

DEMANDS OF THE MARKETPLACE REQUIRE
PRACTICAL SKILLS:
A NECESSITY FOR EMERGING PRACTITIONERS, AND
ITS CLINICAL IMPACT ON SOCIETY – A PARADIGM FOR
CHANGE

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ABSTRACT

Many articles have been written focusing on the benefits that the law students receive from participating in a rigorous program of clinical study early on in their careers. However, little focus has been given to the clients who participate in law school clinics. Most of the time these clients are poor and minorities with few, if any, options for legal representation.

In general, law student clinical work has been confined to local clients with local issues. Even law schools that handle national issues have clients that are local and the issues that give rise to the national representation occur locally. This article poses two questions (1) what if student participation in law school clinical programs was made mandatory, thus expanding the number of law students available to offer legal assistance to the underrepresented; and (2) what if law school clinics unite with one another to form an alliance to take on cases, thereby creating a broader impact on a national level. Specifically, if law school clinics decided to unite and share information, data, briefs, and forms, they would have the concentrated power of a nationwide public interest law firm to address issues that are below the economic radar screen of for-profit lawyers and law firms. For example, the housing crisis is both local and national and has a disproportionate impact on the poor. The nature of this crisis calls for a global solution rather than a local approach. Therefore, in a nationwide effort to positively impact the housing crisis, law school clinics forming an alliance could set a standard for practical training and potential resolution while impacting history in ways that were never envisioned by the doctrinal curriculum.

"The clinic thus becomes a 'case book' - not, however, of dead letters descriptive of past controversies, but always of living issues in the throbbing life of the day, the life the student is now living."¹

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I. INTRODUCTION

In an ever changing economy, industries must constantly modify and update their products and services in order to remain competitive. Schools of higher education, including law schools, are no exception to this sea of change in the United States and the global economy. Law schools are the producers and lawyers are the products. For many years, most law schools have regarded the Langdellian model as the most effective way to fulfill market demands for preparing and producing legal professionals.² However, with the shift in focus from just educating to training, simply getting students to 'think like lawyers' is no longer sufficient to prepare students to enter the practice of law or to satisfy the demands of today's marketplace for attorneys. To be effective and competitive, law schools must cater not only to their student customers, but to those students' potential clients and employers as well. Law schools must face evolving market expectations that, if not reconciled with current teaching strategies, will rapidly leave luddite³ law schools at a competitive disadvantage to those schools that are more progressive.⁴ In a partial response to this enigma, most law schools offer legal clinical programs in their curricula. However, they do so as an elective, leaving it to the student to recognize the need for skills training. This approach is insufficient for meeting current market demands. Only those students with the foresight to participate in clinics will be better prepared for the legal marketplace. These others will require more on-the-job training when they begin their careers. On-the-job training for new attorneys is rapidly succumbing to economic realities.⁵ The new marketplace mantra for new attorneys is 'be prepared to hit the ground running.'⁶

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1. Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 7 (2000).

2. See *infra* Part II.A.

3. Luddite, OXFORD ENGLISH DICTIONARY 86-87 (2d ed. 1989) (Defining "Luddite" as "A person opposed to increased industrialization or new technology").

4. John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 352 (2007).

5. See Annie Lowrey, *How Law School Went from Being a Sure Thing to a Bum Deal*, WASH. POST, Oct. 31, 2010, at G4.

6. See Gary Blankenship, *Law Schools: Time to Get Practical?*, FLA. BAR NEWS, Aug. 1, 2009, <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/cb53c80c8fabd49d85256b5900678f6c/8cd b069589d3395e852575fb0067c45f?OpenDocument&Highlight=0,Law,Schools;Time,to,Get,Practical> (discussing the need for law students to have practical experience not just top grades).

Numerous articles have been written about the benefits bestowed on law students who participate in a rigorous program of clinical study.⁷ It is a well-founded principle that well trained law students mature into competent lawyers who can in turn offer a high quality service to their clientele, which benefits society at large. Most of these articles have focused on the concept of benefits gained by the law student from practical experience obtained in legal clinics before beginning their professional careers.⁸ However, little focus has been given to the beneficiaries of law students' assistance, who are the underserved clients and the societal void that would result if these student legal services were eliminated or reduced. Law student clinical work has generally been confined to local clients and issues. Even law schools that handle national issues deal with local clients, and the issues giving rise to the representation occur locally.

This article poses two questions (1) what if student participation in law school clinical programs was made mandatory, thus expanding the number of law students available to offer legal assistance to the underrepresented; and (2) what if law school clinics unite with one another to form an alliance to take on cases, thereby creating a broader impact on a national level. Specifically, if law school clinics decided to unite and share information, data, briefs, and forms, they would have the concentrated power of a nationwide public interest law firm to address issues that are below the economic radar screen of for-profit lawyers and law firms. For example, the housing crisis is both local and national and has a disproportionate impact on the poor. The nature of this crisis calls for a global solution rather than a local approach. Therefore, in a nationwide effort to positively impact the housing crisis, law school clinics forming an alliance could set a standard for practical training and potential resolution while impacting history in ways that were never envisioned by the doctrinal curriculum.

