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Cultivating Justice for the Working Poor: Clinical Representation of Unemployment Claimants

Colleen F. Shanahan*

The combination of current economic conditions and recent changes in the United States’ welfare system makes representation of unemployment insurance claimants by clinic students a timely learning opportunity. While unemployment insurance claimants often share similarities with student attorneys, they are unable to access justice as easily as student attorneys, and as a result, face the risk of severe poverty. Clinical representation of unemployment claimants is a rich opportunity for students to experience making a difference for a client, and to understand the issues of poverty and justice that these clients experience along the way. These cases reveal that larger lessons of justice can come from cases that are not classic poverty law representations, but are nonetheless tangible, personalized, and valuable sources of learning about justice and the poor.

I. INTRODUCTION

Clinical representation of unemployment insurance claimants exposes students to clients who, though recently employed, are teetering on the edge of poverty and who are often unable to access the justice that our unemployment insurance system promises. As advocates for unemployment insurance claimants, student attorneys gain insight into individual client experiences, have the opportunity to draw larger lessons about our economy, poverty, and justice, and help their clients access justice and the unemployment insurance system more effectively.

This Article begins with an overview of the unemployment compensation system in the United States and moves on to a discussion of its importance in the current economic climate and its role in poverty law. Ultimately, the Article observes that the clinical experience of representing unemployment insurance claimants (1) allows students to identify, experience, and attempt to combat injustice at individual and systemic levels, (2) gives students the opportunity to better understand how immediate and unexpected the experience of poverty can be for many Americans, (3) provides an opportunity for student reflection and

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learning about larger social, economic, political, and legal change that may be necessary to achieve justice for their clients, and (4) provides increased access to justice for individuals through representation and systemic change.

II. THE UNEMPLOYMENT COMPENSATION SYSTEM

A. Historical Context

Unemployment insurance in the United States is a product of the New Deal, and has not changed fundamentally since its creation.\footnote{For detailed accounts of the history of unemployment insurance, see, e.g., Saul J. Blaustein, Unemployment Insurance in the United States: The First Half Century (1993); William Haber & Merrill Murray, Unemployment Insurance in the American Economy (1966).} In 1935, President Franklin Roosevelt’s Committee on Economic Security outlined a comprehensive plan for social security that included unemployment insurance.\footnote{See Comm. on Econ. Sec., Report to the President (1935) (providing recommendations that were the basis of the Social Security Act, Pub. L. No. 271, 49 Stat. 620 (1935) (codified in various sections of 42 U.S.C.).} As a component of a larger social security plan, unemployment compensation was intended to provide short-term, cash payments to mitigate the broader economic effects of temporary unemployment.\footnote{See id. at 11.} The New Deal plan also recognized the problem of long-term or “structural” unemployment, and proposed programs like the Works Progress Administration to address this issue.\footnote{See id. at n. 3.} Although the Roosevelt Administration implemented some of these work-related programs, they were not sustained in the long term.\footnote{See Michel B. Katz, America’s Once Generous Welfare State, 27.2 Rev. in Am. Hist. 275, 277-80 (1999) (reviewing Edwin Amenta’s account of the demise of the WPA).} Thus, the unemployment compensation system has born the burden of all types of unemployment, rather than the narrower purpose for which it was originally designed.

The basic structure of unemployment insurance, conceived during the New Deal and essentially unchanged today, is built around a federal payroll tax that provides credits to employers who contribute to a state unemployment insurance system that meets certain federal standards.\footnote{23 U.S.C. § 3302 (2011).} Although states have some flexibility in designing the details of their unemployment insurance systems, the basic characteristics are the same. In keeping with the original design, unemployment insurance places time limits on an individual’s receipt of unemployment compensation, although there are provisions for extended benefits in a weak economy.\footnote{D.C. Code § 51-107(g) (2011).}

For example, the District of Columbia’s unemployment insurance system\footnote{For purposes of illustration and because the observations in this article are from The Community Justice Project, a clinic that operates in the District of Columbia, this article will use as its framework the specifics of the District of Columbia’s unemployment insurance system, a system that shares its basic characteristics with systems across the country.}


3. See id. at 11.

4. See id. at n. 3.


8. For purposes of illustration and because the observations in this article are from The Community Justice Project, a clinic that operates in the District of Columbia, this article will use as its framework the specifics of the District of Columbia’s unemployment insurance system, a system that shares its basic characteristics with systems across the country.
imposes a dual set of criteria, referred to as “eligibility” and “qualification.” First, there is a threshold requirement that a claimant has worked a sufficient amount of time and earned a minimum level of wages in the period leading up to the claim for unemployment compensation.9 At present, this “base period” calculation is capped at a weekly unemployment benefit of $359.10 If the base period requirement is satisfied, then a claimant must certify—on an ongoing basis—that she is available for work and is actively seeking work.11 If the base period, availability, and job search requirements are met, then a claimant is eligible for unemployment compensation.12 Second, each claimant is subject to an evaluation of her qualification for unemployment compensation. A claimant is presumptively qualified for benefits, but may be disqualified if she was discharged from her most recent employment for “misconduct” or if she “voluntarily” left her most recent employment “without good cause.”13

The process by which these criteria are applied in the District of Columbia involves several steps. First, the claimant’s application is reviewed by the District of Columbia Department of Employment Services, which gathers wage data from the employer, the employee, and/or tax records.14 After this wage data is used to determine whether the “base period” criteria are met, the Department of Employment Services contacts the employer and/or the employee for information regarding the separation from employment (although our clinic’s experience suggests that this contact is inconsistently executed). Then, a Department of Employment Services employee known as a Claims Examiner determines whether the claimant is disqualified from benefits.15 Either party then has fifteen days to appeal an adverse determination to the Office of Administrative Hearings, a District of Columbia agency.16 Because the employer’s contribution to the unemployment insurance fund correlates with the number of former employees who have received benefits, the employer often has a significant incentive to contest the award of benefits.17

If the determination is appealed, an Administrative Law Judge conducts an adversarial hearing, reviewing de novo the claimant’s eligibility and qualification for unemployment benefits.18 Regardless of which party appealed, the employer

10. Id.
12. Id.
15. D.C. MUN. REGS. tit. 7, § 305 (2011). Although the regulations describe a claims examiner giving notice of and conducting a “predetermination fact-finding interview,” in practice this is simply a series of phone calls and/or letters. See D.C. MUN. REGS. tit. 7, § 305.2-305.4 (2011).
bears the burden of proving that the claimant is disqualified from receiving benefits. The Administrative Law Judge’s decision is then open to appeal to the District of Columbia Court of Appeals. A similar process is followed in most states.

