

2015

Effective Client Selection in Transactional Clinics

Manoj Viswanathan

UC Hastings College of the Law, viswanathanm@uchastings.edu

Follow this and additional works at: http://repository.uchastings.edu/faculty_scholarship



Part of the [Legal Education Commons](#), and the [Tax Law Commons](#)

Recommended Citation

Manoj Viswanathan, *Effective Client Selection in Transactional Clinics*, 16 *Transactions* 389 (2015).

Available at: http://repository.uchastings.edu/faculty_scholarship/1268

This Article is brought to you for free and open access by UC Hastings Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

EFFECTIVE CLIENT SELECTION IN TRANSACTIONAL CLINICS

MANOJ VISWANATHAN*

I. INTRODUCTION

Good morning. My name is Manoj Viswanathan, and I'll be talking about effective client selection in transactional clinics. As such, this presentation is geared toward transactional clinicians and, even more specifically, *new* transactional clinicians, such as myself.

A little bit of background—I'm a clinical teaching fellow in the Community and Economic Development (CED) Clinic at Yale Law School. Prior to starting at Yale, I was a tax attorney at a large New York law firm. During my time in private practice, I was largely insulated from client selection; but I'm fairly certain that that the criteria we used in New York were dramatically different from the criteria my clinic is currently using to select clients at Yale. In private practice, revenue generation is a primary concern. In the clinical context, what makes for an effective client is less straightforward.

The goal of this presentation is to get clinicians thinking about their goals with respect to the clinics they lead and show that client selection is often related to achieving those goals—in other words, determining what makes for effective client selection in transactional clinics. It's important to note that there is no right or wrong way for an individual clinician to weigh the factors we're going to discuss. My argument is only that it would be wrong to not think about these factors at all.

II. WHY IS CLIENT SELECTION IMPORTANT?

So why is client selection important? There are three main functions that client selection performs, and to some extent, these functions have a degree of overlap.

A. Client Selection Informs the Legal Work Your Students Perform

First, and perhaps almost tautologically, client selection informs the nature of the legal work your students will perform. Unlike direct representation clinics, transactional clinics often perform a wide range of legal work and represent a diverse set of clients. Most litigation-based clinics work within one area of law; for example, criminal defense, mortgage foreclosure, or asylum claims. Transactional clinics can work on projects involving corporate governance, tax, contracts, real estate, banking, or any other non-litigation-based area of law. The clients represented can be small businesses, public charities,

* Clinical Teaching Fellow, Yale Law School; Community & Economic Development Clinic Presentation at *Educating the Transactional Lawyer of Tomorrow*. Transcript of presentation given on June 6, 2014, at Emory Law School.

private foundations, or even local governmental units. As such, the work the students do affects the areas of law in which students develop skills.

In transactional clinics, the macroscopic, “big picture” objectives can be less clear than the objectives of direct representation clinics. For example, in an asylum clinic, the underlying macroscopic objective is clear: to obtain asylum for your clients. Similarly, the objective for a criminal defense clinic is to minimize criminal consequences for the client. For a transactional clinic, the macroscopic objectives may not be clear. A transactional clinic can work on a real estate closing, negotiate a lease, or update corporate bylaws—the macroscopic results of the work done may not have a unifying theme.

The legal work performed by students in a transactional clinic has both macroscopic results (the project that is being advanced as a result of the work being performed) as well as microscopic results (the skills students learn by doing this work). It is possible for any given legal project to advance one of these goals but not the other. For example, if a potential client approached our clinic with a project where the students would be involved in a skills-building real estate transaction, but the end result would be, say, another fast food restaurant on Whalley Avenue, I doubt we’d take that client. Similarly, if a project that aligned with our clinic’s macroscopic objectives required our students to do nothing but due diligence and document review, we probably wouldn’t take that client either. But in a perfect world, both the macro and micro goals would be achieved. Students would advance the macroscopic goals of the clinic by doing work that sharpens their legal skills.

B. Client Selection Establishes a Clinical Identity

Second, the clients you work with establish an identity for your clinic. This identity affects how your clinic is perceived. Within the law school, this has an effect on how your colleagues characterize your work. If you work with more than one housing cooperative, your colleagues might describe you as “that new housing clinician.” If you work with a couple of nonprofits on unrelated business income issues, you might be “that new tax clinician.” The point is that the clients you take affect how your colleagues perceive your clinic, especially those colleagues who are not involved in clinics and not necessarily well-versed in what clinicians do.

The clients you work with also affect how the public perceives you and your clinic. Transactional work can make the papers, especially in smaller towns. The clients you work with will frequently become public knowledge. I view this as generally a good thing, especially for new clinicians, in that most publicity is good publicity. The result is that the public will associate your clinic as doing the things that are mentioned in public, and more groups needing that kind of help will get in touch. If word gets out about your clinic assisting one local non-profit with a lease negotiation, it is possible that other non-profits needing leases negotiated will soon be in touch.

