

The Not-Quite-Accidental Genius of EBCLC's Consumer Justice Clinic: Lessons for Legal Services Providers

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In the fall of 2008, I was approached after an Ultimate Frisbee game by a player who asked if she remembered correctly that I practice consumer law. I confessed that yes, that was precisely what I had been doing at the California Attorney General's office until earlier that year. That inquisitive player and skilled advocate, Elisa Della-Piana, then asked apologetically if I knew anything about debt-collection law and, if so, whether I might be willing to sit in the back of the old EBCLC office on Shattuck Avenue during clinic hours. I did, and I was, and I went in that Thursday and have never left.

What I encountered at the Neighborhood Justice Clinic (NJC), as the old Shattuck office was then called, was a remarkable experiment in community lawyering, courage, vision, and creativity, leavened with a healthy dollop of entrepreneurship. From the day they started, the attorneys at NJC were doing things that lawyers just do not do: they were opening their doors to anybody with a legal problem; they were shaping their practice to the needs of the community rather than the preferences of funders; they were helping out as best they could rather than sending people away. And when they ran into an area of law that was unfamiliar, they were—to use the legal term of art—winging it.

The spirit of those first few days has persisted. First, unlike most legal service providers, the Consumer Justice Clinic (CJC), as the practice is now known, remains focused on the problems that potential clients bring in, not the problems that the clinic is already prepared to address. Second, CJC has taken what it has learned from its intensely client-focused approach and, once again showing a most unlawyerly derring-do, has crafted and somehow succeeded in

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passing legislation in Sacramento that remedies specific problems facing the clinic's low-income clients. Third, CJC has brought together other providers of legal services for low-income consumers in the Bay Area and around the state to share strategies and resources; it has convened nongovernmental organizations and government lawyers and academics to develop strategies, templates, and case ideas; and it has even become the fulcrum of a formal policy coalition in Sacramento. These activities are no accident. They stem directly from the energy, optimism, and dedication with which the clinic was born.

THE GENERAL CLINIC: EBCLC AS FINGER ON THE PULSE

It began simply. Tirien Steinbach, the creative mastermind at the helm of EBCLC, and Osha Neumann, furiously inspired muralist and homeless advocate, had conceived of a radical change with a deceptively innocuous name: the "General Clinic." They then hired the incomparable Ms. Della-Piana to run it. Most legal services clinics are tightly focused on one particular area: providing assistance in clearing criminal records, helping with applications for Social Security benefits, or defending tenants in eviction proceedings. Potential clients who do not fit into the right category do not get seen at that clinic. Often they receive a referral to another agency or office. If their issue is unusual or new, they frequently receive nothing but an apology.

The General Clinic at EBCLC set out to change that paradigm. Anyone who came in with a legal problem that no other EBCLC clinic handled (other than family law¹) would be seen. The supervising lawyers took a risk that the great majority of practicing lawyers would simply never take: offering assistance to a client with a problem they had not encountered, in an area of law they did not know. As the founders of the General Clinic saw it, the important thing was not the comfort of the lawyers; it was the problems faced by the clients.

The supervisors' overarching insight was that for these clients some help, even by inexpert lawyers, would be better than none—and none was the only alternative for most of the people who came to the General Clinic. In addition, Tirien, Osha, and Elisa strongly suspected that the greater part of the clinic's clients would fit into a group they had often seen but previously had few resources to help: homeless people who had received criminal citations for infractions like sleeping or sitting on the sidewalk. Holding an open-door clinic would serve these clients in addition to whoever else needed assistance.

But once the doors opened, there was a twist. A large plurality of the people who came into the clinic were not homeless; they had not been given

1. EBCLC does not handle family law matters. This policy avoids potentially complicated conflict issues: representing one spouse in, say, a divorce proceeding would preclude representing the other spouse in an eviction case.

citations; and they were faced with a suddenly widespread problem that EBCLC had never seen before. They had been sued in superior court . . . over credit card debt.

The General Clinic had served another function perfectly: it had alerted EBCLC to the existence of an epidemic.

The General Clinic not only allowed people with unusual or previously unseen problems to receive assistance, but also permitted EBCLC to monitor the emerging legal problems facing the low-income population that it serves and to deploy attorneys and staff to meet those needs. That bit of not-quite-accidental genius led eventually to the creation of the Consumer Justice Clinic, an independent practice group helping low-income consumers—first with debt-collection lawsuits and now with a range of problems extending from fraudulent debt settlement companies to deceptive used car lots to predatory for-profit colleges.

By maintaining an open door, CJC has made sure that the work it does targets the most pressing problems facing EBCLC's consumer clients. Several years ago, for example, CJC attorneys noticed a plethora of scams directed specifically at immigrant groups, from diploma mills to door-to-door sales schemes; in response, they created the nation's first immigrant consumer law clinic.² Today, the General Clinic still operates as an intrinsic part of CJC. And the door to that clinic remains open. Because the Consumer Justice Clinic knows where it came from. And because it doesn't know what might come next.