This article will undertake the challenge to lay out a blueprint for a paradigm shift in clinical education and its potential effect on society by using the housing crisis as the model.⁹ First, it will lay the foundation for making clinical education mandatory for all law students by discussing the benefits of such an experience. Second, it will discuss societal outcomes that result from law school clinical programs, and how those benefits can be expanded and enhanced. Third, it will discuss the greater need for the intersection of law school clinics and main-street America. Fourth, it will demonstrate clinical accomplishments through the application of these concepts to the current housing crisis, and illustrate the effects of law school

7. While performing research for this article, Westlaw provided hundreds of cites discussing clinics and externships. See Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485 (1998); Paulette J. Williams, *The Divorce Case: Supervisory Teaching and Learning In Clinical Legal Education*, 21 ST. LOUIS U. PUB. L. REV. 331 (2002).

8. Williams, *supra* note 7, at 331.

9. This article is not intended to promote any specific law school per se. It is intended to promote the various services offered in housing clinics throughout the country.

clinic unification based on a common agenda for short (foreclosures, loan modifications, etc) and long term (federal, state, and local legislative proposals) solutions to societal housing ills. Finally, the article will conclude with a cost benefit analysis implementing a globalized program of law school clinics.

II. THE LAW SCHOOL QUANDARY: DOES THEORY-BASED TRAINING STILL SERVE THE MARKET

A. Current Legal Training: The Langdellian Model

In 1875, Christopher Columbus Langdell became dean of Harvard law school after being appointed Dane professor of law at Harvard.¹⁰ As Dean, he advocated a new approach to legal education consisting predominantly of reading prior court opinions and then challenging the students to evaluate judicial reasoning.¹¹ Such a method causes students to evaluate and deconstruct the law into its subparts and nuances, thereby prompting a detailed understanding of legal reasoning and statutory construction. In layman's terms, the Langdellian model forces students to think like lawyers. Langdell spearheaded the movement to make the practice of law more scientific in order to conform to the new model of university discipline.¹² Using this approach, law schools were able to be viewed as serious and real professional schools and not mere trade schools, as they were traditionally perceived by society.¹³ In Langdell's own words: "'what qualifies a person . . . to teach law is not experience in the work of a lawyer's office, not experience in dealing with law, not experience in the trial or argument of a case - not experience, in short, in using law, but experience in learning law.'"¹⁴

In the casebook method, the sole emphasis on legal analysis "became 'the objective' and 'the structure' of early legal education in the United States and represented early legal educators' narrow view of legal

10. Christopher Columbus Langdell 1826-1906, *ENCYCLOPEDIA.COM*, http://www.encyclopedia.com/topic/Christopher_Columbus_Langdell.aspx (last date visited Jan. 17, 2011).

11. *Id.*; See also Margaret Martin Barry, et al., *supra* note 1, at 7 (There existed three main methods of legal education: "the applied skills training method inherent in the apprenticeship system; the general education approach of the prevailing European legal educational model, which was adopted by some colleges and universities in the United States; and an analytical and systematized approach to the law as interconnected rational principles, taught primarily through lectures at proprietary law schools.").

12. Keith Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 *WIS. INT'L L.J.* 295, 298 (2006).

13. Eric Mills Holmes, *Education for Competent Lawyering - Case Method in a Functional Context*, 76 *COLUM. L. REV.* 535, 543-44 (1976).

14. WILLIAM R. JOHNSON, *SCHOOLED LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES* 103 (1978) (quoting C.C. Langdell, Address before the Harvard Law School Association (Nov. 6, 1886)).

education."¹⁵ Even with the growing dominance of the casebook method, there were critics from the very beginning.¹⁶ Although law schools pride themselves in teaching their students to think like lawyers, that might not be enough nowadays.¹⁷ For many years, law schools have endured the pressure of the academic and professional communities asking for a re-evaluation of the methods they employ to form new lawyers.¹⁸ As the ABA expressed, incorporating practical skills into legal education provides a solution currently demanded by today's marketplace.¹⁹

B. Law School as a Service Industry

The term "service industry" is defined by breaking the term into its elements and evaluating each as it relates to the other. Webster's Dictionary defines "service" as a facility supplying some public demand,²⁰ while "industry" is defined as work devoted to the study of a particular subject.²¹ The second half of the definition is easy. The particular subject being studied is law. The first part however, is the basis for this paper's premise. The public demand is for competent lawyers.²² Law schools are expected to supply this demand by offering legal education that produces lawyers who upon graduation are competent to practice law. The obvious initial customer of the service provided by law schools is the student. However, by properly preparing students, law schools ultimately provide a broader service to society, namely fresh young lawyers who are ready and able to practice law in a manner that meets public expectations.

