

1991

## Specialized Legal Clinics Assist Unrepresented Consumers: A Local Success Story

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### Recommended Citation

Karen V. Kole *Specialized Legal Clinics Assist Unrepresented Consumers: A Local Success Story*, 3 Loy. Consumer L. Rev. 92 (1991).

Available at: <http://lawcommons.luc.edu/lclr/vol3/iss3/4>

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# Feature

## **Specialized Legal Clinics Assist Unrepresented Consumers: A Local Success Story**

*For this issue's Feature, the Reporter presents a report from Karen V. Kole,\* Director of the Loyola Student Federal Tax Clinic, on the positive impact specialized legal clinics have on consumers, the community and the legal profession.*

## **Sleeping With the Enemy? No, We Work With Them**

### **Introduction**

The common perception is that only the rich have tax problems. Unfortunately, however, tax problems among the low-income segment of our population are enormous and often overlooked. For 1990, a single taxpayer under sixty-five years of age with gross income over \$5,300 was required by law to file a federal income tax return. Clearly, this amount of earnings places the taxpayer in a low-income earning category. Nevertheless, the taxpayer may have some federal income tax liability, albeit quite small.

In addition to financial problems, these taxpayers often have the additional problem of illiteracy, not speaking the language, being relatively uneducated and certainly unsophisticated with respect to the tax laws. Once they have filed returns, or even if they have not, these low-income taxpayers can have tax problems with the Internal Revenue Service ("IRS"). Imagine being poor, hungry, and having the IRS after you. It would scare any segment of the population, even those that can afford legal counsel.

The clinical model of legal education is not a new one. Even before the clinical legal education 'boom' of the late 1960's and 1970's, a number of law school

curricula already included clinical courses that served not only to put substantive course work to use in practice, but also to provide a valuable service to communities whose interests were not otherwise adequately served by the legal community in general.

A continuing debate exists as to the extent to which law schools should concentrate on the theory rather than the practice of law. However, it is clear that general clinical legal programs are firmly entrenched as a part of nearly every modern law school's course offerings. Specialized legal clinics help fill the gap in these students' educational experience and better prepare starting practitioners for

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real-life lawyering. Thus, specialized legal clinics, such as Loyola's Tax Clinic, are and must be a significant part of the future of clinical legal education.

In addition to providing students with special skills training, the student of a specialized legal clinic, and the law school itself, provides valuable legal representation to segments of the communities that otherwise remain unserved. A truly unrepresented segment of the community are the low-income taxpayers who have significant tax problems. An obligation to service the community exists for law students and for practicing tax attorneys, for that matter. This obligation extends to all law students, not only the students anticipating a general practice career. Specialized clinics help meet this obligation.

This article discusses the signifi-

cant impact a relatively unique clinic such as Loyola's Tax Clinic can have on the community.

### **The Clinic**

Five upper-level law students and I started the Tax Clinic in December 1987. In its three years of operation, the Tax Clinic has

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handled over 300 cases. Nine students were enrolled during the Spring 1991 Semester. Similarly, nine students have been approved for enrollment in the Fall 1991 Semester.

The Loyola Tax Clinic provides a unique service; it is one of only fourteen tax clinics nationally, and the first clinic of its kind in the Chicago area. Although other *pro bono* legal organizations may provide tax representation, representation is on a limited and selective basis. Approval has been granted to the Loyola Tax Clinic from both the Internal Revenue Service and the United States Tax Court for students to represent clients before these bodies. Additionally, the Tax Clinic is now an approved project of the Chicago Bar Association which provides the manpower to service more of this segment of the community.