WHY NOT CHANGE THE LAW?: EBCLC AS LEGISLATIVE VOICE

The almost accidental genius of the General Clinic soon extended beyond the crumbling brick walls of the old Neighborhood Justice Clinic. After all, in an environment where lawyers and law students were hearing unfamiliar cases every week at clinic, trying a new idea just didn't seem like that big a deal—even if that idea was something outside the experience of everyone in the building. So if there was a problem that couldn't be solved by litigating individual debt-defense cases because the law governing those cases was deficient, then why not . . . change the law?

The problem was debt buyers. Before the General Clinic was two years old, EBCLC was seeing upward of a thousand debt-collection clients a year at the Shattuck office and its "courthouse clinic" at the Alameda County Superior Court. The great majority of these lawsuits were filed by companies that, for

2. The clinic was staffed by superb Equal Justice Works fellows, including the remarkable Kara Acevedo (now a staff attorney), but it was first conceived of and created by CJC staff (and an adviser). In other words—somewhat unusually, for a legal services provider—the clinic came into being not as a project that could get a fellow funded, but rather as a need that CJC staff identified among the clients it saw at the General Clinic.

pennies on the dollar, had purchased portfolios of credit card debt from banks and department stores and then set about trying to recover their investment.³

The business model had some flaws. The debt buyers typically received no more information than a line on a spreadsheet for each account. The agreements with the original creditor stated that the accounts were sold as is and that the information might be inaccurate. The debt buyers didn't seem to care about accuracy: they unconcernedly went after individuals with a different middle name, different social security number, or different address from the one they had on their spreadsheet—and happily produced a “robosigned” affidavit swearing that someone on their staff had carefully reviewed each case for accuracy. Why? Because they operated under a business plan based on volume. The debt buyers counted on the fact that some 90 percent of consumers never responded to the complaint when they were sued—either because they knew they owed the debt and had no defense to offer (the debt buyers' story), or because they had never received notice of the lawsuit or didn't recognize the debt or knew they weren't the person named in the lawsuit (EBCLC's view). In fact, if a client showed up in court for trial, or even just answered the complaint, the debt buyer would frequently dismiss the case. And in the one case in a hundred where a lawyer got involved, the dismissal was a near certainty. To the debt buyers, those few dismissed cases were just the cost of doing business. Volume, speed, default judgments, wage garnishments, bank levies—that was the debt buyers' *modus operandi*. And it was working all too well.

So one day at a weekly unit meeting, when someone bemoaned the rampant problems with debt buyers' conduct and recordkeeping, I suggested that perhaps we should try to do something about it.⁴ Amend the state debt-collection statute. Require debt buyers to be able to prove the amount of the debt and the identity of the alleged debtor before filing suit, before getting the default judgment. Someone has to write the laws—why not EBCLC?

Well, when there are law students around, rhetorical questions get answered and theoretical propositions get investigated. Suddenly, “There oughta be a law against it!” gets turned into a white paper proposing just such a measure.

Rachel Terp was an intern at EBCLC that summer, a rising 2L at Berkeley Law, and—it turned out—both an alchemist and a trendsetter. By taking on that first policy project and transforming a raw idea into a bill, she established the model for many clinical students to come.

3. Paul Kiel, *So Sue Them: What We've Learned About the Debt Collection Lawsuit Machine*, PROPUBLICA (May 5, 2016 7:57 AM), <https://www.propublica.org/article/so-sue-them-what-weve-learned-about-the-debt-collection-lawsuit-machine> [<https://perma.cc/A842-774H>].

4. Yes, somehow I was still there. Like the brick dust in the back room. The pro bono counsel who refused to leave.

Rachel also clearly had connections in the right places. Within weeks, the Federal Trade Commission obligingly issued a report on debt collection titled “Repairing a Broken System” that included ideas for legislative reform at the state level. It was the first lightning strike. It would not be the last.

Rachel wrote up an analysis of the issues that summer. In the fall, she took my class in Consumer Protection Law and did her research project on the topic, drafting not just a white paper (later published with Consumers Union) but also a bill to fix the problem. This method would become a pattern.

And then, somehow—by drawing on partners with legislative experience in Sacramento and bringing the stories of our clients to committee hearings and having students testify and negotiating with the debt collectors’ lobby and waiting out the banks’ lobby—after three years, we emerged with a law. It took a lot of research, a lot of drafting and redrafting, and a lot of intense bargaining. It took some devastating disappointment, and it took the development and invocation of what has become the EBCLC maxim on negotiating legislation: “You know your bill is ready to pass when you hate it—and everybody hates you.”⁵ It also took another stroke of lightning when a likely opponent of the bill had his state Senate wages garnished by a debt buyer in a sloppy case of mistaken identity—and as a result became a co-author of the legislation.

