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### **Computer and Internet Applications in a Clinical Law Program at The University of New Mexico School of Law**

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#### **Introduction**

For many lawyers, the practice of law depends a great deal on the use of computers, software, and telecommunications. To meet the educational needs of students at the University of New Mexico Law School, I have developed a clinical law program that makes extensive applied use of computers, expert systems software, on-line legal research, CD-ROM legal research tools, email, and the internet. The two courses in this program, Process of Taxation and Tax Practice Clinic, involve students in the computer preparation of federal (USA) and state (New Mexico) income tax returns for the working poor living in and around Albuquerque, New Mexico, USA.

The learning goals of the Process of Taxation Course are for the students to acquire working knowledge of 1) federal and state income tax laws; 2) a notebook computer, modem, and printer; 3) a computer software program that uses expert systems to analyze and apply tax laws in the preparation of returns; 4) Lexis and Westlaw; 5) Research Institute of America's OnPoint CD-ROM tax library; 6) the electronic filing program of the Internal Revenue Service; 7) email on the law school's local computer system; 8) email on the internet; 9) search tools of the internet (Lynx and Gopher); and 10) how to apply law and technology in providing legal services to clients. In addition, students learn basic interviewing in the context of interviewing 10-50 clients during the semester.

Because the course involves students in helping the working poor claim refundable credits for earned income and child care, the students get a bird's eye view of the single largest component (by way of expenditure) of the federal welfare system. Students must write a paper in which they assess the effectiveness of this component of the United States welfare system.

The learning goals of my Tax Practice Clinic are the same as those for the students in the Process of Taxation course. In addition, as complicated legal issues arise during preparation of returns in the Process of Taxation course, the students in the Tax Practice Clinic serve as tax law experts who do research memos to help clarify reporting positions to be taken on returns. In addition, the Tax Practice students are available to accept internet clients through consultations with other clinics from around the United States.

#### **Course Methodology and Description**

##### *Methodology*

Both courses rely on the clinical method in which students work on real problems having legal significance for real clients. The clinical method is an effective learning method. The learning environment is completely interactive. Each action the student takes has significance. Because that significance really affects a fellow human being, the student realizes the importance of learning, knowing, and applying the law.

Finding the facts is the student's responsibility and requires action and effort. Incomplete or inaccurate facts make projected outcomes unreliable. So the student quickly learns the importance of having reliable facts. The student has a substantial stake in the outcome because his or her mistakes will injure the client, whereas quality legal service will benefit the client. For this project, a mistake will cost a client money or expose him or her to burdensome and frightening IRS audits. Therefore, the student wants to get it right.

The student's investment in the outcome provides an important source of positive motivation and heightens the need to learn. Having a need for the knowledge, the student will seek it out, learn it, and, if all goes well, master it.

#### **The Process of Taxation Course**

### *Requirements*

The Process of Taxation course has 32 students who must meet the following requirements. Each student must:

- 1) complete a 40-hour course offered by the Internal Revenue Service in its VITA (volunteer income tax assistance) program.
- 2) take and pass a five-hour qualifying exam administered and assessed by the Internal Revenue Service.
- 3) develop a community project site targeted at taxpayers who, in the past, probably have not claimed their entitlement to the federal earned income tax credit and the state (New Mexico) low income rebate.
- 4) complete training in the use of laptop computers, tax preparation software, electronic filing software, modem, printer, email, internet (listserv, gopher, and lynx), tax libraries on Westlaw on Lexis, and RIA OnPoint CD-ROM.
- 5) prepare 10-50 returns (a federal and a state return count as one return).
- 6) complete an advanced tax procedure mini-course and pass the examination.
- 7) write three short papers about a) the IRS course, b) the project site, and c) the effectiveness of the earned income credit.

### **Hardware**

The University of New Mexico Law School has purchased six notebook computers for use in other programs but has permitted my class to use them on a limited basis for this course. Each notebook computer has a 486 microprocessor (75 mhz), 8 MB RAM, 350 MB hard drive, color screen (dual scan), 14.4 baud modem, and a portable CD-ROM drive. Some of the sponsoring project sites have computers on the premises and will allow us to use them.

The Director of the Law Library has loaned us her computer to use at a project site in the Law School for low income students and staff. This computer has a 486 microprocessor (50 mhz), 4 MB RAM, 250 MB hard drive, color monitor, 14.4 baud modem, and internal CD-ROM drive. Seven students have their own laptop computers that they plan on using in the project. Although the student-owned computers do not have portable CD-ROM drives, some have modems, and some have printers. We are also encouraging law firms and accounting firms to donate computer equipment for use in this project.