In the law school setting, student-customers procure a legal education that is perceived to have value upon graduation.²³ In the service industries, value may be measured in terms of how well the consumer is served. As a supplier to the legal services industry that serves both students and the public, two different aspects of value²⁴ must be assessed. The first is the potential value to the student who seeks to increase his knowledge and earning potential. The student expects a return on his law school

15. Margaret Martin Barry, et al., *supra* note 1, at 5-6.

16. *Id.* at 6.

17. See WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

18. See Anthony V. Alfieri, *2009 Survey of Books Related to the Law: Review: Against Practice*, 107 MICH. L. REV. 1073 (2009).

19. Ann Marie Cavazos, *The Journey Towards Excellence in Clinical Legal Education: Developing, Utilizing and Evaluating Methodologies for Determining and Assessing the Effectiveness of Student Learning Outcomes*, 40 SW. U. L. REV. 1 (2010).

20. Service, <http://www.merriam-webster.com/dictionary/service> (defining "service" as "a facility supplying some public demand").

21. Industry, <http://www.merriam-webster.com/dictionary/industry> (defining "industry" as "work devoted to the study of a particular subject or author").

22. See Blankenship, *supra* note 6.

23. Lowrey, *supra* note 5, at G4.

24. Value, <http://www.merriam-webster.com/dictionary/value> (last date visited Jan. 17, 2011) (defining "value" as "something (as a principle or quality) intrinsically valuable or desirable"). *Id.*

investment as measured by the ability to obtain a job or otherwise employ his legal skills as a tool to achieve desired societal objectives.²⁵ The second is the marketing of the young lawyer's talents to potential employers and/or clients who in turn are recipients of the law student's services. Here, the expectation has evolved from patience for a reasonable lengthy post-graduate training period to a presumption that the law graduate can 'hit the ground running.' For law schools to remain viable, these evaluations of value must retain their worth. For if one suffers, so must the other. Unfortunately, surveys mentioned in the MacCrate Report indicate that most lawyers believe their law school education was inadequate and increasingly irrelevant to their needs as practicing lawyers.²⁶

C. Marketability is Key to Perceived Value of Law Schools Service

Since value is the driving force in any economy, law schools must actively work to remain on the cutting edge of marketability. Employers are no longer willing to train young law graduates as they did a decade ago.²⁷ They expect graduates to know how to apply what they have learned in the real world.²⁸ To have a highly marketable product, law schools must provide skilled competent lawyers to the market, i.e. firms (from solo practitioner to profit and non-profit), governmental agencies, and corporations. Their market value is the ability to provide effective and efficient legal services at the lowest cost for the consumers/client and highest margin to the firm.²⁹ The former applies to clients in general, including individual clients, government agencies and corporations who hire in-house lawyers at a fixed cost. The latter applies to lawyers who provide their talents and skills to the public and are compensated through billable hours. Needing less post-graduate training reduces the time it takes for a young lawyer to contribute professionally. For fixed cost attorneys, this lowers the employer's expenditures, thereby increasing the employer's return on the amount invested in the new lawyer by decreasing time spent to complete particular tasks. The fixed cost employers pay a flat salary and the value received is what is done within the hours worked. The theory is

25. See Lowrey, *supra* note 5, at G4.

26. ABA Sec. of Leg. Educ. & Admin. to the Bar, Legal Education and Professional Development-An Educational Continuum Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 138-140 (ABA 1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> (hereinafter "MacCrate Report").

27. Cavazos, *supra* note 19.

28. Zack Needles, Panel: Law Schools Must Adapt to New Post-Grad Reality, THE LEGAL INTELLIGENCER, May 2009, <http://www.law.com/jsp/article.jsp?id=1202430489077>.

29. See Mukesh Bajaj et al., *Firm Value and Marketability Discounts* (Leonard N. Stern Sch. Of Bus.), <http://pages.stern.nyu.edu/~adamodar/pdfiles/articles/firmvalueanddiscounts.pdf>; See also, Patrick J. Lamb, *Lawyers Have Incredible Lack of Interest in Changing Legal Marketplace*, ABA JOURNAL (Nov. 9, 2010), http://www.abajournal.com/news/article/incredible_lack_of_interest_in_the_changing_legal_marketplace.

that better equipped young lawyers will accomplish more in the same time period than their inexperienced counterparts. Write-offs apply to attorneys that bill by the hour. Such write-offs may be demanded by clients who object to paying to train the young lawyer, resulting in a potentially embarrassing dilemma for the supervising attorney between public relations and revenue. Consequently, providers and consumers of legal services are becoming less enthusiastic about training young lawyers in how to practice law. Thus, the days of students graduating from law school still needing to be brought up to speed on the practical aspects of lawyering are rapidly going by the wayside. The Langdellian method (teaching students only how to think instead of combining it with how to practice) is quickly approaching obsolete status. Consumers and providers of legal services want young lawyers who have the ability to function effectively and efficiently from day one.