Of course, the American economy has undergone fundamental changes since the 1940s, due in large part to increased economic globalization and a fundamental shift away from a manufacturing job base. Furthermore, the welfare reform of the 1990s altered the context in which unemployment compensation operates, increasing the importance of unemployment benefits for many individuals for whom welfare reform limited access to other benefits. These changes and others have prompted calls for incremental and systemic change of the unemployment insurance system, so that its design more closely matches the role it is playing in the American economy and the nature of the contemporary workforce.

As an example, the District of Columbia has implemented some recent reforms in response to criticism of the unemployment insurance system’s mismatch with the contemporary workforce. This criticism has focused on a variety of issues, ranging from the disconnect between an unemployment insurance system designed for male breadwinners, and a modern economy replete with employed single mothers, and increased contract work and telecommuting. The District of Columbia addressed some of these issues in statutory amendments in 2010. For example, one amendment provides that benefits shall not be denied where the separation from work was caused by domestic violence. Another recent amendment created a “caretaker exception” prohibiting the denial of benefits where the employee had to leave employment to care for a sick relative. While, as reflected in the discussion below, these incremental reforms have increased access to justice for some individual claimants, they have not comprehensively addressed the flaws in the design of the unemployment insurance system.

B. Current Economic Context

At the end of 2010, the national unemployment rate was 9.4%, down from 9.8% in November 2010,25 and having been above 9% for 20 months, the longest recorded streak.26 More than fifteen million Americans are out of work and over six million of these unemployed have been out of work for six months or longer.27

In the District of Columbia, where The Community Justice Project operates, the unemployment rate increased by more than 40%—from 8.4% in January 2009 to 12% in January 2010—and was 9.6% in December 2010.28 Unemployment in the District of Columbia has disproportionately impacted low wage workers. Half of DC’s unemployed in 2009 had worked in a low wage job, and Ward 8, one of the city’s poorest wards, had a 2009 unemployment rate of 26.5%.29

This increased and ongoing unemployment has led to political wrangling over the extension of unemployment benefits.30 It has also caused some commentators to return to an issue posed at the time of the New Deal: whether it is acceptable for the United States to have long-term, “structural” unemployment that is more than negligible.31 The concept of “structural” unemployment is one that is used in economic terms to describe an unemployment rate that can be reached without causing inflation, and in political terms to ascribe a more serious and less temporary cause to current unemployment. A corollary suggestion to “structural” unemployment is that we are creating a new class of “involuntarily retired” workers: older workers who are able and willing to work but are unable to find employment.32 A recent survey shows that a disproportionate number of workers over the age of fifty-five are unemployed and that 27% of older workers reported that they will retire early because of their unemployment.33

As an issue of justice, the concept of structural unemployment embodies social, political, and economic choices: are we willing to tolerate some groups of people who are able and willing to work, but who are unable to find employment? If we are, then do we want our unemployment insurance system to provide

27. Id.
benefits for this segment of society, do we want to provide some other source of governmental assistance, or do we want to provide no support at all? Our choices in this regard necessarily dictate the role of unemployment insurance and the appropriate shape of the unemployment insurance system.

The historic length and depth of unemployment and the political discussion regarding whether we are undergoing a fundamental change in the United States labor market give unemployment insurance representation a particularly interesting perspective. Although unemployment claimant representation has not traditionally been seen as an area of advocacy for a population in serious crisis, our current economic context may change that view.

C. Unemployment Insurance and Poverty Law

Representation of unemployment insurance claimants is not a classic area of poverty law. To the contrary, individuals seeking unemployment compensation are often seen as not truly poor, or perhaps not poor enough. While it is logical that an individual who has recently been employed is theoretically financially better off than an individual who has not been employed for a long time, the economic realities of the American workforce belie such an easy distinction. Fifteen years ago, Deborah Maranville wrote of the particular salience of the unemployment insurance system in light of the changing economy, noting the shift from manufacturing to service jobs and the entry of more women into lower wage work.34 The trends Maranville observed continue today and have been exacerbated by welfare reform in the late 1990s and the current financial crisis. Thus, unemployment compensation has become an even more vital lifeline for individuals living in poverty—or teetering on its edge.35

Reforms of the unemployment insurance system—suggested in some cases, implemented in others—reflect issues facing the American poor and, in particular, poor women. Among these issues is the disconnect between the base period requirement and the reality that many low wage workers are part-time or seasonal workers.36 Another issue is the mismatch between the blanket exclusion of individuals who leave their jobs “voluntarily” from receiving benefits, and the realities facing working women of limited means, who commonly have caretaking responsibilities for children and other family members.37 Still another


35. See Mark R. Rank, One Nation, Underprivileged: Why American Poverty Affects Us All 22-32 (2005) (discussing the textured reality of poverty in the United States, including that some individuals experience chronic poverty while for others, loss of employment can lead to poverty of a more temporary nature).

36. See Maranville, supra note 34.

37. See Czapanskiy, supra note 34.
issue is the failure of many unemployment insurance systems to take into account the realities of domestic violence and its effect on an individual’s ability to perform or keep a job. Finally, the lack of a right to representation in civil proceedings, often referred to as “civil Gideon,” further complicates the ability of claimants to obtain justice. Each of these issues of unemployment insurance is inextricably linked to corollaries in poverty law more generally. Thus, the effect of representation on the experiences of—and the outcomes obtained by—unemployment claimants, discussed below in the context of our clinical experience, can be extrapolated to poverty law more generally.

Clinical representation of unemployment claimants can also be explored within the broader evolving context of poverty law and clinics. Juliet Brodie has written that, because of welfare reform and the growth of the worker center movement, there is increasing importance in focusing on workers’ rights and particularly wage litigation as part of an evolving poverty law mission in law school clinics. Similarly, welfare reform, coupled with the current economic crisis, has made representation of unemployment claimants an important opportunity for advocacy and learning about justice for the working poor.

III. LESSONS IN CULTIVATING JUSTICE FOR UNEMPLOYMENT CLAIMANTS

Representation of unemployment claimants by student attorneys in The Community Justice Project has led to opportunities for students to help clients access justice by increasing positive individual outcomes and, in some instances, initiating structural reform. These individualized and systemic experiences, and the student learning opportunities that have resulted from them, reveal that unemployment representation is a rich opportunity for learning about and achieving justice for the working poor.