In the end, the bill passed unanimously.

The new law, the Fair Debt Buying Practices Act (FDBPA), changed not only the way debts are collected in California, but also the way policy is thought about at EBCLC and at legal services providers around the state. No longer is a state law an immutable enactment printed for all time in those blue California codebooks that sit on the office shelves. A law is now something that we try to alter when it stands in the way of justice. It is difficult to overstate the revolution in our thinking—and that of our students and our clients—that passing the FDBPA has wrought.

You can actually *change* the law.

The notion has led to some remarkable things. In the California legislature, it has led to a series of new laws, about one every year, enacted in furtherance of the interests of low-income consumers. At Berkeley Law, it has meant students coming up with policy ideas, working them up in consultation with practitioners, drafting bills, locating consumer witnesses, and testifying in committee.

And within EBCLC, it has helped spur a surge of interest in—and success at—legislative work at the state level.⁶ Once the FDBPA was under way, it became much easier for the folks battling maximum family grants, or driver’s

5. The original source of this wisdom was Marc LeForestier, then of the California AG’s office, who was instrumental in the bill’s passage. He did not know at the time that he was uttering a maxim—at least until we made it into a needlework sampler and sent it to him.

6. I have had the privilege of serving as what might be called inspiration by example: “If *he* can do that, *I* can do that.”

license suspensions for failure to pay traffic fines, or unjustified juvenile court fines and fees to imagine taking their concerns to Sacramento—and, crucially, to believe that the law would be different when they were done.⁷

Consider: a scrappy community law center acts, in a leap of faith, on the belief that if it can describe an injustice that is afflicting low-income Californians, figure out how it might be fixed, and get lawmakers to listen to people whom current law has left unprotected, then those legislators may listen and the law might shift. Stir in a little persistence and the help of some wise and skilled friends, and that formula, against all odds, has actually . . . worked.

EBCLC—that scrappy outfit—has changed the law.

PULLING TOGETHER: EBCLC AS UNIFYING FORCE

The Consumer Justice Clinic's legislative efforts drew on, and enhanced, an emerging community of legal services providers around California who were increasingly engaged in litigating on behalf of low-income clients facing abusive debt collectors, predatory lenders, unscrupulous car dealers, and a host of other consumer protection issues. That community of like-minded clinics has itself been enhanced by coming together in regular meetings with government agencies, consumer advocacy organizations, and academics to create a remarkably broad coalition of organizations and individuals dedicated to serving low-income consumers. And at the heart of many of those regular conferences, quarterly meetings, and annual retreats, the careful eye might discern the work of a certain dust-covered clinic on the Berkeley/Oakland border.

Facilitated by the General Clinic and energized by the policy work, a third near-accidental piece of genius has flourished in the old office on Shattuck Avenue: bringing together dedicated people to exchange ideas, build coalitions, and while they're at it, roll the rock of justice forward.⁸

Legal services providers traditionally work with their heads down: there is too much at stake in the case set for trial next week—the entirety of a client's life savings, the roof over a client's head—for an attorney to consider going to that meeting or joining that amicus brief, not to mention thinking about putting together a bill to prevent cases like this in the future. But the staff at the Neighborhood Justice Clinic, and now the Consumer Justice Clinic,⁹ have kept their heads up and their eyes open. And the results have been striking.

7. EBCLC's policy efforts have been greatly boosted by the birth of former EBCLC director Jeff Selbin's Policy Advocacy Clinic at Berkeley Law. Among that remarkable clinic's first projects was joining the effort to enact the FDBPA.

8. Everything coming out of the old Shattuck office has the word "Justice" in its name. I think there was once even a "stapler of justice." This is but one of the ringing legacies of the inspiring and absurdly capable Jen Neuber, Owen Thompson, Mari Castaldi, Rachel Swanson, and Yahaira Carrillo Rosales in their years running the office.

9. *See id.*

Part of it stems from EBCLC's role as an unusual hybrid. It is, first and foremost, a community law center, dedicated to improving the lives of its clients in as great a volume as it can handle. Yet EBCLC is also—and has been from the start—an organization dedicated to the training of law students. There are very few law school clinics that provide high-volume legal services out in the community. And there are very few community clinics that are directly attached to a law school.

That unusual combination attracts attention from a number of places, not just locally and regionally, but nationally as well—from the Consumer Financial Protection Bureau when it seeks to gather information from law school consumer clinics, and from the Federal Trade Commission when it looks for information from community clinics. When the FTC wanted to hear from Bay Area legal service providers about the problems facing low-income consumers, EBCLC—keeping its head up—offered to help convene a quarterly clearinghouse. The legal service providers found the meetings more valuable than they'd expected: suddenly they had a forum in which to share ideas with the folks who were doing the same work. Seven years later, having grown to include agencies and NGOs that address low-income consumer issues, that group still meets every quarter.