Failure to properly respond to new market forces that do not recognize or revere doctrine or tradition could ultimately be the demise of many law schools. Competition will ultimately cause a wide disparity in the quality of raw materials (students) that the producers (law schools) are charged with molding into competent attorneys. Changes in the economy and the globalization of commerce are changing the way employers are looking to hire new lawyers, and that change demands that new lawyers must possess a minimal set of practical skills that most law schools are not providing.³⁰ Any business that wants to survive must be receptive to change, and law schools are no longer the exception. Changes in how the procurement or consumption of the 'business of law' is conducted are forcing lawyers to bring new sets of skills to their employers, such as strategic thinking, organizations, and a basic understanding of management skills that were heretofore learned on their post graduate jobs.³¹

III. MIGRATING FROM THE LANGDELLIAN METHOD

A. Clinical Training in Law Schools

In the late 1890's and early 1900's, law students at different law schools established volunteer legal aid bureaus to provide hands-on opportunities to learn and practice legal analysis and lawyering skills.³² Concurrent with this endeavor was a social justice mission to provide legal aid to the poor.³³ In 1916, the New York State Bar Association adopted a resolution that stated, "every law school shall make earnest clinical work, through legal aid societies or other agencies, a part of its curriculum for its full course."³⁴

30. Needles, *supra* note 28.

31. *Id.*

32. Barry, *supra* note 1, at 6.

33. *Id.*

34. *Id.*

It was the 1960's that drastically changed clinical education.³⁵ Law schools were denounced for being out-of-touch institutions that dehumanized the legal education being taught.³⁶ There were some clinicians who believed that the then current legal education would churn out lawyers that had earned the right to be the butt of lawyer jokes – professionals who cared only about the bottom line: the money.³⁷ The revolution was on as the clinical movement was determined to provide a conscience to the legal profession.³⁸ The school of thought was that "clinicians claimed to be sensitive, egalitarian, nonhierarchical, mutual trusting, caring, open, etc.—offering a sharply contrasting professioned model to their nonclinical colleagues."³⁹

Over the last fifty years, a growing number of members of the legal academy have recognized the need for clinical education to adapt to a changing marketplace. These academics have astutely acknowledged the need for a type of fusion of the old apprenticeship methods with that of the Langdellian method.⁴⁰ One of the overall goals is to increase the student's legal knowledge in an environment that also allows practical application.⁴¹ Carefully blending these ideologies instills in young lawyers both the ability to think like a lawyer and the experience to be productive as a lawyer upon graduation. However, such an evolution comes at a great price to traditional law school faculty and curriculum, and requires a significant amount of reengineering, reorganization and restructuring. Like any factory, producing a new product requires the producers to develop new molds and train or augment the staff. Change must be embraced in order to move forward.

B. Dipping Toes in Practical Legal Training Waters is Not Enough

In recent decades, some law schools offered basic courses on lawyering skills, but that was akin to teaching physical education mainly from a textbook rather than having students engage in some physical activities.⁴² The MacCrate report listed ten skills and five values that are essential for a practicing attorney to be an effective advocate.⁴³ The skills include problem solving, legal analysis, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution,

35. Leah Wortham et al., *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U. L. REV. 337, 346 (1987).

36. *Id.*

37. *Id.* at 341.

38. *Id.*

39. *Id.*

40. Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1462 (1998).

41. Cavazos, *supra* note 19.

42. Needles, *supra* note 28.

43. MacCrate Report, *supra* note 26.

administrative skills, and resolution of ethical dilemmas.⁴⁴ The values include competent representation, promotion of justice, fairness and morality, improvement of the profession, and professional self-development.⁴⁵ Today, the driving force of most law school curricula is preparing students to pass the bar exam. While passing the bar is a requirement for entering the practice of law, practical skills are essential once that door to the profession is opened. Law schools have several incentives for accomplishing high bar passage rates. The bar passage rate is often part of the law school selection criteria employed by prospective students. It is an essential factor for obtaining and retaining ABA accreditation.⁴⁶ There is no ABA accreditation metric for producing effective lawyers;⁴⁷ the marketplace is the first true test. The main problem with focusing solely on the bar is that the bar exam is built on and, consequently, reinforces the Langdellian method, focusing more on how legal rules are applied instead of practical lawyering, which incorporates, *inter alia*, judgment. This runs apposite to the real world of lawyering where the issue may not be 'what can I do within the parameters of the law' but 'what should I do within those parameters to obtain a desired objective.' For example, litigation could result in pyrrhic victories because of the delays inherent in some court proceedings.⁴⁸