The Loyola Tax Clinic's purpose is multi-fold. Primarily, its pur-

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*\*Associate Professor, Loyola University of Chicago School of Law, where she teaches courses in taxation and is the founder and director of Loyola's Federal Tax Clinic. Professor Kole is a CPA and she received her B.S. from University of Southern California, J.D. from Northwestern University, and MBA from University of Chicago.*

pose is to educate the law student in the practice of federal tax law. The Loyola Tax Clinic is neither exclusively a 'skills center' for teaching mechanical tasks necessary in practice, nor a 'theory center' where esoteric legal principles are debated. Instead, all the numerous components of tax law practice are integrated in a curriculum of both classroom study and legal practice.

As a resource for employment purposes, law firms can look to the Loyola Tax Clinic for students interested in tax careers and who have had both theoretical and practical training in client interviewing, negotiations, and tax litigation procedure.

Finally, the Clinic serves an important need of an unrepresented segment of consumers and in turn exposes the student to the value of *pro bono* work.

### The Clients

Who is the segment of the community that the Loyola Tax Clinic serves? The Loyola Tax Clinic helps community residents who need tax counsel for pending federal tax problems yet are limited by the amount of money they can afford. Accordingly, these people cannot find practicing attorneys who will represent them at little or no cost. The Loyola Tax Clinic also works in cooperation with area law firms through its affiliation with the Chicago Bar Association, as a referral service for clients who cannot afford legal help.

Acceptance of clients is based on their economic need. Taxpayers with less than \$30,000 gross annual income are accepted for representation if their case has merit. If a tax deficiency greatly exceeds a taxpayer's annual income, however, (s)he will also be considered for representation even though the annual gross income may exceed \$30,000. In addition, if the taxpayer has an exceedingly large outstanding tax debt, (s)he may be considered.

The majority of the Loyola Tax Clinic clients are, however, indigent and unable to obtain counsel from any other legal service organization, due to the specific nature of the taxpayer's problems, or from a

member of the bar, due to the taxpayer's inability to pay fees.

There is no 'typical' client, but they can be categorized generally.<sup>1</sup>

### The Honest Taxpayer

The first category of client is the so-called honest taxpayer who files a timely tax return but has a tax liability that he cannot pay. How

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does such a taxpayer end up with unpaid tax when such wages are presumably subject to income tax withholding? Often these taxpayers are paid in cash, such as waiters with tip income, which is not subject to withholding.

Also, many indigent taxpayers, although paid by check, mistakenly or deliberately, overestimate the dependency exemption in order to increase their weekly take-home pay and to meet basic living expenses. (Many do not realize that it is against the law to overestimate their dependency exemptions, especially those who are hungry.)

### EDITOR'S NOTE

Read the next issue of the *Loyola Consumer Law Reporter*!

Refer to Professor Karen Kole's article on establishing a specialized legal clinic. In her article, Professor Kole explores the current debate over general versus specialized legal clinics, the educational opportunity created by specialized clinics, and most importantly she provides a framework for establishing such specialized legal clinics.

As illustrated by this issue's Feature, legal clinics have a positive impact on consumers; indeed, clinics are an integral part of the practice of consumer law.

Read the *Reporter*, the only student-run law journal devoted entirely to consumer law, as the premier source for scholarly analysis of legal issues which affect consumers.

Inevitably, when the time comes to file their federal income tax return for the year, they have no money left—it has all gone to paying expenses such as rent and food bills.

In addition, more and more employers are beginning to treat employees as independent contractors in order to save on FICA. In this situation, the employer does not withhold either income taxes or FICA and the taxpayer is left with a large tax deficiency made up of income taxes and self-employment taxes. These clients often come to the Clinic in various stages of collection and need help in negotiating payment schedules. At this stage there is little negotiating that can be done with respect to the amount of the tax liability; thus, the negotiating focuses on the timing of payments.

Other "honest" taxpayers include those who honestly believed that income they received was exempt from income tax when they filed their returns, such as pre-1986 scholarship and fellowship income, and those taxpayers who understate income because they mistakenly believed they were entitled to deductions.

