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The Veterans Clinic and Legal Education: A Conversation with Professor Steven Berenson

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**The Veterans Clinic and Legal Education:
A Conversation with Professor Steven
Berenson**

Steven Berenson and Paul Lee

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I. INTRODUCTION

In his second inaugural address, President Lincoln famously pledged “to care for him who shall have borne the battle, and for his widow, and his orphan.”¹ Unfortunately, the difficulties veterans face do not end when they return from service. Veterans frequently struggle with issues at home including obtaining benefits, coping with post-traumatic stress, and adapting to civilian life. Despite an overwhelming need, obtaining legal assistance for these issues can be difficult.

Professor Steve Berenson sought to aid veterans through the creation of the Thomas Jefferson School of Law’s Legal Clinic (the “Clinic”). This Article is a conversation between Professor Berenson and the UMass Law Review, discussing both his experience setting up the Clinic and the Clinic’s achievements. Part II provides a brief introduction to Professor Berenson’s work and how he started the TJSJL Veterans Clinic. Part III considers veterans particular legal needs and how the Clinic addresses these issues. The Article concludes with some remarks from Professor Berenson regarding the future of the Clinic, and the overall movement of law schools toward greater practical education.

II. A SMALL START, BUT A GOOD ONE

A. How did you get started with the TSJL Veterans Clinic?

I have a long background in clinical legal education. I had been involved in clinics at Harvard Law School, Northeastern University Law School, and Nova Southeastern University School of Law before joining the faculty at TJSJL. At that time, TJSJL had no traditional “in-house” law school clinics, just a field placement program, and my primary goal was to start a clinic at TJSJL. I offered a number of proposals to the then-Dean, but none were approved.

During the winter of 2006, representatives from Veterans Village of San Diego (VVSD) approached the law school to see if there might be a way to partner with the school to provide civil legal services to its

¹ President Abraham Lincoln, Second Inaugural Address (March 4, 1865) available at http://avalon.law.yale.edu/19th_century/lincoln2.asp. The VA has since embraced this statement as its mission. See DEPARTMENT OF VETERANS AFFAIRS, *About VA*, http://www.va.gov/landing2_about.htm (last visited June 7, 2014).

residents and alumni. VVSD is a nationally recognized recovery program for homeless veterans with substance abuse problems.² However, up to that point, VVSD had been unable to provide civil legal services to its residents on a consistent basis.

Based on this need for legal services, VVSD connected with an anonymous donor who was willing to put up “seed” money to get a program off the ground. TJSL, VVSD, and the donor quickly agreed on the concept of a clinic to serve the civil legal needs of the VVSD community. Given my persistent efforts to start a legal clinic at TJSL, I was the logical choice to head up efforts to put this vision into operation.

B. Why did you choose a Veterans Clinic over another area?

As a matter of public policy, we should do what we can to support and assist those who served and sacrificed for our country. Although veterans have issues that mirror the civilian population, veterans’ needs are unique because the issues they face are often a residual effect of their service. Thus, it was important to set up a clinic that catered to these distinctive and specific needs for veterans.

C. How does the Clinic get Clients?

The main Clinic gets all of its clients through VVSD, whether they are current participants or alumni of one of its various programs. We also operate a monthly, limited-assistance, advice-only Clinic for self-represented veterans with legal issues. The latter clinic is open to the broader veteran community—not only VVSD affiliates, as long as the veteran earns less than California’s median income.³ A wide range of additional organizations refer veterans to our self-help Clinic.

² VETERAN’S VILLAGE OF SAN DIEGO, <http://www.vvsd.net> (last visited Mar. 1, 2014); *VVSD Featured on 60 Minutes*, <http://www.vvsd.net/60min.htm> (last visited Mar. 1, 2014).

³ See *State and Country QuickFacts*, CENSUS.GOV, <http://quickfacts.census.gov/qfd/states/06000.html> (last visited Mar. 1, 2014) (“Median household income, 2008-2012 \$61,400”).

III. THE ISSUES IN MEETING THE LEGAL NEEDS OF VETERANS AT THE CLINIC

A. What Major Issue Does the Clinic Face When Aiding Veterans?

Although the Clinic primarily deals with civilian issues, military issues often arise when representing clients in matters involving VA Benefits, family law and criminal work.⁴ Resolving exclusively military issues can be challenging for practitioners and students who do not have a military background.⁵ Military acronyms and terminology are often difficult for civilians to decipher—I often feel like I need an interpreter to help with our clients' military records. Fortunately, we often have students in our Clinic, TJSJL alumni, and other San Diego lawyers with a military background who are eager to help.

B. What are the Greatest Legal Needs Among Veterans at the Clinic?

When we started the Clinic in fall 2006, the greatest legal needs among the veteran population were in family law.⁶ Child support was the area of greatest need, followed closely by child custody and visitation issues, and dissolutions of marriages.⁷ Recently, however, we have begun to see a shift in the legal needs of our client population, as more veterans of the recent conflicts in Iraq and Afghanistan return. San Diego has the greatest concentration of veterans from these recent conflicts in the country.⁸ These veterans are typically younger than our previous clients and much less likely to have families or family law issues. They seem to have a greater need than their predecessors for

⁴ For example, different types of veterans' benefits may impact the division of pension benefits in divorce cases, and military service issues may impact the sentence imposed in criminal cases.