The kind of judgment that enables competent decision making in legal scenarios must be experienced through real practical issues as early in the legal training period as possible so as to provide multiple opportunities to reinforce the skill in the comparatively safe environment of law school. By focusing on theory alone, the current educational approach creates professionals who lack the minimum practical experience required to be effective in their profession.⁴⁹ Practical skill training reinforces rather than diminishes doctrinal learning.⁵⁰

C. Practical Training in the Schooling of Other Professions

Professional schools, such as medicine and pharmacy, have one common denominator: they all expose students in a comprehensive way to a full range of skills that are required in the profession to gain experience in

44. *Id.* at 138-40.

45. *Id.* at 138-41.

46. See ABA SEC. LEG. EDUC. & ADMIS. TO THE B., Standards for Approval of Law Schools, Standard 301(a) and 301-6 (2005), available at http://www.forumea.org/toolboxdocs/Standards-Rules_of_Procedure_for_Approval_of_Law_Schools_2005-2006_by_ABA.pdf [hereinafter ABA Standards].

47. MacCrate Report, *supra* note 26, at 278.

48. *Id.*

49. *Id.*

50. Eric Goldman, *Integrating Contract Drafting Skills and Doctrine*, 12 LEGAL WRITING. J. LEGAL WRITING INST. 209 (2006).

their post graduate professions.⁵¹ Our current legal education fails to expose law students to a full array of skills that are required by lawyers in order to gain experience in the practicing of law.⁵² Professor Keith Findley⁵³ uses the analogy of medical schools training aspiring doctors in the practice of medicine by allowing them to experience actual surgery.⁵⁴ In a medical practicum, the assessment of medical residents and medical students is mainly based on a model that uses six interrelated areas of competence: medical knowledge, communication and interpersonal skills, practice-based learning and improvement, patient care, professionalism, and systems-based practice.⁵⁵ Medical clinics are founded on the ideals that competence is not an achievement, but rather a habit of lifelong learning. It is contextual, reflecting the relationship between a person's abilities and the tasks he or she is required to perform in a particular situation in the real world. It is also developmental, for "habits of mind and behavior and practical wisdom are gained through deliberate practice and reflection on experience."⁵⁶ Students begin their training by using abstract rule-based formulas that are removed from actual practice. However, as the students advance, they begin to apply the abstract rule-based formulas accordingly to particular situations.⁵⁷ Throughout their residencies, medical trainees make judgments that reflect a more progressive understanding of a situation which later results in direct diagnoses that are based on their profound understanding of underlying medical principles.⁵⁸ Attending physicians working with a student are required to evaluate the student's knowledge, professionalism, interest in learning, procedural skills, and systems-based practice.⁵⁹ The medical clinical and the concept of legal clinics parallel the main concepts of the educational paradigm in that they start with the theory, then continue teaching through application of that theory to practice. Unfortunately, legal practica have been controversial for almost a century now.⁶⁰

51. See Ronald M. Epstein, M.D. *Assessment in Medical Education*, 356 NEW ENGLAND J. OF MED. 387 (2007), available at <http://www.nejm.org/doi/pdf/10.1056/NEJMra054784>. See also University of Florida College of Pharmacy, DOCTOR OF PHARMACY DEGREE EDUCATION, <http://www.cop.ufl.edu/education/doctor-of-pharmacy-degree-pharmd/> (last visited April 4, 2011).

52. Keith Findley, *International Conference on Legal Education Reform: Discovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 WIS. INT'L L.J. 295, 312 (2006).

53. Keith Findley teaches in the clinical programs at the University of Wisconsin Law School's Frank J. Remington Center, where he has served as co-director of the Criminal Appeals Project and where he co-directs the Wisconsin Innocence Project (which he co-founded with Professor John Pray). He currently serves as the president of the Innocence Network, an affiliation of fifty-four innocence projects in the United States, Canada, the United Kingdom, Australia, and New Zealand. University of Wisconsin, UNIV. OF WIS. LAW SCHOOL: FACULTY AND STAFF, <http://law.wisc.edu/profiles/kafindley@wisc.edu> (last visited April 4, 2011).