Finally, another type of honest taxpayer is one who seeks a refund due to a miscalculation by the IRS. As a result of the bureaucratic inefficiencies at the IRS, the taxpayer is unable to obtain a valid refund. For example, in one case a taxpayer should have received a refund check in the amount of \$1,000. Instead she received a \$10 check. While "everyone" at the IRS agrees that it should have been \$1,000, it had been a year since our client contacted the IRS on her own. Not until we contacted an IRS problems resolution officer on her behalf did she receive the full amount of her refund.

In another case, the Tax Clinic recently filed a Tax Court petition on behalf of a Mexican citizen who claims that he was allocated \$900 of tip income that he never received. The tax liability in this case was only \$160 plus interest, but this was a significant amount of money to this indigent taxpayer who was supporting his mother in

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Mexico. Our client, on principle, refused to pay the liability. The Clinic filed a Tax Court petition on behalf of this client and the deficiency was reduced to zero. The Tax Court filing fees were also waived due to his indigent status.

### The Non-Filer

Another problem situation arises when an indigent taxpayer fails to file a tax return. In some cases, the taxpayer does not think they have to file a tax return; in others they simply cannot afford to pay the tax, and subsequently, because of fear of being caught, do not file their return.

Other non-filers include those who feel they satisfied their tax liability through withholding and filing a tax return would add insult to injury. We call this taking the ostrich approach.

These non-filers can be found in all walks of life. The Clinic has had

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clients who work at major law firms in the city! In these cases, the taxpayers are sent to an accountant or tax return program to have the necessary returns prepared. Once they are prepared, the Clinic will help them file and try to negotiate with the IRS regarding penalties.

### The "Down-On-His-Luck" Taxpayer

The Tax Clinic sometimes has clients who fit our definition of indigent even though one would not necessarily think of them as such. You might recognize this client yourself. For example, a taxpayer may make a large amount of money one year, such as a commodity broker, but can end up in bankruptcy the following year. Typically, this person will have an incredibly large tax deficiency

from the previous year with no assets to satisfy the deficiency.

The Tax Clinic is currently handling one such client. The taxpayer had a deficiency of over \$300,000 from income of over \$1 million in one year. Because of a bankruptcy filing the next year, he lost all his assets and could not afford to hire an attorney.

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### The "Trying To Be Sophisticated" Middle Income Taxpayer

This taxpayer is one who invests in a tax shelter or some other scheme to "save" taxes. Thereafter, the deductions are disallowed by the IRS and huge deficiencies coupled with interest and penalties result. Often, the taxpayer has only a moderate amount of income to pay off the liability.

### The Truly Dishonest Or Crazy Taxpayer

On occasion, the taxpayer, although seemingly honest in initial meetings, presents us with fraudulent or altered documents to substantiate his claim. After discovery or suspicion of this fact, we quickly withdraw from the case.

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These taxpayers can be hard to spot and can result in some embarrassing situations if district counsel suspects before we do. These are extremely valuable learning experiences for the student, a lesson that is impossible to teach out of a textbook.

In other cases, the client appears

on the brink of significant mental problems certainly exacerbated by problems with the IRS. The Tax Clinic has had to have a client physically removed from premises because he was upset that the collection payment schedule we negotiated with the IRS required him to pay \$35 a month on a \$5,000 outstanding deficiency. He did not want to pay anything and, given his other problems, any amount was too much.

### The Services

The Tax Clinic does not charge for its service; it is not allowed to by its agreement with the I.R.S. and Tax Court. It does request a \$10 administrative fee to cover copying costs, and does ask clients to pay filing costs and other court costs.

The Loyola Tax Clinic does not prepare tax returns, provide tax planning or counseling; however,

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the Loyola Tax Clinic does provide referrals for these matters. Instead, the Loyola Tax Clinic provides counsel to those clients who are about to face, or have already faced, an I.R.S. audit or an Appeals Conference. Additionally, the Loyola Tax Clinic assists in collections matters, prepares protest letters and United States Tax Court petitions, negotiates with District Counsel, and represents clients before the United States Tax Court.