Meanwhile CJC, under the leadership of its first director, Megan Ryan,¹⁰ continued to pull together informal coalitions of low-income consumer advocates from around the state to help move laws through the legislature. In order to make sure the substance of bills reflected the most salient issues facing California consumers, EBCLC decided several years back to host an annual policy retreat at the law school, bringing together academics, practitioners, and advocates from around the state to identify the most promising ideas for legislation. In each of the past three years, the ideas ultimately selected were initially proposed, anonymously, by the same person: Sharon Djemal, the current director of CJC.¹¹

Finally, in 2017, EBCLC leapt at a long-dreamed-of chance to professionalize its consumer policy work in Sacramento, pulling together a formal coalition and hiring a lobbyist. The California Low-Income Consumer Coalition (CLICC) has already made its presence known in the Capitol, notably amplifying the voice of consumers in Sacramento. EBCLC's twin commitments to policy work and to bringing people together have merged into a standing force for low-income Californians.

10. Megan's arrival was another piece of serendipity for the clinic: she came as a temporary "deferred associate" during the Great Recession, when law firms were temporarily paying new hires *not* to work for them. Of course, when it came time to start at the firm, Megan, showing the great wisdom for which she would become known, decided she'd rather stay at CJC.

11. To the surprise of absolutely no one who knows her. It would probably be more efficient to do away with the retreat and just ask Sharon every year. But we are a process-oriented people.

But wait—in the words of the old commercial—there’s more! CJC has also acted as convener in the other of its dual roles as a law school community clinic. With the passage of the FDBPA, the consumer practice called a conference to discuss the new law and its potential role in ameliorating debt-collection abuse in California and serving as a model nationwide. When the immigrant consumer law clinic was launched with regular workshops, first in Fruitvale and later in Chinatown, EBCLC and the FTC co-hosted a conference at the law school on the particular hazards facing immigrant consumers.¹²

And in May 2017, EBCLC co-convened¹³ at Berkeley Law the first-ever conference of law school consumer clinics. The event marked the first time that directors of the nation’s academic consumer clinics had gathered on their own to share ideas and experiences with their peers. The conference meant many things: official recognition of a critical clinical practice area, acknowledgment of the expanding number of consumer clinics at law schools around the country, and respect for the professors and students and practitioners who provide legal assistance to the most vulnerable consumers in our society.

It also meant a culmination for the consumer practice area and the people who had built it. There have been other celebrations—notably including the party in the fall of 2016 marking the milestone of one million dollars of client debt discharged—but this one was special, because it cemented the Consumer Justice Clinic’s role at the fore of consumer law clinics nationwide.

Not bad for a practice area that emerged from the General Clinic, not quite by accident, less than a decade before.

I look back over the course of that decade with a sense of deep gratitude. For the courage. For the ingenuity. For the unswerving commitment to clients. For, of course, the dedication to justice. For the chance to be a witness to, and part of, all of it.

That was one valuable Ultimate game.¹⁴

Since that game, I have had the honor of watching the work of scores of outlandishly talented and dedicated students and of attorneys who inspire those students every day. I have been able to see from my desk—then my table, and then my chair (as the clinic staffed up and things got more crowded)—the

12. These conferences stemmed in part from the imaginative force of staff attorney Chris Douglas and the uncanny ability of Evonne Silva, who was then an Equal Justice Works fellow.

13. With co-conspirator Professor Prentiss Cox of the University of Minnesota Law School. And with the extraordinary work of staff attorney and event planner extraordinaire Miguel Soto.

14. Certainly to me. Possibly to EBCLC as well: someone calculated that at market rate, my pro bono services to EBCLC over that decade have amounted to more than \$1 million. But of course, that is equally true of the difference between market rate and the actual pay of any long-time EBCLC staff attorney. At the insistence of several fact-checking readers, I will admit to having played a role in most of the events described above and even to being responsible for some of the more outrageous ideas. I will also cop to one other thing: an unwavering dedication to the continued, thriving existence of the CJC and the people—attorneys, students, staff, and clients—who have made it such an essential part of the community it serves.

growth of a glimmer of an idea into a force that resonates in Sacramento, in the nation as a whole, and most importantly in the lives of the clients that CJC serves. In 2008, I walked into that back room where I was once a clinical student myself and proceeded, through a carefully parlayed inertia, not to leave. This year, I stepped into CJC's new office on University Avenue with a handful of brick dust from the old Shattuck office in my pocket. And I sprinkled that dust around the disquietingly clean carpet and the strangely unblemished desks. Because this most innovative and creative enterprise now has a tradition to carry forward. And that dust and I—we plan to stick around and watch it happen.