54. Findley, *supra* note 52.

55. Epstein, *supra* note 51, at 387.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 387.

60. Barry, *supra* note 1, at 6-7. In a 1917 article, Rowe, a commentator stated that "The law

D. The Case for Mandatory Legal Clinical Training in Law School

Findley contends: "Nor should law students be expected to enter the world of practice without having ever learned to apply doctrine or theory to solving real-world problems."⁶¹ Clinical experiences bridge the gap between theories by illustrating the law and its application in real world situations.⁶² Fundamental principles of learning theory confirm that, "when cognitive studies are accompanied by active engagement in their application to concrete problems, a likely result is fuller comprehension, better retention, and more apt recall of the cognitive material."⁶³ A viable solution to this problem is to implement legal clinical programs but this is not an innovative proposal. As stated earlier, the matter has been debated for almost 100 years. The previous debates, however, took place at a time when some of the current drivers for quality legal education, mandated by the current marketplace did not exist. In general, evolving circumstances requires a review and assessment of former practices that were historically effective.

In 1917, William Rowe, a commentator who had originally opposed the idea of mandated legal clinics,⁶⁴ penned a law review article advocating the opposite viewpoint. He opined that the preeminent way to instruct law students to become competent lawyers was to integrate formal clinical legal education, with faculty involvement, into the law school curriculum.⁶⁵ At the time the article was published, most law schools offered only a two-year course of instruction, although some efforts were made to integrate clinical education throughout a student's law school experience.⁶⁶ Rowe still contended "that a year is not sufficient."⁶⁷ Rowe foresaw the clinic as "a principal medium of instruction in all years for all subjects."⁶⁸

Almost thirty years later, in 1944, a Report of the Association of American Law Schools (AALS) Curriculum Committee, stated that the "current case-instruction is somehow failing to do the job of producing reliable professional competence on the by-product side in half or more of our end-product, our graduates."⁶⁹

schools, he observed, were lagging behind medicine, architecture, engineering, and other disciplines in providing such clinical experiences to students." *Id.*

61. Findley, *supra* note 52, at 312.

62. *Id.* See also Linda F. Smith, *The Judicial Clinic: Theory and Method in a Life Laboratory of Law*, 1993 UTAH L. REV. 429 (1993) (discussing Judicial clinics and the clinic methodology).

63. Frank Michelman, *The Parts and the Whole: Non-Euclidian Curricular Geometry*, 32 J. LEGAL EDUC. 352, 353-54 ("[t]he curriculum is excessively committed to doctrinal learning as differentiated on the one hand from theoretical learning and on the other hand from practical learning.").

64. Barry et. al., *supra* note 1, at 6-7.

65. *Id.* at 6.

66. *Id.* at 6-7.

67. *Id.*

68. *Id.*

69. *Id.* at 8.

One of the main purposes of a legal clinical program is to augment classroom teaching through practice. It is well known that practical knowledge of the law comes through experience, not just classroom instruction.⁷⁰ A main goal of clinical education is the method of teaching that is synonymous with a real world setting using skills-training.⁷¹ In a clinic or practicum, a student interacts with real clients and members in the legal system, providing enrichment to the student's overall learning experience.⁷² Clinical professors with practice experience,⁷³ not just legal educators, supervise and review the law students.⁷⁴ Clinics provide insight into the reality of practicing law and the legal system that the students cannot obtain in class.⁷⁵ There is a school of thought that in-house clinics provide the optimal means of integrating the theoretical, analytical and ethical goals sought by the legal community.⁷⁶ The ABA acknowledged these clinical program achievements.⁷⁷

In 1993, the ABA amended its law school accreditation standards stating that law schools had the responsibility to maintain an educational program designed to prepare graduates to effectively participate in the legal profession.⁷⁸ Furthermore, in 1996 the ABA added provisions that strengthen the implementation of clinical programs in order to provide opportunities for students to access clinical-based training in order to provide at least some exposure to the practice of law.⁷⁹ Unfortunately, these courses are offered in most law schools as "elective" or "optional."⁸⁰ What would the medical profession be like if medical students had the option of not participating in medical clinics?

70. Report of the Subcommittee on Pedagogical Goals of the In-House, Live-Client Clinics, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 511, 513 (1992). The Committee identified nine teaching goals that exist in most clinics: Developing Modes of Planning and Analysis for Dealing with Unstructured Situations; Providing Professional Skills Instruction; Teaching Means of Learning from Experience; Instructing Students in Professional Responsibility; Exposing Students to the Demands and Methods of Acting in Role; Providing Opportunities for Collaborative Learning; Providing the Opportunity for Examining the Impact of Doctrine in Real Life and Providing a Laboratory in which Students and Faculty Study Particular Areas of the Law; and Critiquing the Capacities and Limitations of Lawyers and the Legal System. *Id.* at 512-16.

71. *Id.* at 511.

72. *Id.*

73. See also Peter A. Joy et al., *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183 (2008).

74. Cavazos, *supra* note 19

75. AALS Report, *supra* note 70, at 516.

76. *Id.* at 517.