### **Software/Expert System**

The Internal Revenue Service has provided our project with the 1994 version of "TaxWise 1040 Software for the Tax Professional," developed by Universal Tax Systems, Inc., Rome, Georgia, USA. This software, used by many professional return preparers and accountants, contains expert system features which include client questionnaires, return and schedule selections for individual client characteristics, specific issue worksheets, and sophisticated diagnostic tools for finding errors and suggesting error corrections. The software automatically calculates the client's federal tax liability or refund. In addition, the software automatically transfers all of the federal data to the New Mexico income tax return, asks for additional information, and calculates the New Mexico tax liability or refund. The software automatically archives all information. And if next year's version is used, it will automatically transfer for each client all information that does not change from year to year.

The software also contains telecommunications software for electronic filing of returns. By prior arrangement, we will transmit, via modem, both the federal and New Mexico returns to the local Internal Revenue Office in Albuquerque. They have set up a personal computer for the receipt of these returns. They, in turn, will then retransmit the returns to the Internal Revenue Service Center in Austin, Texas, 800 miles away. The Internal Revenue Service Center in Texas, by prior agreement, then electronically transmits the New Mexico income tax returns to the New Mexico Department of Taxation and Revenue in Santa Fe, New Mexico.

We have arranged for this indirect filing of returns with the local Internal Revenue Service Office to save long distance phone charges, which could be substantial because the Internal Revenue Service uses 2400 baud modems. The software would permit us to file the returns directly with the Service Center in Texas. We are currently exploring this option as a way of increasing efficiency and reducing the risk of errors. I have already become registered with the IRS as an electronic return originator (ERO). The software also permits us to dial a 1-800 (toll-free) number to the software company to receive software updates directly.

We have available an additional software program donated to us by another leading tax software company. This software, "TaxMachine," is a leading commercial product used by many of the major accounting firms in the United States. We have chosen not to use this software because it is actually too complicated for the types of returns that we will be preparing.

### **On-Line Research**

Each of the law school's laptop computers will have loaded session software for both Westlaw and Lexis\Nexis. Each student will have an individual password for each of these on-line research services. While at project sites, the students will be able to access (via modem) either or both of these services in the event that they have to perform advanced legal research. Both services have extensive tax libraries (data bases) that will provide students with ample support in researching tax issues that arise in the course of preparing returns.

LEXIS provides a daily on-line tax reporting service known as Tax Notes Today (Tax Analysts). Almost all significant legislative, administrative, and judicial developments are reported on Tax Notes Today within 24 hours. One student will have the responsibility of reading this each day and forwarding relevant items via email to the students in the class.

### **CD-ROM Tax Research (RIA's OnPoint)**

In the United States, CD-ROM products in the tax law area are among the most popular, competitive, and sophisticated hypermedia available in the legal publishing market. Research Institute of America (RIA), for purposes of this project, has donated eight sets of their CD-ROM product OnPoint. The version available to us (CDSSE) is the most complete edition of the product. The disc contains:

1. The RIA Federal Tax Coordinator (about 20 volumes), which is an analytical text organized according to subject matter.
2. The RIA Federal Tax Reporter (15 volumes) containing an explanation of Internal Revenue Code sections, together with annotations of most authority having precedential value.
3. The Internal Revenue Code (2 volumes).
4. Treasury Regulations (5 volumes).
5. The Cumulative Bulletin (since 1954) (about 100 volumes).
6. Four major tax treatises (all updated four times a year): Bittker & Lokken, FEDERAL TAXATION OF INCOME, ESTATES AND GIFTS; Bittker & Eustice, FEDERAL INCOME TAXATION OF CORPORATIONS AND SHAREHOLDERS; McKee, Nelson & Whitmire, FEDERAL TAXATION OF PARTNERSHIPS AND PARTNERS; Eustice & Kuntz, FEDERAL INCOME TAXATION OF S CORPORATIONS.
7. All of RIA's Tax Advisors Planning Series containing 29 separate books on planning opportunities for closely-held corporations together with planning documents and client letters.
8. Almost all of the IRS publications (about 200).
9. All US tax treaties with other countries.
10. Taxpayer elections with forms.

The OnPoint CD-ROM uses FolioViews software to provide access to text. The hyper-text links provide a powerful tool for doing sophisticated tax research. In any given set of text, the user has immediate access to analytical explanations, statutes, regulations, legislative history, and administrative pronouncements. In addition, OnPoint has an on-line link feature that allows seamless access via Lexis/Nexis to cited authority not on the OnPoint disc. OnPoint is updated monthly. During our project, the publisher will furnish us with discs for January through April 1995.