The Community Justice Project’s representation of unemployment claimants occurs in a unique context. This clinic is not defined by subject matter, but rather by the guiding principle that students are best prepared to become advocates for justice through a combination of direct representation opportunities that provide them with “traditional” litigation skills, and group projects that engage broader advocacy skills. At present, The Community Justice Project offers the direct representation opportunity to represent two different unemployment claimants in first-level appeals. This design reflects a choice to give students two specialized cases, foregoing the learning opportunities of a more generalized clinical

representation for the learning opportunities presented by repeating the experience of a particular type of representation in the same semester.\textsuperscript{41} Supervisors screen representations before they are accepted, and often cases are chosen because they suggest that they are “hard” cases or will present novel applications of District of Columbia law.\textsuperscript{42} Although this framework was designed with pedagogical motivations, it has given both supervisors and students an opportunity to experience the District of Columbia’s unemployment insurance system in a concentrated way.

A. Cultivating Justice for Clients

Through student attorney representation of unemployment claimants, The Community Justice Project is increasing access to justice for our clients, and potentially for a broader group of unemployment claimants. Our experience shows that as a result of their representation by clinic students, clients are experiencing positive outcomes, including not only decisions granting unemployment benefits, but also improved personal circumstances. It is also apparent that our students’ participation in the unemployment insurance system as thoughtful, repeat players is generating change beyond individual clients’ cases.\textsuperscript{43}

1. Individual Clients

Our experience in The Community Justice Project is that student attorneys have made a difference for their individual clients in tangible and measurable ways. When measured statistically and anecdotally, our experience shows that individual clients are likely to have increased access to justice when they have the benefit of a student attorney.

a. Statistical Outcomes

The Community Justice Project’s experience is consistent with the few studies of unemployment representation in that representation appears to increase

\textsuperscript{42} See Paul Reingold, Why Hard Cases Make Good (Clinical) Law, 2 CLINICAL L. REV. 545 (1996) (discussing the pedagogical appeal of the “hard” clinical case). Of course, this choice is also a choice to not provide the learning opportunity of selecting cases. See Adrienne Jennings Lockie, Encouraging Reflection on and Involving Students in the Decision to Begin Representation, 16 CLINICAL L. REV. 357 (2010) (discussing the advantages of student involvement in case selection).
\textsuperscript{43} Student attorneys are perhaps a variation of the “repeat player” described by Marc Galanter. They combine institutional resources and knowledge with a focused, individualized view of and dedication to each client. Further, student attorneys are advocates whose role in the institution lasts only a semester and thus have a different set of incentives than long term “repeat players” in the system. See Marc Galanter, Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change, 9 LAW & SOC’Y REV. 95 (1974).
claimant success rates. Of the twenty cases in which we have obtained a decision, fifteen cases have resulted in the award of full benefits for the claimant, and three cases have resulted in the award of modified benefits for the claimant. Of the remaining two cases, one resulted in a final denial of benefits, and the other case is pending on appeal from a denial of benefits.

Although there are few statistical studies of unemployment cases, a 1994 study showed claimant success rates increasing from 34% to 45% with representation. An earlier study showed an increase from 31% to 45% with representation. These measures show a valuable increase in outcomes for represented unemployment claimants. Arguably, the even stronger increase in outcomes for The Community Justice Project reflects the disproportionate time and energy that student attorneys have to dedicate to individual clients, as compared to private or legal services attorneys. Thus, consistent with the broader studies discussed above, student attorney representation appears to improve outcomes for unemployment claimants.

b. Balancing the Procedural Playing Field

Beyond the statistics, The Community Justice Project has had individualized impacts on our clients. The unemployment insurance system is inequitable by definition because an unemployment claimant’s adversary is either her former employer or the government. The most common appeals scenario in The Community Justice Project’s representations involves a claimant who was denied benefits by the claims examiner, based on a finding that the claimant was either terminated for misconduct or voluntarily quit without good cause, and that claimant appeals the determination. In this circumstance, the adverse party in the initial appeal is the employer, who has the burden of proving facts supporting the misconduct or quit scenario. In this procedural posture, representation balances the distribution of power in several ways.

Balancing Access to Information. Appeals where the employer is the opposing party have a fundamental imbalance of information that heavily favors the employer. The only factual issue in these appeals is the circumstances of the

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46. In each of these cases, the claimant takes the initiative to appeal, and is then referred to The Community Justice Project. In many of these cases, clients have come to expect denial and often simply accept it, and delay filing an appeal until encouraged by family, friends or another service provider to do so. This anecdotal experience suggests that there may be many more unemployment claimants who simply accept a denial of benefits that is unwarranted or unfair and thus have even less opportunity to access justice in the unemployment insurance system.
claimant’s separation from employment. While the employer has the burden of proving the factual basis for disqualification from benefits, the employer also typically has control of all of the documentary evidence and witnesses relevant to that issue. While some claimants keep copies of their employment-related documents, it is more likely that a low wage employee never received copies of relevant documents such as an employment agreement or an employee handbook.

The Rules of the District of Columbia Office of Administrative Hearings\(^\text{47}\) attempt to mitigate this inequality by providing limited discovery opportunities, namely (1) requiring document and witness disclosure three days before a hearing and (2) allowing for subpoenas by request to the court.\(^\text{48}\) In practice, employers, who are sometimes unrepresented parties, are regularly unaware of or fail to comply with the three-day disclosure rule. In the eighteen representations that The Community Justice Project has handled in which an employer was the opposing party, on three occasions the employer failed to comply with the disclosure rule, yet appeared at the hearing with documents or witnesses.\(^\text{49}\) Against this backdrop, the presence of a representative who can object to the use of this evidence—which claimants may not know to do—can add significant value to the claimant’s case by excluding the employer’s evidence in a setting where the employer has the burden of proof.

A related problem is that self-represented claimants—and in many instances, student attorneys before they receive training—often misunderstand the burden of proof concept. As a result, self-represented claimants will unwittingly provide testimony at hearings that proves the employer’s case. This can occur in two scenarios. In the first scenario, the employer appears at the hearing and presents insufficient evidence to sustain its burden that, for example, the claimant was terminated for misconduct. The claimant then testifies, and, in the course of relaying her version of events, concedes facts supporting misconduct.\(^\text{50}\) For example, the employer may say that the employee was always late, and the employee may then testify that she was always late, but that the real reason she