77. See ABA Standards, *supra* note 46, Standard 301.

78. *Id.*

79. See ABA Standards, *supra* note 46, Standard 302, at 19

80. A 2002 ABA study found that skills and simulation opportunities in law schools had increased in the decade since the MacCrate Report, but that still only twenty-nine percent of law schools required some form of skills, clinical or simulation course for graduation. See ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA 1992-2002, available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/curriculum_survey.authcheckdam.pdf [hereinafter *ABA Survey of Curricula*].

IV. EFFECTIVENESS OF THE NEW MODEL

Forging new frontiers in education is always going to be a slow process because of the time it takes to integrate a new teaching process, fears of seasoned law professors, and accompanying resistance to reengineering the factory and producers. The Langdellian method has survived the test of time and has been refined to the point of near standardization throughout the country. However, just because a model is refined and nearly perfected does not mean that it must, or should, remain the chosen method by which a subject is taught. If industry took this approach, horse and buggy would be our primary mode of transportation. Consequently, as the demand for a more refined set of legal skills increases throughout the United States, so should the educational industry supply a program that more closely conforms to those needs, thereby remaining an effective tool for students aspiring to be lawyers.

The early years of American legal education were focused on training lawyers for practice.⁸¹ Being a lawyer was viewed as more art than a science.⁸² Ultimately, legal educational programs have the responsibility of teaching law students how to solve legal problems.⁸³ In order to become professionally competent, educational experience is necessary but currently insufficient.⁸⁴ The main advantage of clinical education is that it combines academic theories with actual experiences:⁸⁵

When seen as parts of a connected whole, the practical courses in lawyering and clinical legal education make an essential contribution to responsible professional training. These courses are built around simulations of practice or law clinics involving actual clients. But they can do more than expand the apprentice's repertoire of knowledge and skill. Critically, they are the law school's primary means of teaching students how to connect the abstract thinking formed by legal categories and procedures with fuller human contexts.⁸⁶

A. History of Legal Clinics: An Old Concept Revisited

Around the turn of the 20th century, a number of law schools had established extracurricular activities that in essence resembled legal aid clinics staffed in part by students although not formally recognized as

81. See generally, Findley, *supra* note 12.

82. See generally, *id.*

83. ROBERT M. GAGNE, *THE CONDITIONS OF LEARNING AND THEORY OF INSTRUCTION*, 195 (1985).

84. Roy Stuckey, *Teaching With Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807, 811 (2007).

85. *Id.*

86. *Id.* at 812.

such.⁸⁷ In 1928, the University of Southern California (USC) operated a six-week legal clinic program.⁸⁸ However, the very first ongoing in-house clinic was established by Duke University in 1931. It was later eliminated in 1959.⁸⁹ The University of Tennessee (UT) Legal Clinic opened in 1947 as the second in-house legal clinic in the nation. Today, it is the oldest continuously operating in-house Clinical program.⁹⁰ The University of Tennessee faculty and administration were so supportive of this endeavor, that a new law building was built in 1950 to accommodate the legal clinic. During the first three years, approximately 200 students completed the mandatory legal aid clinical program under the supervision of Charles Henderson Miller,⁹¹ one staff attorney, and members of the local bar.⁹² Nonetheless, only a small minority of law schools instituted in-house clinical courses through the first half of the 1900's.⁹³

There were several factors that attributed to the lack of clinical programs in the first half of the 1900s and inhibited the growth of clinical pedagogy.⁹⁴ The first is that law schools were marketing themselves apart from the apprenticeship concept.⁹⁵ Second, law schools were extremely underfunded and clinical legal education courses were not as economical as regular larger law classes.⁹⁶ Third, a significant number of law school teachers disagreed about the value and practicality of teaching lawyering skills other than legal analysis.⁹⁷ Fourth, the ABA and the AALS, during the period from the 1920's to the 1940's, were making strides in forming and adopting higher standards for law schools which did not encourage or require clinical legal education experiences.⁹⁸ These four factors combined not only limited the number of clinical programs, but also stunted the growth of clinical pedagogy by limiting the number of law faculty teaching clinical courses.⁹⁹

Clinical legal education experience varied among programs.¹⁰⁰ In the 1950's, there was no mainstream legal clinic pedagogy, and as a result any

87. Douglas A. Blaze, *Deja Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 940 (1997).

88. *Id.* at 940 n.3.

89. *Id.* at 940.

90. *Id.*

91. *Id.* Charles Henderson Miller started the University of Tennessee (UT) Legal Clinic in 1947. *Id.* Miller had also enrolled and helped establish the Duke clinical program in 1931. Although he graduated from Duke in 1933, he continued to serve as an assistant in the clinic through 1946. *Id.* at 940-41.

92. *Id.* at 940.

93. Barry, *supra* note 1, at 8.

94. *Id.* at 8-9.

95. *Id.*

96. *Id.*

97. *Id.* at 8.

98. *Id.* at 8-9.