### **Local Email**

All students in the course currently have student accounts providing access to our computer system. We have created an email distribution list so that we can send email messages to all students in the course as needed. Students can check their email at the law school in the computer lab, from home if they have a computer with a modem, or from project sites if they have a laptop with a modem. We plan on using local email to communicate critical information to students. In addition, we recommend that students archive important information communicated via email. Students can also communicate directly with me via email, which assures daily access on an extended hour basis because I check my email several times every day, beginning early in the morning and finally at about 10 pm.

Four tax attorneys have volunteered to serve as email tax experts over the period of the course. Each volunteer has a computer account at the school. As questions arise, students can send email, which the volunteers will read and respond to as soon as possible.

### **Internet Email**

In the United States, an internet listserv called FEDTAX has developed over the past several years. FEDTAX has a large membership made up of tax lawyers, CPAs, enrolled agents (tax specialists who can practice before IRS after passing an extensive examination), academics, taxpayers, and tax protestors. Students in the class have subscribed to this listserv. Because the traffic is heavy, one student has been assigned the task of reading the email each day to see if any helpful information comes our. We also plan on posting questions to FEDTAX to see what practitioners around the country think about particular problems that arise.

## Internet Resources

Unfortunately, the Internet does not provide much tax information. The United States Department of Treasury, which contains the Internal Revenue Service, has a small gopher site containing very little information. Some other federal agencies provide excellent gopher sites. For example, the Social Security Administration has an excellent gopher that contains a wealth of current, detailed, and helpful information. This information will have some value to our project.

To encourage use of the internet, I have provided all the students in the class with training on basic internet access through gopher and lynx. Because our computer system does not use networked personal computers, no internet access through cello or mosaic software is possible.

## Project Site Development

A critical part of this course is to put students in a situation where they can use acquired skills and apply them to solve a defined problem. The problem: many of the working poor who live in around Albuquerque do not take advantage of the federal earned income credit or the state low income rebate. Many of these individuals are not legally required to file tax returns because their income levels are so low. To receive the credit and the rebate, which for 1994 can be more than \$2800, a taxpayer must file a federal and state return.

Many of the working poor have never filed returns and are unaware of these benefits. Many others who file returns fail to claim the credit or rebate because the law, forms, and instructions are very complicated. Those who do file often must go to commercial return preparers that charge about \$100 (more for electronic filing). A study covering 1992 suggests that nationally 15-20% of those eligible do not claim the earned income credit.

IRS officials estimate that the rate of those not claiming the credit in New Mexico is about 30%. In New Mexico, 130,000 families qualify for the earned income credit. The population of New Mexico is 1.6 million. According to IRS estimates, then, about 39,000 families do not claim the credit. Assuming that the average credit is \$1500, the residents of New Mexico are foregoing \$58.5 million in benefits. The magnitude of this sum for the state becomes clear when one considers that the entire state health and human services budget amounted to \$472.2 million for the 1993-94 fiscal year. We are hoping to prepare 700-1000 returns. This will make only a small dent in the problem.

Working in teams of two, students must develop a project site aimed at individuals who are unlikely to have had free and professional tax preparation available in the past. Thus far, students have developed sites at:

1. hospitals (aimed at low paid staff and medicaid patients);
2. an elementary school serving one of the poorest populations in the city (aimed at parents of the children attending the school);
3. several churches that have social welfare outreach programs or parishioners with low incomes;
4. social welfare organizations that help the homeless and victims of domestic violence;
5. two nearby Indian reservations (aimed at members who are working poor);
6. an organization that provides a large and extensive work program for persons with mental and physical disabilities (aimed especially at low income single individuals who are eligible for the earned income credit for the first time in 1994);
7. a community center serving the African American population of the city and a community center serving the Hispanic population of Santa Fe (aimed at members of each community who are the working poor);
8. the local legal aid office (all of their clients must meet low income guidelines).

Site development requires the students to establish contact with appropriate community, church, or organization leaders. They must also explain the program and develop an outreach plan and put together a schedule for delivery of service. Many of the students expecting to work with Spanish speaking clients are themselves bilingual or have arranged for translators.

## Client Contact and Interviewing

Interviewing is one of the most important skills for lawyers to learn. Because interviewing is an interpersonal skill, it requires a good bit of practice in a real setting. Each student, to accomplish the task of preparing a client's tax return, will need to acquire a substantial amount of information about the client (marital status, jobs, investments, children, home, charitable giving, legal residence). Many of these areas are personal and of a confidential nature requiring delicacy and respect. Students will need to learn how to put clients at ease, how to ask questions, how to listen, and how to get clients to further clarify. Each student's goal is to have every client feel that he or she has received polite, courteous, effective, and professional help from the student.