The clients you work with can similarly establish an identity to your potential future students. The broadness of transactional work, as mentioned earlier, often defies succinct description. Future students will understandably use past clients as an indication of the types of clients they might be working with. Students talk to one another. If your clinic is involved with solely redevelopment projects, future students will know that information. Note that this isn't necessarily a bad thing. If your objective is to have students participate in clinic that have an interest in the clinical identity that is being established, great. But know that this identity will affect the students interested in your clinic.

The identity of your clinic also has an effect on how your clinic is perceived by peers not at the law school. Other lawyers or simply other community members will ask what you do. This question is most easily answerable by describing the clients you are representing. To the extent that this reputation outside of the law school is of importance to you, it's worth taking into account.

Many of these issues were described in an excellent article by Stephen Miller, *Field Notes from Starting a Law School Clinic*.¹ I recommend reading it, especially if you are starting a new clinic and thinking about issues of clinical design.

Third, the clients you work with build connections between various important groups. Your students will form relationships with their clients. The clients with whom your students are working are drawn from the community, and as such, your students will form professional bonds with these people. This can be very helpful for your students, depending on what they want to do after law school.

C. *Client Selection Builds Connections*

The clients your clinic chooses to work with also build connections between the community and the law school. This, for better or for worse, goes beyond your own clinic. The community will often associate the work that you do (and the clients you work with) in your clinic with the law school, or even, the university. Of course, the extent to which this is an issue depends on the particulars of each new clinician's circumstances. Stephen Miller, whose article I mentioned earlier, explicitly advises new clinicians to not take on a controversial clinic during their first semester.²

Who you choose to work with will build connections between you and various other groups. As I mentioned previously, your clinical identity will be of importance to students, your colleagues at the law school, and peers in the community. Related to that is how the clients you select will affect the relationships you develop with these groups. It is possible to get client referrals from colleagues. This can be a good way to find clients that have already gone

¹ Stephen R. Miller, *Field Notes from Starting a Law School Clinic*, 20 CLINICAL L. REV. 137 (2013).

² *Id.* at 143.

through at least a preliminary vetting process. It can also be a way to accomplish some cross-pollination between the doctrinal side and clinical side. Your decision to work with these referrals can develop connections with folks you may not have interacted with previously.

This illustrates some of the effects that client selection can have on your clinic. The extent to which these effects are important to you can vary widely from clinician to clinician and clinic to clinic. I have a view on how important each of these factors are to me, but don't have a view on how relevant they should be to *you*. I'm simply suggesting that these factors should be considered when deciding which clients to represent.

III. CLINICAL MISSION STATEMENTS AND CLIENT SELECTION

As discussed earlier, your clinic's macroscopic objectives can influence the clients you choose to represent. Should every clinic, then, establish mission statements that articulate these macroscopic objectives? Should these macroscopic objectives be made public? Let's look at some publicly articulated examples of mission statements for transactional clinics.

The goals of Georgetown's Social Enterprise and Nonprofit clinic are to

- (1) teach law students the materials, expectations, strategies, methods, and lexicon of transactional lawyering, as well as an appreciation for how transactional law can be used in the public interest;
- (2) represent D.C.-based social enterprises and nonprofit organizations in corporate and transactional legal matters; and
- (3) facilitate the growth of social enterprise in the D.C. area.³

Georgetown's Social Enterprise and Nonprofit Clinic is very explicit about its goals. The only vague term – “social enterprise” – is defined in the next paragraph.⁴

³*Social Enterprise and Nonprofit Law Clinic*, GEORGETOWN LAW, available at <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/social-enterprise/> (last visited June 4, 2014).

⁴*Id.* Georgetown's Social Enterprise and Nonprofit Clinic defines “Social Enterprise” as something that offers:

Internal Positive Impact in the way the business or organization operates, treats employees, engages in production, selects materials and other factors of production; External Positive Impact in what the business or organization contributes to the environment, the communities in which it operates, and/or humanity; Legal & Ethical Accountability in the business or organization's incorporation documents, mission statements, stated values, and governance policies and practices.

Additionally, Social Enterprises are described as enterprises that “generally apply entrepreneurial approaches to addressing social, environmental, and human justice issues, have a primary purpose

Students in Hofstra's Community & Economic Development Clinic "provide transactional (non-litigation) assistance to nonprofits, community-based organizations and microenterprises in low-income communities in and around Nassau County, with a preference for clients that contribute to social and economic justice."⁵ Hofstra's mission statement contains at least three guidelines: (1) no litigation; (2) that clients will be located in low-income communities in and around Nassau County; and (3) preference for clients who contribute to social and economic justice.