⁵ Stephen F. Butera & Matthew A. Kelly, *Ending Veteran Homelessness Through the Veterans Justice Outreach Initiative*, W. VA. LAW. 35, 36 (Jul.–Sept 2012).

⁶ Steven K. Berenson, *Legal Services for Struggling Veterans—Then and Now*, 31 HAMLIN J. PUB. L. & POL'Y 101, 137 (2009-2010).

⁷ See generally, Steven Berenson, *Homeless Veterans and Child Support*, 45 FAM. L.Q. 173 (2011).

⁸ CALIFORNIA VETERANS LEGAL TASK FORCE, <http://www.cvlftf.org/> (last visited Mar 7, 2014).

assistance relating to criminal justice issues,⁹ and consumer credit and debt matters such as bankruptcies.¹⁰

For the broader group of successfully transitioning veterans, particular areas of need include consumer finance and employment law, especially among veterans who remain in the military reserve and may need to juggle their military and civilian employment obligations.

C. How are those issues addressed in the context of a legal clinic?

Our goals are twofold. First, we want to provide opportunities for our students to develop their legal practice skills and professional values in “real world” contexts. This is part of our overall goal to produce excellent legal practitioners. Second, we want to provide needed, valuable, and high quality legal services to those who have served our country but are currently struggling and are in need of assistance.

The Clinic’s partnerships with organizations such as the San Diego Department of Child Support Services (SDDCSS) reflect the depth of the clinical experience. In the Clinic, students not only gain invaluable experience by representing a client, but also have the opportunity to collaborate with other organizations. Coordinating with outside organizations is a form of legal education that is not and arguably cannot be taught in the classroom.

IV. CONCLUSION

A. What do you consider to be the biggest achievement of the Clinic?

For homeless veterans who are delinquent in their child support obligations, their arrears can be a huge impediment to their successful

⁹ Mark A. McCormick-Goodhart, Note, *Leaving No Veteran Behind: Policies and Perspectives on Combat Trauma, Veterans Courts, and the Rehabilitative Approach to Criminal Behavior*, 117 PENN ST. L. REV. 895, 904-06 (2012-2013) (examining the link between post-traumatic stress disorder and criminal behavior).

¹⁰ See, e.g., Benet Magnuson, *Lawyers Serving Veterans: Pro Bono Opportunities and Resources*, 93 TEX. B.J. 820 (2010) (discussing housing and consumer debt struggles among newly returned Texas veterans).

reintegration into society.¹¹ They have returned from the battlefield and reentered the workforce only to find their wages garnished up to 65%,¹² their driver's license suspended,¹³ and their bank accounts emptied.¹⁴ Unable to afford to pay rent, the cycle of homelessness, addiction, and crime begins anew. The Clinic has successfully assisted many veterans with their child support debt, while at the same time preserving enough of their income to remain on the path to recovery.

In addressing the issue of child support, our single greatest achievement has been to partner with the San Diego Department of Child Support Services and the San Diego Superior Court's Family Support Division and provide legal services at VVSD's annual Stand Down event. Stand Down is a community-based intervention program that provides comprehensive assistance to homeless veterans, including legal assistance with reconciling child support obligations.¹⁵ Each year, for the past five years, the Clinic has helped between forty and fifty veterans get back on top of their child support obligations on that one day alone, allowing these veterans to proceed with recovery and reentry into society. It has been a very rewarding experience.

B. Are there any new developments in the law that will assist your clients in the Clinic?

As you know, presently there is a huge back log of benefits claims that the VA needs to process.¹⁶ Veterans are waiting far too long to

¹¹ See Berenson, *supra* note 6, at 177–79 (documenting that homeless veterans often cannot afford a lawyer, that the treatment of their child support arrearages are treated as court judgments, so they cannot be retroactively adjusted to make more affordable, and that the arrearages accrue interest making them even less possible to be paid).

¹² Their wages are garnished because their VA benefits are not subject to attachment, levy, or seizure by anyone for any reason. See *id.* at 179 (citing 38 U.S.C. § 5301(a)).

¹³ See *id.* at 180 (citing Cal. Fam. Code § 17520 (2010) (license suspension); 42 U.S.C. § 666 (a)(7) (credit bureau reporting); Cal. Fam. Code § 4701(a) (2010) (credit bureau reporting)).

¹⁴ See Berenson, *supra* note 6, at 180 (citing Cal. Fam. Code § 17522 (2010)).

¹⁵ See VETERANS VILLAGE OF SAN DIEGO, *About Stand Down*, <http://www.vvsvd.net/standdown.htm> (last visited June 6, 2014).

