Student Name

August 30, 2022

<center>Fall 2022 Independent Clinical Project Proposal</center>

Legal Internship with the ███████████████████████

I.   **Project Description**

    a.   **Placement Organization and Mission**

The ██████████████ is the largest and oldest provider of legal aid in the United States. ████ works across all five boroughs of New York City providing criminal and civil legal representation, animated by the belief that no person should be denied their right to equal justice simply because they are poor. ██████ operates outside the courtroom, working with community leaders, policymakers, and media groups to advocate for all New Yorkers.

The Special Litigation Unit (SLU) is a specialized group within the ████████████ Instead of engaging in representation of individual clients, SLU addresses systemic legal issues affecting the rights of ████'s public defense clients through impact litigation and policy advocacy. SLU is able to leverage ████████ unique role-- employing on-the-ground public defenders in all five boroughs with expertise in New York's interconnected legal systems--- to identify particularly invidious issues affecting ████ clients writ large.

    b.   **Proposed Project: Anticipated Responsibilities and Activities**

I will be an intern in the Criminal Defense Practice of the Special Litigation Unit, assisting on the federal class action case ████ *v.* ████████████. The lawsuit challenges the

NYPD practice of surreptitiously taking-- and then indefinitely searching and storing in an unregulated, rogue database-- the DNA of tens of thousands of children and adults without a warrant or court order (which has been covered in the news media, including twice in the in the New York Times— ██████████). The complaint was filed in March of 2022 and has currently only reached the 12(b)(1) stage (challenging subject matter jurisdiction). Over the summer, I conducted legal research and prepared memos on questions of standing, mootness, and supplemental jurisdiction, as well as Fourth Amendment and state preemption precedent. I also had the chance to participate in strategy meetings discussing potential amicus briefs on our side and how to counter opposing counsel's arguments. I anticipate getting to conduct similar legal research over the fall, but in response to the city's filings following the 12(b)(1) stage—they may try to file a separate 12(b)(6) motion or go straight to the summary judgment stage. Alternatively, if the judge dismisses the case on subject matter grounds, SLU will likely appeal the dismissal, and I will get exposure to appellate proceedings.

c. Previous Work

I spent ten weeks this past summer interning with SLU, working primarily on ████ *v.* ████ ████████ . ████████ , my proposed independent clinical supervising attorney, was my supervising attorney over the summer as well. I felt like my legal research and writing skills grew a lot under his supervision—he was always willing to take long meetings with me and give me comprehensive feedback. I would love the opportunity to keep working under his supervision and keep refining my skills.

II. Statement of Interest

a. Difference from Practice Opportunities in HLS Clinical Program

While there are a number of clinics that cover criminal justice issues at HLS, none guarantee exposure to cutting-edge impact litigation in quite the same way that an independent clinic with SLU would. To my knowledge, the Criminal Justice Institute, the Criminal Prosecution Clinic, and the Capital Punishment Clinic all focus on individual representation. While I find that interesting as well, I have been representing individual clients in SPOs like TAP and PLAP since last year, and I am eager to keep learning about the intricacies of class action federal litigation, which the opportunity to keep working on ███ provides. While the Institute to End Mass Incarceration and the Criminal Justice Appellate Clinic both seek to address systemic, criminal justice issues, neither appears to do so through trial-level impact litigation. The information I've read about the Institute to End Mass Incarceration has stated that IEMI focuses on nontraditional modes of lawyering, and students spend more time organizing conferences and talking through theoretical ideas and models while engaging community stakeholders than filing more standard litigation. While the Criminal Justice Appellate Clinic also really appeals to me, I want to learn more about trial-level lawyering (getting into the weeds of discovery and other initial filings and disputes) before I focus on appellate work. For these reasons, I believe that SLU will give me an experience different from the other offerings from the clinical program at Harvard.

b. **Interest in Subject Area**

As a high school senior taking AP Computer Science, I had loved building wacky—if basic— projects from scratch. As an undergraduate, I then took (and very much enjoyed) computer science classes like Honors Introduction to Computer Science, Data Structures and Algorithms, and Programming in Linux. I thought seriously about becoming a software engineer, but was unable to stomach the exploitative, frighteningly underregulated practices seemingly

central to the models of big tech companies. Instead, I decided to apply to law school, and took

time in-between college and law school to work as an educator in rural Colorado as an

AmeriCorps servicemember.

My year as a K-12 educator (and non-profit SAT instructor) during COVID highlighted

to me just how much we need to balance technological advances with strong privacy and civil

liberties protections. When I taught using different online platforms or heard about the kids'

physically-isolated socializing on TikTok or Roblox, a part of me always worried about the

potential consequences. What were they inadvertently agreeing to when they used those

platforms? What data was being collected from them without their knowledge? These worries

were informed by my time as an investigative intern at ████████████ during my

sophomore as college, where I observed client after client unfairly surveilled and harassed by the

NYPD. That same year, the *New York Times* reported that ██████ clients as young as 12 had

had their DNA surreptitiously collected by the cops for databases operated with little oversight.