The previous mission statement of the Community and Economic Development at Yale, in contrast, stated that the Clinic

focuses on issues of neighborhood revitalization, social entrepreneurship, sustainable development, and financial access. Students in the CED Clinic represent and partner with community organizations, nonprofits, banks, local government, and small businesses. They work in regulatory, transactional, business, policy research, development, advocacy, and strategic capacities. The Clinic's clients are primarily located in New Haven, but also include, for example, a community development financial institution located in Washington, D.C.⁶

Yale's old CED website doesn't state explicit goals. The entity type of potential clients isn't really limited, and neither is the location. Yale's approach is at least coincidentally consistent with its "norms not rules" mentality. What is the benefit of having a specific versus generalized mission statement? An explicit mission statement provides clarity to prospective clients and to the public. But the downside of this clarity is that it might be difficult to say no to clients who meet the explicit criteria. The benefit of not having an explicit mission statement is that it gives the clinician flexibility in the types of clients the clinic accepts. The clinic can be more dynamic. For example, legislative advocacy projects might not fit within an explicit clinical mission statement, but could easily be worked into the docket of a clinic with a broad clinical mission statement. Some other bright-line rules that your clinic's mission statement may nor may not contain include limiting representation based on (1) client status (non-profit or for-profit); (2) location (local or non-local); (3) type of legal work (litigation, advocacy, or

beyond making money for individual owners and investors," and are "set as a primary goal improvement of the environment, humanity, and/or community."

⁵*Community and Economic Development Clinic*, HOFSTRA LAW, available at <http://law.hofstra.edu/clinics/communityandeconomicdevelopmentclinic/index.html> (last visited June 4, 2014).

⁶*Ludwig Center for Community & Economic Development*, YALE LAW SCHOOL, available at <http://www.law.yale.edu/academics/Ludwig.htm> (last visited June 4, 2014). Note that this website has been updated with a more specific mission statement; namely, that all Yale CED clients "share an interest in promoting economic opportunity and residential mobility among low and moderate-income people."

transactional; and (4) populations served (low-income or other underserved demographics).

IV. THE ROLE OF SOCIAL JUSTICE IN CLIENT SELECTION

What is the role of social justice in client selection for transactional clinics? Clinical legal education arose out of progressive lawyering. The first clinicians were active participants in the social and political movements in the 1960s and '70s. The world was unjust, and they were doing their part. Transactional clinics, because of the broad nature of CED work, do not always have an easily identifiable social justice goal. I don't view the absence of social justice in clinics as a flaw, per se. It is possible to have a valuable transactional clinic without taking into account social justice, where the primary objective is skill building for students. Taken to an extreme, your clinic could serve well-heeled, corporate clients. However, I personally would not want to participate in a CED clinic that did not incorporate aspects of social justice. Where you come down on this issue might differ though.

V. STUDENT INVOLVEMENT IN CLIENT SELECTION

To what extent should students be involved in client selection? A student's career goals can affect client selection. If a student wants to work in real estate, they'll be more amenable to real estate development projects. Similarly, a client's legal work can affect the students selected for a clinic. This point is almost the converse of the first, which is more common for direct representation clinics where the legal work that needs to be done (e.g., asylum hearings) affects the type of student selected (i.e., a student with an interest in immigration). In my experience, students doing client outreach results in student excitement about the work, and a generally better work product. An example: When I first arrived at Yale we did not have many active food policy clients. One new student was passionate about food policy and essentially built up the client base, not dissimilarly from how a partner might build up a practice at a law firm. The downside of students doing client outreach is that clients found by the students might not fit your vision of the clinic, which can lead to awkward conversations.

VI. "SOFT" FACTORS IN CLIENT SELECTION

There are other factors with respect to client selection that don't have bright-line rules but are still worth considering. The first of these "soft" criteria is length of engagement. An enduring relationship with a client that has long-term projects can be good pedagogically. It establishes a relationship between student and client. But this may not be possible given the nature of the clinic (if your clinic is one-semester and has no continuing students, for example). But your clinic might also become the de facto general counsel for this client. This can be a good thing or a bad thing. Second, how important is the sophistication of the clients you select? Do you want to work with a client that is badly managed? This can cut both ways. Working with a dysfunctional client can be instructive, because sadly this is often a reality of legal practice, but this pedagogical value can be outweighed by the frustration. Third, the clients you select can affect the

professional development of students. If working with a client helps students get jobs after graduation, this can only help. Fourth, to what extent should you prioritize your own research interests when deciding whom to represent? Most clinicians got into clinical teaching because they enjoy practicing and teaching more than writing, but scholarship is, of course, a reality of academia. To the extent that your work can promote your scholarship, the better. Lastly, a clinician's expertise is an important consideration. Transactional clinics cover many areas of law. Be wary, but not dismissive, of selecting projects that are fascinating but in areas of law in which you are not experienced.

VII. CONCLUSION

I've thrown a lot of information at you. I hope I've made it clear that the diversity in whom transactional clinics can represent can affect the clinician in unexpected ways. Consideration of these consequences can help transactional clinicians more effectively accomplish their professional goals. As I said before, there is no wrong or right way how an individual clinician might weight the factors I've discussed. But it would be wrong to not recognize that these factors affect how a clinician's goals are realized. Thank you.