¹⁶ According to the VA's own statistics, as of January 4, 2014, there were over 600,000 pending VA claims and over 400,000 of those have been pending for more than 125 days. See *Veterans Benefits Administration Reports*, U.S. DEPT. OF VETERANS' AFFAIRS, http://www.vba.va.gov/REPORTS/mmwr/2014/MMWL_01_04_14.xls (last visited Mar. 1, 2014).

receive their benefits and many fall through the cracks during that wait.¹⁷ In an effort to address this issue, the VA recently adopted a “fully developed claim” (FDC) process that will allow veterans to short-cut some of the wait.¹⁸ The veteran provides the VA with the records necessary to adjudicate the claim.¹⁹ Previously, veterans filed skeletal claims, and the VA assumed the duty of collecting all of the supporting records.²⁰ By taking advantage of the FDC process, veterans may receive their benefits sooner.

C. Has your work in the Clinic highlighted any specific areas that could benefit from legislative change?

Veterans often grapple with substance abuse while in the military.²¹ This can result in a discharge from the military that is something other than fully honorable.²² Such “bad paper” discharges

¹⁷ See Marcia G. Yerman, *America's Veterans: Falling Through the Cracks?*, HUFFINGTON POST (July 4, 2010 11:07 AM), http://www.huffingtonpost.com/marcia-g-yerman/americas-veterans-falling_b_635076.html (discussing a personal encounter with a homeless veteran who had been waiting over a year for his benefits).

¹⁸ See *Fully Developed Claims*, VETERANS AFFAIRS, <http://www.benefits.va.gov/fdc/> (last visited Mar. 4, 2014).

The Fully Developed Claims (FDC) program is an optional new initiative that offers Veterans and survivors faster decisions from VA on compensation, pension, and survivor benefit claims. Veterans and survivors simply submit all relevant records in their possession, and those records which are easily obtainable, such as private medical records, at the time they make their claim and certify that they have no further evidence to submit. VA can then review and process the claim more quickly.

Id.

¹⁹ See *id.*; 38 U.S.C. §§ 5101–5104 (providing the laws and procedures that mandate, *inter alia*, that the Secretary of the VA must provide forms for veterans making claims and the VA's duty to assist those claimants in establishing the required information and evidence to collect on those claims).

²⁰ See *Fully Developed Claims*, *supra* note 18.

²¹ *Substance Abuse in the Military*, NATIONAL INSTITUTE ON DRUG ABUSE (March 2013), available at http://www.drugabuse.gov/sites/default/files/drugfacts_military_0.pdf.

²² *Army Discharge Review Board*, ARMY REVIEW BOARDS AGENCY, <http://arba.army.pentagon.mil/adrb-overview.cfm> (last visited March 14, 2014); *The Naval Discharge Review Board*, SEC'Y OF THE NAVY COUNCIL OF REV. BOARDS, <http://www.public.navy.mil/asnmra/corb/NDRB/Pages/Naval%20Discharge%20Review%20Board.aspx> (last visited March 14, 2014); *Air Force*

may bar these veterans from accessing certain, if not all benefits from the VA.²³ There is a legal process to “upgrade” such discharges, but the chances of success are low, particularly for veterans like our clients who are very early on in their recovery process from addiction and homelessness.²⁴ Though I would like to be able to take on more of those cases, what we really need is a legislative solution that would allow struggling veterans with “bad papers” access to at least some VA resources that might assist them in their recovery.²⁵

Although our veterans face numerous challenges when they return from service, our Clinic attempts to provide these men and women with the legal supports necessary to return to civilian life. It is an honor to serve these individuals.

Discharge Board, AIR FORCE PERS. CTR., <http://www.afpc.af.mil/afveteraninformation/airforcedischargereviewboard/index.asp> (last visited March 14, 2014); *Board for Correction of Military Records*, U.S. COAST GUARD JUDGE ADVOCATE GEN., <http://www.uscg.mil/legal/BCMR.asp> (last visited March 14, 2014).

²³ Peggy McCarthy, *Despite Less Than Honorable’ Discharge, Veteran Fights for Benefits*, THE DENVER POST (July 13, 2012), <http://www.americanhomecomings.com/news/2012/07/13/veteran-fights-for-benefits/>.

²⁴ See generally Teresa Panepinto, *Good Paper*, 35 L.A. LAW 43 (Nov. 2012) (discussing the laws and process of upgrading a dishonorable discharge to an honorable discharge). There are boards that review the discharge status of service members, but those boards do not review *de novo*, so there are significant limitations on a veteran’s ability to represent his or her case before the board. *Id.* at 46–48.

²⁵ See (Title Redacted by Agency), 06-14 586, 2009 WL 3325047 (2009) (“Where an individual’s discharge or release is considered to have been issued under dishonorable conditions under the provisions of 38 C.F.R. § 3.12, that individual is not eligible for VA benefits other than healthcare and related benefits authorized by Chapter 17, title 38, U.S. Code. See 38 U.S.C.A. § 101(2); 38 C.F.R. §§ 3.1(d), 3.12(a), 3.360(a)”).