### **Applied Technology**

The core of this course is using technology in an applied and professional legal setting. The technology involved is 1) computers, 2) tax preparation software using an expert systems approach, 3) electronic filing of returns, 4) on-line computer research, 5) CD-ROM legal research, 6) use of experts via local email, 7) use of experts via internet email, and 8) use of legal and information sources on the internet. All of these tools are supposed to help the students accomplish their task of preparing tax returns correctly, efficiently, and professionally. By getting training on how to use these tools and then by actually using them and gaining some mastery, the students will add to their own professional development. After becoming lawyers, they will be better able to apply technology to legal practice and to evaluate its effectiveness in terms of lowering costs and enhancing the quality of legal representation.

### **Advanced Tax Procedure**

When the students are completing the return preparation phase of the course, I will cover advanced tax procedure topics. The purpose is to cover this fairly arcane material at a time when students are likely to be interested in what happens after taxpayers file their returns. We will cover audits, administrative and judicial review, claims for refunds, collection matters, and statutes of limitation.

### **Systemic Insights**

As law students learn the particulars of an area of law, it is always appropriate to encourage them to gain insights about the legal system--what it is, how it works, whether it is just, whether other laws or no laws would be better. This class provides an avenue for engaging students in an ongoing discussion about the American tax and welfare systems.

By preparing returns for low income people, students will see the tax system in action. For example, they will see that the legal requirements for qualifying for the low income credit are very complicated, so complicated in fact that one must apply nine general rules and a myriad of sub-rules to determine eligibility. Moreover, all these rules require substantial factual inquiry and thereby cause a large amount of legal uncertainty. The students will be prompted to ask if this is the best and most efficient way to accomplish a redistribution of wealth from the wealthy to the poor.

Students will be participating in this project as the United States Congress debates welfare reform. The earned income credit is currently a major part of the American welfare system. Assuming no change in the law, by 1998 the annual tax expenditure for the earned income tax credit will be \$24.5 billion whereas the program for aid to families with dependent children (AFDC) will cost only \$16 billion. Should the earned income credit be retained, changed, eliminated, reduced, increased? We will discuss these issues during the course of the semester.

Finally, students should begin asking fundamental questions about redistribution of wealth, the role of government, and individual responsibility.

### **Student Coordinators**

To assist me in the administration of the course, I have recruited three student coordinators. These students are enrolled for extra course credits to reflect the additional work that they do. Prior to the beginning of the semester, we attended technical training on the TaxWise computer software and the OnPoint CD-ROM. Each student coordinator adds an area of expertise to the project. One student is especially well versed in computers and assists with many of the hardware and software problems that arise. Another student was an accountant and a tax return preparer prior to attending law school. He serves as a key tax resource person for the other students. And the third student coordinator is especially well skilled at working on special tasks. For example, he wrote a proposal asking for funding from the Student Bar Association to purchase portable printers for this project.

### **Evaluation and Continuation**

We are especially interested in measuring the effect our project has on the populations that we serve. Therefore, we will gather data regarding refunds, filing history, and prior use of return preparers. From this, we will also assess the broader economic impact of the project. One of the student coordinators has an economics background and will assist us in measuring the larger economic impacts. Two of the student coordinators have an interest in expanding the program to serve a larger population around the state. Another student in the class is a lobbyist for the Graduate Student Association of the University of New Mexico. She is attempting to secure funding for students so that they can purchase laptop computers for this project in later years.

### **Tax Practice Clinic**

In the Tax Practice Clinic, students work on a variety of cases involving tax issues. The students in this clinic, as part of their overall caseload, provide support for the Process of Taxation course. They do this by giving expert legal opinions on issues that arise at the various project sites. The issues they work on tend to be difficult and the kind that require substantial reflection and analysis. For example, one student is working on the question of whether a prison inmate's work-release earnings qualify for the earned income credit.

### **Internet Clients**

Email is gaining ground as a method of communication between lawyers. A growing number of lawyers are now becoming specialists who do a major part of their consulting through email. Many of them prefer email because it is nearly instantaneous and relatively cheap. Email also allows for transmission of massive documents in formats that are easy to edit and to resend. Email will also become more important for client communications.

Because email communication is important for many lawyers, I thought it would be professionally beneficial for students to experience lawyer-to-lawyer consulting relationships in a clinical program setting. Through the American clinical law teachers' listserv (LAWCLINIC), I sent a number of announcements stating that my students are available for consultations with other student attorneys in cases involving areas in which we have expertise (federal taxation, non-profit and tax-exempt organizations, community property, and Indian law). The notice provoked some discussion. Some of the commentators endorsed the concept and wished us well in our effort. At least two commentators expressed concern about the security of confidential information. No one, however, referred any cases to us. One of my colleagues suggested that perhaps email is a fleeting medium and that numerous announcements are necessary.