\(\text{47. The Rules for the Office of Administrative Hearings were amended, effective January 1, 2011. Since the experiences reflected in this article occurred in 2010, citation to a D.C. Office of Administrative Hearings Rule (D.C. MUN. REGS. tit. 1, § 2800 } \text{et seq.} \text{) is to the rule in effect in 2010.}
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\(\text{48. See D.C. MUN. REGS. tit. 1, § 2822-2823 (2010). Notably, the only way to obtain discovery other than the three-day disclosure rule is by order of an administrative law judge. However, the time limits provided for this process clearly are not designed to apply to unemployment hearings, as they are inconsistent with the approximately fourteen day time period between the filing of a notice of appeal and the appeal hearing. See D.C. MUN. REGS. tit. 1, § 2822.2 (2010) (request for subpoena must be filed no later than eleven days before return date), D.C. MUN. REGS. tit. 1, § 2823.4 (2010) (responding party shall have fourteen days to respond to discovery request); D.C. MUN. REGS. tit. 1, § 2823.7 (2010) (discovery completed thirty days before trial date).}
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\(\text{49. See Student Attorney Case Closing Surveys (surveys completed by students in The Community Justice Project regarding various procedural issues in each of their cases) (on file at The Community Justice Project, Georgetown University Law Center).}
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was fired was that her supervisor did not like her. In the second scenario, the employer does not appear at the hearing and the claimant nonetheless tells the court her version of events, conceding facts that disqualify her from receiving benefits. In both of these scenarios, representation prevents the claimant from proving the case against her, places the burden back on the employer, and typically improves the claimant’s outcome.

Countering Third Party Employer Representation. An additional recent development in the unemployment insurance system that highlights the value of claimant representation is the growth of the third party employer representation industry. Many jurisdictions, including the District of Columbia, allow parties non-attorney representatives in administrative hearings. This rule, combined with the economic incentive for large employers to reduce their unemployment insurance costs, has spawned an industry that monitors companies’ unemployment insurance costs and claims, and represents them in appeals. Against an unrepresented claimant, these repeat players can be very successful in controlling their clients’ costs by achieving denials of benefits.

In one instance at The Community Justice Project, a client was awarded benefits by the claims examiner, and the employer, represented by a third party representative company, appealed the award of benefits. Interestingly, when the hearing finally took place, it came to light that the employee’s supervisor had not wanted the employee to be separated from employment and appeared to be participating in the appeal only as part of a corporate cost control strategy. In a very satisfying conclusion, the student attorney spoke with the employer after the hearing, and our client was rehired in her old position (and won the appeal and received benefits for the several months that she was not employed).

Undoubtedly, student representation made a significant difference in this claimant’s unemployment appeal and, in this circumstance, it also made a fundamental difference for this low wage worker’s economic security.

It has also been our experience that the presence of a student attorney can scare third party representatives into conceding a case. We have encountered third party employer representatives in five of our twenty representations. In three of these cases—one of which involved briefing by the student attorney and another

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51. In a hearing where only the claimant appears, the administrative law judge gives an instruction regarding burden of proof to the claimant before asking if she would like to testify. However, our anecdotal experience and written appellate opinions suggest that this explanation does not always convey to the claimant that she is better off saying nothing. See, e.g., Berkley v. D.C. Transit, Inc., 950 A.2d 749 (D.C. 2008) (reversing A.L.J.’s denial of benefits where unrepresented claimant was “misled to her prejudice” by A.L.J.’s instruction regarding burden of proof and testified in a hearing where the employer did not appear).


55. See Student Attorney Case Closing Surveys, supra note 49.
of which involved negotiations regarding continuances—the employers simply conceded the appeal to the claimant before the hearing.\(^5^6\) This strongly suggests that the third party representatives or employers made a decision not to invest their resources in a hearing with a vigorously represented opponent. In the face of a growing industry of employer representatives who contest claimant benefits, student attorneys may tangibly increase unemployment claimants’ access to justice.

Mastering Administrative Procedure. Finally, student attorneys in The Community Justice Project have become repeat players in the unemployment appeals process and are strongly encouraged to pool their experience and knowledge. As a result, student attorneys are themselves confident in their representation of their clients—a hearing that empowers their clients in a hearing room. As importantly, our students are identifying solutions and processes that employers, other attorneys, the Department of Employment Services, and the Office of Administrative Hearings, have not identified.

For example, some of our students have filed motions or hearing briefs, which is a highly atypical practice at the Office of Administrative Hearings. In addition to the potential intimidation factor discussed above, this seemingly obvious practice improves client outcomes because it makes the bureaucracy more efficient, whether by helping claims office staff figure out how to remedy a paperwork error or by compiling applicable law in a brief for the Administrative Law Judge.

Similarly, in the cases where the Department of Employment Services itself is an opposing or interested party, the time and dedication of a student attorney can solve an arcane issue that the bureaucracy has been unable to solve. In one instance, a student attorney’s mastery of the regulations of the employer funding system in the District of Columbia led to the understanding that a seemingly daunting threshold issue for her client’s appeal raised by the Department of Employment Services—to which “base period” employer the claimant’s benefits would be charged—was in fact a non-issue and her client was awarded benefits.\(^5^7\) In another instance, a student attorney representing a client who allegedly received an overpayment of benefits mastered the relevant regulations, and the Administrative Law Judge reversed a finding of disqualification.\(^5^8\) Then, the student attorney identified and pursued a remedy in the regulations to offset the overpayment. Strikingly, the Department of Employment Services was seemingly unaware of this regulatory provision and had no established process to consider this remedy. Thus, the student’s efforts have created a path for future


claimants contesting overpayment of benefits. In situations like these, the time and dedication of a student attorney can offset the procedural imbalances inherent in the unemployment insurance system, thereby increasing claimants’ access to justice.

c. Offsetting the Power Imbalance of At-Will Employment

The unemployment insurance system is necessarily bound up in the at-will employment context in which it operates. The problems of at-will employment and potential areas of reform are the subjects of their own comprehensive treatment, but this context is relevant for students who represent unemployment claimants. Unemployment claimants often feel powerless, and the fact of representation can be a crucial element in empowering claimants to pursue justice.

At the most generalized level, at-will employment places disproportionate power in the hands of the employer and disproportionate risk on employees. In many employment situations, employees are forced to assume the risk of difficult work situations such as unreasonable (or worse) supervisors, poor working conditions, or unilateral changes in the terms of employment. Against this backdrop, the construct of unemployment insurance where “worthy” claimants are only those who were fired without any kind of wrongdoing on their part or quit their jobs with “good cause” is often at odds with reality.

This employment context often results in claimants who feel powerless in the face of their employers’ opposition to their receipt of unemployment compensation. This powerlessness is exacerbated by the frequent misperception that an initial denial of benefits is the result of the employer’s active opposition to the claimant’s benefits when, often, a claims examiner will deny benefits based on a fact or set of facts obtained without any agenda or even involvement on the employer’s part. Finally, the psychological impact of job loss can compound a claimant’s fear or powerlessness.