This summer, I was back at ██████████, working on a class action lawsuit

seeking to shut that unregulated DNA database down. Many of the issues raised in our complaint

get to the core of fairness and privacy issues. Is it fair to consider DNA left on a soda straw

"abandoned" material? With advances in DNA collection and sequencing, is it really accurate to

compare a DNA profile to something like a fingerprint? When DNA profiles can reveal intimate

information about both an individual and their family members, is it just for police officers to be

able to arbitrarily collect these samples without a warrant or court order? Does maintaining and

analyzing an unregulated DNA database qualify as a search or seizure under the Fourth

Amendment? What alternatives could the police use to solve crimes when there's otherwise

scant evidence at their disposal? How do we balance these concerns with the arguments of those

who believe such databases can be used to exonerate just as much as they might be used to convict?

I am interested in continuing to consider such questions through this independent clinic and believe that doing so will help lead me to fuller answers.

c. Advancement of Academic and Professional Goals

I'm interested in continuing on with SLU for a number of reasons. The first is that I already have a fairly comprehensive background in the case I would be working on—I spent 35 hours a week for ten weeks this summer focusing mostly on this litigation. I spent weeks preparing memos on what arguments they might hypothetically in preparation for the coming 12(b)(1). Yet when the city actually filed their motion to dismiss, they brought up new wrinkles and facts we had not accounted for, necessitating another deep dive into the best way for us to counter their arguments. I anticipate that moving on to the 12(b)(6) and summary judgment stages would result in similar experiences—despite having a strong grounding in the facts of the case, there would still be many new things to research and learn.

This ties into the second reason I want to continue with SLU: because I realized this summer that I love litigation. I know that a number of HLS students end up as transactional lawyers working on deals, but I've never enjoyed a professional experience more than working on the ██████ litigation this summer. I found trying to parse out the strengths and weaknesses, line-by-line, of the opposing counsel's filing—and then working on writing the best response possible to those arguments-- thrilling. I'm eager to keep working with SLU because it will allow me to further witness the life of a case in active civil litigation (I joined the team only a month and half after the complaint was filed, and right before the city filed their first response) and build on skills I developed during the summer. I hope that being able to closely monitor and contribute to

one case as it moves from procedural step to procedural step through the litigation process will be an even more in-depth follow up to 1L Civil Procedure.

The third reason I want to continue on with SLU is because I want to strengthen my skills at impact litigation in particular and continue working with my supervising attorney. I will be undergoing the 2L public interest job search this fall, and I hope to practice in New York and get even more experience doing similar impact litigation 2L summer. Phil, my supervising attorney, worked at ██████████████████████ before joining ███████████████, and I believe that continuing to be mentored by him will be helpful for not only growing my skills (as I mentioned above, he was an excellent supervisor over the past summer and gave me a lot of helpful feedback), but add weight to what he will be able to say if I ask him to serve as a reference. I believe continuing to work on this case will allow me to further assess if I want to pursue impact litigation fellowships after law school.

III. Academic Paper

a. Description of Academic Paper Topic

I would like to investigate more fully differing uses of DNA databases in the criminal justice system—and different lawsuits and legal arguments brought against them—across the country. My research for ████ has thus far been mostly confined to New York and Second Circuit law. However, I've read that other states and localities have considered similar (though not identical) questions of law and policy, and many have not yet been resolved. For example, in New Jersey, police have used blood samples mandatorily taken from newborns in the state to investigate crimes allegedly committed by those babies' biological relatives. As this article on the [practice](#) explains, "if police are able to reliably obtain the samples through subpoena, then effectively, the disease screening process is entering all babies born in the state into a DNA

database with no ability to opt out." I am curious about investigating other such practices and if legal arguments have been brought against them. Such an investigation, combined with a review of legal academic pieces on such issues, may lead to patterns or insights on contemporary DNA privacy I have not yet considered. I may narrow this question further to focus on the legal implications of using DNA from one individual to search for family members accused of crimes.

Upon returning to campus, I plan to work with Professor ▊ to discuss and refine the paper topic. I will ensure that my research project will not overlap with my work product.

b. Faculty Sponsor and Expertise

Professor ▊ is the ▊ Professor of Law at Harvard Law School and a ▊ ▊. Professor ▊ teaching and research interests center around empirical law and economics, particularly in the areas of criminal justice and consumer bankruptcy. Her current research includes empirical projects on racial bias in the criminal justice system, the spillover effects of deportation fear, and delivery of health care in correctional facilities.

I asked Professor ▊ to be my faculty sponsor because of her statistical research and research on the intersection of health and criminal justice (and also because I particularly enjoyed her ▊ class last semester.) Part of the argument in ▊ is that juries may misunderstand the statistical significance of a DNA "match" and overweight its significance in finding guilt. We are also arguing that recent technological advances mean that the parts of DNA used for identification purposes (which were previously thought of as "junk" "non-coding" sections) are now able to be used to reveal detailed and sensitive health information. Both factors

underlie why we're arguing that there should be higher safeguards around the privacy interest in genetic material.

Professor ██████ statistical empirical work on criminal justice issues have been cited in SDNY cases before (the same jurisdiction where ████ was filed). I am looking forward to her thoughts on both the policy implications of such a DNA database (and expanding the right to privacy to include DNA samples in such cases) and whether DNA—while an especially powerful tool—may also lead layman jurors to misunderstand statistical significance in cases in which it is brought as evidence.