Our clients come to us in various stages of problem resolution. Sometimes a client will come to the Clinic as soon as they receive an initial notice from the IRS, or, in the case of non-filers, before the

IRS requests their return. Unfortunately, our typical client comes to us after several months or years of putting notices from the IRS under the mattress (a true situation) and the IRS, not having had any response from the taxpayer, has brought a collection action against the taxpayer. At this stage there is little we can do to reduce the deficiency since the Clinic confines

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its activities to Tax Court and not District Court or U.S. Claims Court. Negotiation with the collection division of the Internal Revenue Service is the typical resolution.

Finally, another typical situation is where the taxpayers have been sophisticated enough to file an "S" Tax Court petition, yet are getting cold feet about appearing in front of a judge on their own.

### The Students

The Tax Clinic educates the law student in the practice of federal tax law, but it is not exclusively a "skills center" for teaching mechanical tasks necessary in practice, nor a "theory center" where esoteric legal principles are debated.

Instead, the clinic integrates classroom study with legal practice including: client interviewing and counseling; ethics and professional responsibility; procedure before the Internal Revenue Service and the United States Tax Court; negotiations; and, trial preparation and procedure. Students also learn about their *pro bono* obligation to the community by helping and handling real-life problems.

Students conduct negotiations with the I.R.S. and represent clients in Tax Court under the direction of a licensed supervising attorney. Students handle cases at the

IRS and Tax Court level on a clinical basis. All written responses before the Service and Tax Court are reviewed by the Director, the Tax Clinic Staff Attorney, or one of the *pro bono* assistant Supervising Attorneys. To date, over thirty-five Loyola law students have been involved with the Loyola Tax Clinic.

Students must complete a detailed application, supply references, and have an interview with the Director before they are allowed to

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enroll in the Loyola Tax Clinic. Before working at the Loyola Tax Clinic or concurrently, students must take the Federal Tax Procedure and Litigation course which concentrates on the theory of tax litigation.

It is a little too soon to tell if these students will be more likely

to participate in *pro bono* activities than other students. However, at least six out of the twenty-six Tax Clinic students who have graduated from Loyola have come back to help the Tax Clinic in some capacity. In fact, the Tax Clinic's staff attorney was a previous Tax Clinic student!

### Conclusion

The results of the establishment of Loyola's Tax Clinic have been significant in all respects. Over three hundred taxpayers have been helped, over forty law students have handled a wide range of tax cases, and the practicing bar and Loyola Law School have been provided with an outlet for *pro bono* services outside the normal landlord-tenant disputes. Yes, the costs of such a specialized legal clinic may appear high. However, according to my experience the resulting benefits clearly outweigh these costs.

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1 The following categorization is summarized from a legal newspaper article. See Kole "Les Miserables: The Case of the Indigent Taxpayer," *Chicago Daily Law Bulletin*, Thursday, November 9, 1989, p. 2.

## EDITOR'S NOTE

The *Loyola Consumer Law Reporter* now includes a feature column in order to report more completely on developments in consumer law. The Feature column was created to carry a wide variety of writing including brief lead articles, consumer news pieces, editor's notes, winning articles from consumer law writing competitions, and even readers' comments.

In the first Feature Column, the editors presented an article entitled "Maximizing Federal Deposit Insurance Corporation's Insurance of Deposits." The article, written by attorneys John Darrow and David Lobdell, should assist consumers in answering the question: Are my deposits insured?

This issue includes an article on the positive impact of legal clinics by Professor Karen Kole of the Loyola School of Law, and in the next issue James Baumhart of the Better Business Bureau comments on the philosophy of self regulation.

Submissions for this column should be sent to the Editor-in-Chief, *Loyola Consumer Law Report*, Loyola University of Chicago School of Law, One East Pearson, Chicago, Illinois 60611.