61. See generally Lawrence E. Blades, Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power, 67 COLUM. L. REV. 1404, 1405-06 (1967) (discussing the at-will employment doctrine’s effect on an employer’s power over her employee).


63. See Richard Price, Psychosocial Impact of Job Loss on Individuals and Families, 1 CURRENT DIRECTIONS IN PSYCHOL. SCI. 9, 9 (1992) (discussing the impact of job loss on an individual’s psychological state).
Against this backdrop, representation can give claimants the empowerment that is necessary to pursue their claims fully. One client of The Community Justice Project had resigned from her job after mistreatment by her supervisor, but was seemingly only half-heartedly pursuing her appeal and initially relayed the circumstances of her resignation as entirely of her own volition. Yet, after she became a client of The Community Justice Project, it became clear that her supervisors had taken advantage of her by reducing her hours and opportunities because of a prior criminal conviction, even though that conviction had been expunged and the client had been a valued employee for many years before the employer decided to run a background check. The employer had told the client that he was doing her a favor by letting her keep her job, and the employer then took advantage of the client’s indebtedness at every opportunity. The process of relating this information to the student attorney and the student attorney then placing it in a legal context (in this case, that the client had quit with good cause because of the reduction in hours) empowered the client to see that she was not at fault and that she not only deserved unemployment benefits, but also a better employment situation.

2. Systemic Change

In addition to the impact of representation on individual client’s circumstances, student representation of unemployment claimants also holds the promise of facilitating systemic change. In only a semester of work, students at The Community Justice Project have become repeat players in the unemployment insurance process.64 This exposure, combined with the clinical context of their representation, has made student attorneys thoughtful observers of how their individual clients’ circumstances reveal opportunities to develop the applicable law and the administrative system through which that law operates.

a. Legal Development

Student attorneys in The Community Justice Project have encountered opportunities in their individual client’s cases to advocate for developments in District of Columbia law that increase access to justice for unemployment claimants more generally. Three areas of developing law where students have pursued these broader advocacy opportunities are a statutory domestic violence exception, the intent required for a disqualification based on misconduct, and the equitable exceptions to the appeal deadline.

Domestic Violence. One area that has presented opportunities for developing favorable law is the interplay between domestic violence and unemployment

64. See supra note 43.
As mentioned above, the District of Columbia recently enacted a statutory amendment that provides for the award of unemployment insurance, despite disqualifying circumstances, where domestic violence has caused the separation from employment. The most recent version of this statute went into effect at the same time that The Community Justice Project began representing unemployment claimants, so recent cases have presented some of its first applications. Two student attorneys in The Community Justice Project identified opportunities for expanding clients’ access to justice through application of this recent amendment.

In the first instance, the student attorney advanced a legal theory that expanded the application of the statutory domestic violence exception. The statute requires a claimant to provide documentation of the domestic violence to take advantage of the exception. Such documentation can include a police report documenting a particular incident, or an affidavit from an individual from whom the claimant sought help or to whom the claimant reported the violence. In this particular client’s case, the client had not shown up for work because her boyfriend had physically assaulted her, prevented her from leaving their apartment, and torn the phone from the wall so that she could not call her employer. The claimant had been terminated and the employer argued that the termination was for misconduct that disqualified the claimant from receiving benefits. However, the client had not sought assistance from any service provider, clergy, or other individual who qualified as a source of documentation under the statute. Further, the client had kicked out and broken up with the boyfriend who had been the perpetrator of domestic violence. Thus, the client had no documentation and no way of obtaining documentation to comply with the statute.

To overcome the problem of documentation, the student attorney advanced a theory that the domestic violence exception nonetheless applied to her client because application to this case was consistent with the intent of the statutory amendment. Ultimately, the administrative law judge found that the claimant was qualified for benefits on a different but consistent legal theory. The administrative law judge made factual findings as to the circumstances of domestic violence, noted the lack of documentation, and then concluded that the domestic violence meant that the claimant did not commit the misconduct (absenteeism) of her own

68. Id.
69. This client’s factual circumstances suggested yet another area for reform, as the statute punishes victims of domestic violence who eliminate the circumstances of violence on their own without using criminal or family court systems. Because this client extracted herself from the violent relationship before her unemployment appeals hearing occurred, she did not have the option of approaching a service provider contemporaneous with her unemployment claim to obtain documentation for the purposes of the hearing.
volition and thus could not be disqualified from receiving unemployment compensation. Although the court did not adopt the exact legal theory advanced by the student attorney, the student attorney nonetheless succeeded in creating case law that allows for domestic violence to become relevant even where documentation is unavailable.

In the second instance where a student attorney in The Community Justice Project identified an opportunity to use the domestic violence amendment, the case did not initially present itself as one that even concerned domestic violence. Rather, the client had been repeatedly tardy for work and was ultimately fired for this reason. In several interviews of her client, the student attorney was unable to identify any particular reason for this tardiness. However, after repeated telephone calls with the client, the client’s daughter mentioned in passing that there had been violence between the client’s two sons during the time period of the tardiness. The student attorney recognized this information as the source of a potential case theory. Ultimately, it became clear that the client’s home was the site of repeated violence between the two sons, stemming from one son’s hostility toward his brother’s sexual orientation. Further, the client’s tardiness was often the result of managing and coping with this violence in her home. In fact, in one instance, the police had been called to the client’s home, causing the client to be late for work. If this client had not been represented by a dogged and determined student attorney, the client would have never known of this potential defense to disqualification from unemployment compensation.

The student attorney ultimately presented the court with a case theory based on this domestic violence, the client’s testimony, and police documentation. At the hearing, the administrative law judge expressed unfamiliarity with the existence of the domestic violence amendment and expressed incredulity that the amendment could apply where the claimant was not herself a victim of the violence. The student attorney provided the court with the statutory citation, and correctly asserted that the statute incorporates violence in the claimant’s family. However, the administrative law judge ultimately found that because there was not a documented incident of violence to correspond with each alleged incident of tardiness, the claimant was properly disqualified from unemployment compensation. As the statute imposes no requirement that each incident underlying misconduct correlate with a documented incident of domestic violence, and because of other legal and factual elements of the administrative law judge’s opinion, this case is currently pending with the District of Columbia Court of Appeals. Although this appeal is still pending, the student attorney’s role in

71. See D.C. Code § 51-131 (2011) (stating that exception applies when separation from employment is “due to domestic violence against the individual or any member of the individual’s immediate family”).
72. Id.
creating a strong factual and legal record played an important role in setting up an appeal that could have a very important impact on access to justice for individuals who have experienced domestic violence that has affected their employment situation.