While still hoping to acquire some consultations with other law school clinics, we are now considering direct representation of clients and will limit our role to tax advice involving past or prospective transactions. A significant impediment to acquiring internet clinic clients directly is the possibility that such advice may constitute the unauthorized practice of law in the state jurisdiction in which the client resides. In preparation for this project, I have solicited comment from members of the CYBERIA listserv. The CYBERIA listserv focuses on the legal questions associated with cyberspace.

The discussion on CYBERIA about the "unauthorized practice of law" question has been lively and helpful. One CYBERIA listserv member (a self-described cyberspace anarchist) suggested that we could avoid the "unauthorized practice" problem by using anonymous email remailers. Such a technique would avoid detection, he asserted. Those members with a legal background uniformly condemned the remailer idea, but they could develop no consensus about the central problem. One view was that "practice of law" only includes representation in courts or the establishment of a law office within a state. Another view was that advice on federal matters is controlled by federal, not state, law. If correct, this would mean that advice on federal tax matters could not be regulated by a state unless a related state issue was involved. A third view focused on consumer protection and asserted that states have a legitimate interest in protecting consumers from unscrupulous out-of-state law practitioners. A practicing lawyer indicated that he (and many other lawyers) routinely gives legal advice directly to clients outside the state in which he is licensed. This lawyer suggested that he was in big trouble if such advice constituted unauthorized practice of law.

At this point, we will begin accepting internet clients to whom we will give direct advice. But before giving advice, we will investigate whether the particular state in which the client resides would treat our advice as the unauthorized practice of law. We may use law school clinics in the client's state to help us determine if the giving of such advice is prohibited.

### **Effectiveness of the Process of Taxation Course**

The Process of Taxation Course was just beginning when I wrote this paper. The students had completed their tax law course, had developed their sites, and were starting their training on the software and CD-ROM. By February 1, 1995, they will have begun preparing returns.

A polling of the 32 students enrolled in the course shows a variety of motivations behind taking this elective course. Many are motivated by a desire to provide a valuable service to needy individuals, others want to acquire expertise in tax law, while others find the use of technology in an applied setting to be attractive. Because the amount of work is substantially more than that required in most other three credit courses, these motivations must be fairly strong.

### **Teaching Applied Technology Courses**

Teaching a law course that involves applied technology and the performance of legal services for live clients is a risky venture. As we all know, technology can be a fickle and unreliable tool. Hardware can fail, software has bugs, and technical support may be light or non-existent. Technology also taxes the teacher who must master the subject matter, the hardware, and the software. And there are all those clients to worry about. Students come to the class with varying degrees of computer literacy. Some are more expert than the teacher while others do not own computers or do not use

them very often.

Project work that takes students outside of the classroom can also be difficult if the only workable project times are during the day when students have class. Fortunately, most of the students are planning on operating their project sites on evenings and Saturdays when the law school has few or no classes.

Where hardware and software are involved, costs can be substantial. We have no budget and have been able to use computers by begging and borrowing them. Because some of the students have their own laptops, this has helped. IRS has supplied the tax software, and RIA has donated its CD-ROM product. We are also asking for computer equipment donations from law and accounting firms.

In the long run, many of the resource problems we face actually make the course more challenging because they force us to look for creative solutions. Many of the problems simply arise unexpectedly, and we just troubleshoot them one by one. If all fails, we still have pencil and paper and can prepare returns the old fashioned way. In general, it is good for students to experience real world frustrations so that they can develop strategies for dealing with them.

### **Conclusion**

By making extensive use of technology in a clinical teaching setting, students can learn substantive law, improve their computer literacy, acquire important lawyering skills, and gain insights into the legal system. American tax law is an especially good field in which to apply technology in clinical teaching because many commercial products are available for use. The primary educational value of this project, however, comes not from computers but from an expanded use of the clinical method. The clinical method is an effective method of learning because it is interactive and open ended. Because the student's efforts affect or determine the outcome of the legal problem, the student has a real interest in getting the facts, knowing the law, and applying the law to the facts as correctly as possible. As a result, a student in a clinical environment learns more, learns it better, and retains it longer. In this sense, the clinical method, because it provides a richer learning environment, is superior to computer-based learning. Most computer-based learning programs are little more than fancy workbooks or multiple choice tests loaded onto computers. Computer-based learning will not reach its true potential until it begins to duplicate the truly interactive, outcome-invested dynamic of the clinical method.