

David Dominguez, Professor of Law
Brigham Young University Law School

Proposal for Love and Law Conference

Turning Juvenile Detention Hearings into Community Healing: Why Settle for the Minimum of American Law When We Are Called to Fulfill God's Justice?

Community Lawyering, my clinical course at BYU Law School, has two goals. First, it seeks to improve institutional decision-making concerning the appropriate use of juvenile incarceration. We go to the local juvenile jailhouse and meet with incarcerated youth who are awaiting their detention hearing where the judge determines if they will be released pending trial on the underlying criminal charge. Although presumed innocent, they are incarcerated until they can prove that the risk they present to themselves, to others, or of fleeing, is under control. Too often children placed in secure confinement are not prepared for meaningful participation in detention hearing and are taken by surprise by the brevity and outcomes of the hearings.

My class is called "Community Lawyering" because my students and I tap the problem solving talent of a wide range of community actors—from incarcerated children and their families to judges and jailers, from mediators, probation officers (Juvenile Justice Services)/caseworkers (Division of Child and Family Services) to those school district teachers who run the daytime education program at the jailhouse. Using a variety of interactive methods in large and small group settings—e.g., role plays, mediation demonstrations, reenactments of hearings. etc.--we explain to detainees how detention hearings differ from trials and how detention hearing judges weigh risk factors and protective factors as set forth under Utah statutes, administrative codes, the United States Constitution, and US Supreme Court cases. We also refer cases to parent-teen mediation and victim-offender mediation

Our second goal is to turn the juvenile detention process into a community healing process. In fulfillment of the gospel, our Christian aim is to transform the current system that tends to diminish a child's future into a new way of listening and learning. Unlike the adult correctional system that requires the criminal to "pay back" his debt to society, we pursue a community strategy where the youthful inmate learns to pay it forward. To this end, we gather diverse community actors to help the resident not only deal successfully with the secular challenge under American law but more ambitiously to experience a "Lazarus moment" where he sheds the old life and learns to serve others.

My law students use this experience in Community Lawyering to reconstruct the role of attorney from a Christian perspective. It is the journey of leaving behind simple “obedience” to the law, striding toward the fulfillment of God’s justice. They learn that they are first Christians who happen to be law-trained and that keeping their priorities straight is the key to both effective problem solving and healing broken communities.

Throughout the semester we practice the following skills and disciplines (collectively referred to as “Samaritan Justice”):

Critical reflection on peacemaking: We cannot bring peace to the war being waged around us unless and until we bring peace to the war being waged within each of us. We tend to be our own worst critics, beating ourselves up with negativity and anxiety. Is this why we do so little to make peace? Are we willing to wage peace more than others wage war?

Interviewing and counseling: When we meet children in secure confinement, the whole scene is heavy with resignation and defeat, with all that is wrong and unacceptable about them. Their visage is negative and downcast. We use interviewing and counseling to affirm detainees and overcome their initial skepticism and prevailing sense of hopelessness. We introduce ourselves and inform them that we have watched their detention hearings and it is obvious that they could use a crash course in legal education applicable to their circumstances. We impart very useful, timely legal information through skits, role plays, demonstrations and other active, kinetic learning modules. Why would they want to miss out on any piece of advice that could set them free?

Mediation and Negotiation: But we know that our introduction to law as “legal rights and legal responsibilities” is just that, a starter, an appetizer, a way to get them to choose to focus and remain fully present. Once we have set the stage, we move on to mediation and negotiation. We use informal mediation exercises to open the ears of detainees to many helpful community voices and, in turn, to get those helpful voices to hear the resident in new ways. Indeed, we stretch the formal, two-minute detention “hearing” into an ongoing town forum, a time of community hearing and speaking, learning and healing.

We use negotiation to create a new vision and structure that trains delinquents to see themselves as community partners, even as respected consultants on juvenile justice system. We make it clear that we need to figure out a way to *redeem* their experience in lock-up and that we cannot build a new community without their help. When they see how important they are, how much they can teach us, that there is no limit to how much good they can do, it hits them that no one is stopping them but themselves. The

broken kid who was the source of the problem chooses to become the missing puzzle piece, the source of the answer.

To sustain their engagement and follow-through, we give them assignments to be completed during the evening, while on their detention units, as well as during the day, as part of the local school district education program.

Conclusion:

Our clinical lab happens to be a juvenile detention facility. But the Christian principles we learn and practice in this class are applicable in every setting. Community Lawyering is taught as a way of life, a spiritual exercise that instills a heart of peace.

Bio:

Professor Dominguez grew up in a Los Angeles ghetto near the campus of the University of Southern California. He graduated with honors from Yale University in 1977 (B.A. Religious Studies) and received his Juris Doctor from University of California at Berkeley Law School in 1980. After 8 years as a trial attorney with the National Labor Relations Board, Professor Dominguez joined the law faculty at Brigham Young University in 1989. He teaches Criminal Law, Work Law, and Community Lawyering. He has received numerous awards for his teaching and community work promoting justice for all. Recent awards include: 2012 Utah State Bar Award for Advancement of Minorities in the Legal Profession; 2012 Utah Valley University Lifetime Achievement Award; 2011 Beacon of Hope Award; 2010 BYU Law School Distinguished Service Award, 2010 Martin Luther King, Jr., Award of Excellence.