Intent to Commit Misconduct. Another area of law that has repeatedly presented opportunities for student attorneys in The Community Justice Project to advance case law development is the level of intent required for misconduct to disqualify a claimant from receiving compensation.

The District of Columbia unemployment insurance statute creates two levels of misconduct: gross misconduct, which provides for complete disqualification from benefits, and simple misconduct, which provides for only temporary disqualification. District of Columbia cases have established that gross misconduct requires intent by the claimant. However, the District of Columbia courts continue to grapple with whether certain factual scenarios satisfy this intent requirement. For example, the courts have repeatedly encountered the issue of what type of medical circumstance obviates the necessary intent so that repeated absenteeism does not satisfy the requirements for gross misconduct. In addition, the DC courts have struggled to determine the level of intent necessary for simple misconduct.

Student attorneys in The Community Justice Project have repeatedly encountered this legal issue, leading to opportunities to advocate for developments that increase access to justice for claimants. This issue is of particular salience for low wage workers, because often these claimants’ economic circumstances present issues outside the workplace that are beyond the claimant’s control and necessarily affect the claimant’s behavior related to her employment. Domestic violence is one example, but so too are the common challenges of medical problems for uninsured or underinsured individuals, child or other family care obligations, and unreliable transportation options.

In the domestic violence case discussed above, the administrative law judge ultimately concluded that, even though the claimant’s lack of documentation obviated a direct application of the domestic violence amendment, the claimant’s lack of intent in missing work meant that she did not commit gross misconduct. This opinion was one of the first explicit expansions of the line of cases regarding

74. See D.C. Mun. Regs. tit. 7, § 312.3 (2011) (addressing gross misconduct), § 312.6 (addressing “other than gross misconduct”).
76. See e.g., id. (remanding for consideration of intent and noting that “absences or tardiness alone cannot suffice as proof of gross misconduct”); Morris v. E.P.A., 975 A.2d 176, 182 (D.C. 2009) (finding “genuine illness . . . negates the willfulness and deliberateness of [claimant’s] absenteeism”).
intent and absenteeism from medical reasons to absences due to other circumstances. It also appears to be the first application of these cases to a situation involving domestic violence. Unsurprisingly, this opinion (the result of the first completed case by a student attorney in The Community Justice Project) allowed other student attorneys to advance arguments related to intent, and will hopefully serve as useful precedent for claimants in general.

Another student attorney identified an opportunity to expand case law regarding intent and simple misconduct. In this instance, the claimant was an elderly man who worked as a security guard in a parking garage and whose overnight shift required only sitting and watching cars. The claimant was fired for a single incident of falling asleep on the job. The student attorney learned that the claimant had a medical condition that caused drowsiness and that the claimant had repeatedly adjusted his medication to address his condition. Despite District of Columbia cases that plainly found misconduct where a security guard had fallen asleep on the job, the student developed a case theory and wrote a hearing brief that reconciled these cases with the cases regarding the interplay of medical conditions and absenteeism as well as cases regarding the intent required for simple misconduct, and concluded that the claimant’s medical condition obviated the intent required for both gross and simple misconduct. Ultimately, the employer did not appear at this claimant’s hearing and it was not necessary for the student attorney to present this argument. It seems likely, however, that this issue will occur again in some variation (and a lucky future student attorney will have a completed brief at her disposal).

**Jurisdiction.** A recurring issue confronted by student attorneys is the court’s jurisdiction based on whether a claimant has timely filed within the fifteen-day appeal period. In some instances, student attorneys are simply familiar enough with the underlying cases to shape a compelling argument that a claimant’s appeal outside the fifteen-day appeal period nonetheless falls within the recently established exceptions of good cause or excusable neglect. For example, it is often the case that administrative error results in claimants never receiving their claims determinations, or receiving them well after the certified mailing date. In these situations, a student attorney is able to present the court with a concise and effective summary of the factual circumstances that place these delayed appeals within the court’s jurisdiction. In other instances, student attorneys have been able to identify opportunities for expanding the scope of these exceptions and thus the opportunities that claimants have to access justice.

In one instance, a student attorney was able to expand the scope of the excusable neglect exception. In addition to seeking unemployment compensation, this particular client was also pursuing a union grievance procedure related to his termination from employment. When the client received the claims determination denying his unemployment benefits, and the accompanying information regarding the procedure for appeal, the client’s union representative had told him that he was going to get his job back. Thus, the client did not file an appeal of the denial of benefits within the fifteen-day appeal period. Several weeks later, it became clear that the union grievance procedure was more complicated than had been predicted and the claimant filed an appeal of the denial of unemployment compensation. Thus, the student attorney advanced the theory that the claimant’s delay in filing his appeal was excusable neglect because of his understanding of the grievance procedure. This theory was adopted by the administrative law judge in her written opinion and the client was ultimately awarded benefits. In addition to achieving benefits for her client, this student attorney also obtained an opinion that will be valuable for future claimants attempting to overcome untimely appeals.

b. Administrative Reform

In addition to opportunities to expand access to justice by developing favorable case law, student attorneys in The Community Justice Project have also identified opportunities to reform the administrative processes underlying the unemployment compensation system in the District of Columbia and, through their participation in the system, have begun the process of advancing these reforms.

Timeliness of hearings. One administrative issue that student attorneys have experienced problems with is the amount of time it takes for a claimant to receive a claims determination, get a hearing scheduled after a notice of appeal, or receive a decision after a hearing. The timeliness of the unemployment insurance process has historically been an issue and, perhaps due to the current increase in unemployment, appears to be a problem again. In the District of Columbia, within a few days of a claimant filing a notice of appeal, the Office of Administrative Hearings will schedule a hearing, and that hearing is scheduled fourteen days from the date of scheduling. This procedure is consistent with the Department of Labor’s measures of state agency timeliness, which establish

thirty days as the threshold timeline from a notice of appeal to a decision. Thus, claimants should receive a hearing a little over two weeks after they file their appeal.

The experience of students in The Community Justice Project has been that this scheduling standard is only sometimes met, and that some claimants are waiting as long as six weeks for a hearing date. Although student attorneys in The Community Justice Project have not raised a comprehensive challenge to this issue, their presence as individual advocates puts pressure on the system. Student attorneys regularly call and visit the administrative office responsible for scheduling to check on the status of their client’s case. The presence of persistent and knowledgeable advocates with sufficient time to dedicate to their clients creates pressure on the administrative system to adhere to regulatory timeliness standards. Further, as part of their case records, student attorneys report the delays that their clients experience, creating a valuable record for stimulating future reform.

Translating Successful Appeals to Receipt of Benefits. Another administrative issue that student attorneys in The Community Justice Project have repeatedly encountered is that there is not a clear administrative process for claimants who have won an appeal to begin receiving benefits. Once an unemployment claimant wins an appeal, the Office of Administrative Hearings sends the decision to the Department of Employment Services, which is responsible for dispensing unemployment benefits. Theoretically, the claimant’s status should then be changed from “disqualified” to “qualified” in the computer system and the client should begin receiving benefit checks. However, it turns out that when a claims examiner initially disqualifies a claimant from receiving benefits, the Department of Employment Services often “closes” that claimant’s file and, when an appeal finds the claimant qualified to receive benefits, the claimant’s file cannot be “reopened.” Thus, even though a claimant is qualified and continues to file the appropriate forms for benefits, the administrative system is unable to dispense benefits.

The anecdotal experience of student attorneys in The Community Justice Project is that this situation occurs with some frequency. Further, the Department of Employment Services has been unable to create a comprehensive solution to this problem. Thus, our student attorneys have pursued their own routes through the bureaucracy to ensure that their clients ultimately receive benefits. The collective knowledge that is the result of student attorneys’ repeated interactions with the Department of Employment Services has led to solutions that allow clients of The Community Justice Project to more efficiently solve this problem.

85. See Benefits Timeliness and Quality Reports of State Workforce Agencies, U.S. DEP’T OF LABOR, http://workforcesecurity.doleta.gov/unemploy/btg.asp (last visited April 1, 2009) (searchable database of state monthly reports, measuring “Lower Authority Appeals Time Lapse” at 30 days, 45 days, 60 days, 75 days, 90 days, and 120 days). The database reflects that in November 2010, 60.6% of District of Columbia appeals had a timeline of 30 days or less.
has also led to awareness that this is a larger systemic issue that may require systematic reform.

Interaction With Other Service Providers. Another area where the experiences of student attorneys have spurred innovation is the interaction between the service provided by The Community Justice Project and services offered by other providers. Student attorneys are often aware of resources that claimants may not be familiar with—whether within the unemployment insurance system or more generally—and the sharing of information itself is often a valuable service. In other instances, student attorneys can give more nuanced advice or referrals to assist their clients with broader needs.

In one instance, a student attorney in The Community Justice Project represented a claimant who had been disqualified from receiving benefits, and was the subject of a recoupment of overpayment, because he was learning disabled, functionally illiterate, and had not understood that he was to report his part-time wages on his unemployment forms. After addressing the legal issues of disqualification and overpayment, the student attorney recognized that this claimant needed ongoing services to properly file his unemployment claims going forward, but also would benefit from a variety of other services, including job training and financial planning assistance. The student attorney identified an organization that could provide these services, and met with representatives of that organization to teach them the intricacies of the unemployment insurance system so that the organization could assist the client with the claims process going forward. As a result, this student attorney provided an individual client with referrals that will undoubtedly assist him going forward, and also created a knowledge base at the referral organization. This organization has become a regular resource for clients of The Community Justice Project.

B. Cultivating Justice-Ready Students

While representation of unemployment claimants provides immediate opportunities to obtain justice for individual clients and for claimants more generally, through the establishment of good precedents, the longer term goal of The Community Justice Project is for student attorneys to leave with a more developed sense of justice and how they can contribute to it. Representation of unemployment claimants is particularly suited to cultivating justice-ready student attorneys because student attorneys’ insights from individual representations are readily expanded to questioning how larger legal constructs and systems can be changed to increase access to justice. The connections that student attorneys draw from their individual clients to broader justice issues are reinforced when the student attorneys handle more than one case and when student attorneys are encouraged to collaborate and share their case experiences.

with their colleagues, as students begin to identify patterns that indicate systemic problems.

1. Understanding Individual Circumstances of Poverty

Like many opportunities for law students to perform direct representation, The Community Justice Project has given student attorneys an opportunity for an ongoing relationship with a client whose socio-economic circumstance may be very different from the student’s own. Because representation of unemployment claimants involves a potentially wide range of relevant information, and because some of this information involves the mundane details of a person’s life, student attorneys often gain a perspective on a client’s life that creates greater understanding and empathy for the working poor.

At the same time, clients who are unemployment claimants are often not that different from student attorneys. Many of these clients have held steady jobs, built careers, and led a life that more closely resembles a middle class existence than that of a person facing poverty. The fact that these clients were nonetheless one paycheck away from poverty can provide powerful lessons about poverty, justice, and empathy. Often, because of students’ preconceived notions about the poor, this experience can be more powerful than one with a client who seems more “different” from the student attorney.

Further, student attorneys in The Community Justice Project have encountered clients with individual circumstances that illustrate the broad effects of unemployment on a client’s life. Student attorneys have had clients who, in addition to pursuing unemployment benefits, are also grappling with legal issues such as eviction, disability, debt collection, child custody, and domestic violence. The interplay of these issues—and the potential negative tipping effect that unemployment can have on them—can lead to important insights into poverty and justice.

Student attorneys also see that low wage workers frequently confront a host of problems that are not classically legal. Student attorneys in The Community Justice Project have had clients who grapple with how to afford stamps to send in resumes for a job search, how to afford bus fare to come to an appointment with a student attorney, how to obtain a badly-needed doctor’s appointment, how to care for an elderly relative, and how to cobble together low-cost child care. Often, student attorneys do not anticipate these challenges, and encountering them—sometimes as an obstacle to representation—gives student attorneys a perspective on the all-encompassing nature of poverty. These challenges also highlight how misleadingly simple needs can inhibit an individual’s access to justice.

Finally, student attorneys in The Community Justice Project have encountered clients with a wide range of employment histories and personal stories. These interactions underscore the breadth of the current economic crisis, the commonality between students and their clients, and the frightening ease with which a person can go from a steady job to poverty. These experiences are valuable learning opportunities for student attorneys about what poverty is, how people
come to be poor, and the simple things that are often challenging for the poor. Exposure to these issues, especially in a personalized way, is a valuable catalyst for student reflection about the effect of poverty on access to justice.

2. Understanding the Interplay of Unemployment and Other Issues

When student attorneys encounter their clients’ individual circumstances, they often have the opportunity to observe that unemployment overlaps with other needs. Encountering the interaction between unemployment and issues like domestic violence, criminal histories, substance abuse, mental health, access to health care, housing, and education allows students to begin to understand the connections among these issues.

As discussed above, one student attorney represented a client for whom domestic violence was an issue, but did not discover this fact until well into the representation. This same client had also been evicted from her apartment after she lost her job, and was sometimes unable to scrape together the funds for the bus fare to The Community Justice Project to meet with her student attorney. In this representation, the student attorney had to grapple with how domestic violence fit into the legal theory of the unemployment appeal, and she also had to understand how her client’s housing and financial circumstances affected the representation, her client’s case, and her client’s circumstances more generally. The client in this case saw domestic violence as unrelated to her unemployment appeal and simply another problem she faced, but the student attorney was able to consider how all of these factors fit together to define both the client’s needs and the client’s case theory. The domino effect caused by this client’s unemployment provided a powerful insight into how quickly someone can enter poverty, and became a strong motivation for the student attorney to fight for her client’s unemployment benefits.

In another representation, a student attorney represented a client who became unemployed, then suffered a stroke and was hospitalized, and ultimately recovered. The client had received unemployment compensation before her stroke, but then applied for disability benefits after her stroke, and was subsequently denied unemployment compensation as a result of indicating that she was unable to work in her disability benefits application. To assist her client, the student attorney first had to understand the legal interaction between unemployment benefits and disability benefits, then sort out the facts of her client’s case, and finally work with the client to understand what was in her best interest. The process of understanding the client’s circumstances and how they fit into a legal context, and especially the process of working with the client to identify appropriate solutions, provided an opportunity for insight into how choices are often more complicated than a student attorney might originally think. It also provided perspective on how clients get different advice from different people, try to do the right thing based on that advice, and can be penalized for their efforts. In this case, the student attorney grappled with
balancing the relative challenges of obtaining unemployment and disability benefits and whether this should factor into the client’s decisions. The student attorney also grappled with the challenge of a client who initially said she was not looking for a job and did not want to do so, which raised the dual questions of how this information should shape the student attorney’s legal strategy and whether it presented an opportunity for client counseling. Ultimately, this representation yielded insights into how a client facing economic and medical challenges may have those issues compounded by the complexity of navigating the benefits systems, and how client counseling and education can be a very valuable tool for the client’s decision making.

3. Understanding the Employment Experiences of Low Wage Workers

Student attorneys have also gained valuable insight from exposure to employment relationships that are very different from their own. As discussed above, the at-will employment system often creates unjust or inequitable circumstances for low wage workers. When a student attorney represents an unemployment claimant, she can encounter factual circumstances where an employee has less power, is less valued, and is often less assertive than the student would expect based on her own experience or understanding of employment relationships.

For example, in the case discussed above, where the student attorney both obtained unemployment compensation for the client and, by approaching the employer after the hearing, got the claimant’s job back, the claimant had never asked for her job back on her own. To the contrary, after not showing up for work, the claimant never contacted her employer again because she was so embarrassed by what had happened. When the student attorney asked the client if she would be interested in returning to her employer, it was the first time the claimant even considered such a possibility.

In another example, a student attorney had a client who had been told by a supervisor that she should apply for a transfer to a different position within the same company and that, for administrative reasons, the claimant should give the supervisor a letter saying she was “resigning” from her position. The claimant did this, then learned the details of the new position and decided she was not interested in the transfer. When the claimant went back to the supervisor, the supervisor was generally evasive about whether the claimant could permanently stay in her original position, even though the claimant continued to work in that position. On the date of “resignation” given in the claimant’s original letter, the supervisor said that it was the claimant’s last day of work because she had resigned. This claimant did not contest the issue to her supervisor’s superiors or otherwise try to overcome her supervisor’s manipulation. Rather, she collected her last paycheck and filed for unemployment. Only after being denied benefits (because she “resigned”), and coming to The Community Justice Project, did the claimant and the student attorney come to understand how the claimant had been
manipulated by her supervisor. In these circumstances, student attorneys gained insight into how the legal framework of our employment system—and its corresponding power dynamics—shapes an individual employee’s view of her own power and the actions she takes. It is a valuable, sobering, and hopefully motivating insight for students to understand that many people, and not even the most impoverished, cannot or do not assert themselves or fight against power dynamics that are harming them.

4. Understanding Biases Created By Administrative Systems

Representing unemployment claimants necessarily requires student attorneys to navigate bureaucracy. The experience of navigating administrative systems to achieve results for a client often reveals biases in these systems and stimulates student attorneys to identify the broader implications of bureaucracy for access to justice.

In some instances, student attorneys gain the insight that their education and privilege gives them a different perspective on bureaucracy from their clients. As mentioned above, one student attorney in The Community Justice Project had a client who was learning disabled and functionally illiterate, and had underreported his part-time wages because he did not understand the reporting requirements. At the outset of the representation, the student assumed that because this claimant filed weekly claim forms, he understood the claims process. However, once the student attorney recognized the client’s difficulty with reading, and then confirmed that suspicion, the student attorney’s perspective on the client’s interaction with the bureaucracy changed dramatically.

With this new awareness, the student attorney came to learn just how challenging navigating the bureaucracy was for this client and, even when his appeal had been completed, how much assistance the client needed to complete the tasks necessary to receive unemployment benefits. For example, to file weekly claims forms online, the client needed an email address, but the process of getting an email address was something the client had found too intimidating, because obtaining an email address would have required both reading and Internet access. Once the student attorney understood how challenging the bureaucratic tasks were for this client, she was able to address these underlying challenges. As importantly, this experience provided a powerful insight into how systems that student attorneys find straightforward can impede access to justice for clients.

IV. Conclusion

Clinical representation of unemployment insurance claimants exposes student attorneys to a group of citizens who fall between “rich” and “poor,” yet face the daily risk of sliding into poverty, and who are often unable to access the justice that our unemployment insurance system promises. Student attorneys who
advocate for unemployment insurance claimants gain insights into individual client experiences, including the reality of low wage employment and the complexity of the experience of poverty. Representation of unemployment claimants also provides opportunities to understand the biases of the unemployment system and how this system can obstruct access to justice. These insights from individual client experiences allow student attorneys to draw larger lessons about poverty and access to justice.

Student attorney representation of unemployment claimants also cultivates justice for claimants themselves. Student attorneys measurably improve the likelihood of their clients obtaining unemployment benefits, and also provide advocacy that can be seen more generally in the improved individual circumstances and experiences of their clients. Further, clinical representation of unemployment claimants provides a context for systemic change that increases access to justice for the working poor more generally.

Clinical representation of unemployment claimants offers an opportunity for direct representation that provides vivid, individualized experiences in advocating for justice for the working poor. As importantly, these representations are an opportunity to consider the larger issues of justice that necessarily grow out of these individual experiences of poverty and that are particularly salient in today’s economy. Through these opportunities, students cultivate justice for their clients and cultivate their own capacity to work for justice.