99. *Id.* at 9.

100. *Id.*

law school sponsored assistance program was considered clinical.¹⁰¹ "A 1951 study of clinical programs identified twenty-eight clinics run by law schools, legal societies, or public defender offices."¹⁰² Only five law schools identified by the study required a clinical legal education experience,¹⁰³ while the majority of the schools offered clinics as electives or extra-curricular activities.¹⁰⁴ Only eighteen of the schools offered some form of credit for clinic work.¹⁰⁵ However, by the end of the 1950's, thirty-five law schools reported "some form of legal aid clinic."¹⁰⁶ Unfortunately, there was only a slight increase in the number of law school clinics for the next several years.¹⁰⁷

B. Mandating Legal Clinics

In 1917, Rowe advocated a system of clinical legal education as "a 'case book' - not, however, of dead letters descriptive of past controversies, but always of living issues in the throbbing life of the day, the life the student is now living."¹⁰⁸ As the Langdellian Method of teaching grew in acceptance, due in part to the view that legal education was more of an academic science,¹⁰⁹ legal education took a turn away from the practical aspects of legal practice that were gained through apprenticeships.¹¹⁰ Based on the theorems of the distinguished scholar, philosopher and author, Donald Alan Schon,¹¹¹ Professor of law Richard K. Neumann, Jr., stated:

Among the professions, legal education stands nearly alone in its contempt for the idea of a reflective practicum. Because it does not expect itself to produce practitioners, legal education is in many ways closer to graduate liberal arts education than it is to professional education as other professions define it. In other professions, practica might not be as effective as they could be. But at least they are required courses, taking up large parts of the curriculum. It would be unthinkable to graduate physicians with no clinical clerkships or architects with no experience in a design

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* In 2010, nearly 60 years later, very little effort has been made, but this needs to change with the market force.

105. *Id.* at 10

106. *Id.*

107. *Id.*

108. *Id.* at 6-8.

109. See also MacCrate Report, *supra* note 26, at 4.

110. Cavazos, *supra* note 19, at 4-6.

111. Donald Alan Schon graduated from Yale in 1951. He was the recipient of the Woodrow Wilson Fellowship and continued at Harvard, where he earned master's and doctoral degrees in philosophy. See also Richard K. Neumann Jr., *Donald Schon : The Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLINICAL L. REV. 401, 402 (2000).

studio.¹¹²

Hiring law firms and other employers of young lawyers cited as a major issue the inability of today's graduating classes to "hit the ground running"¹¹³ due to the lack of practical lawyering experience.¹¹⁴ Cost-conscious clients refuse to pay to "educate"¹¹⁵ young attorneys, leaving law firms to scramble with billing write-offs, internal mentoring, and other costly methods of legal training.¹¹⁶ The ABA acknowledged that "incorporating a blended methodology into legal education provides a solution to the balance expectation currently demanded by today's marketplace."¹¹⁷ The well-known MacCrate Report brought to the forefront the dilemma between legal education and the actual practice of law.¹¹⁸ The bottom line is that "law school graduates lack the fundamental skills and professional values which are considered the foundation for effective competent lawyering."¹¹⁹ The overall goal is to recognize and resolve ethical dilemmas¹²⁰ with a social onus. In correcting this problem, many law schools developed new policies by implementing clinical courses in simulated and live-client settings.¹²¹

Scholars were able to identify first-hand the benefits of clinical courses from a practical course in practice that evolved as the student began to work on the case.¹²² The student gained experience in using the substantive and administrative rules of law which blended when centered on a client's problem.¹²³ In addition, in the process of resolving the client's problem, students would also learn that the individual client's problems were not exclusively legal.¹²⁴ This lead to an experience with the law that took on

112. Neumann, *supra* note 111, at 426.

113. Blankenship, *supra* note 6.

114. Cavazos, *supra* note 19, at 5.

115. Blankenship, *supra* note 6.

116. Cavazos, *supra* note 19, at 5-6.

117. *Id.* at 6. See also ASS'N OF AM. LAW SCHOOLS, ASSOCIATION OF AMERICAN LAW SCHOOLS ANNUAL MEETING PROGRAM: TRANSFORMATIVE LAW 50 (2010), available at <http://www.aals.org/am2010/AMProgram2010.pdf>.

118. MacCrate Report, *supra* note 26, at 138-40.

119. Cavazos, *supra* note 19, at 6. See also MacCrate Report, *supra* note 25, at 138-40; Blankenship, *supra* note 5.

120. Cavazos, *supra* note 19, at n.38. The MacCrate Report laid out the foundation for a successful law school program that FAMU Legal Clinic implemented in its program structure. The report listed in part: Skill 1 - problem solving; Skill 2- legal analysis; Skill 3 - legal research; Skill 4 - factual investigation; Skill 5 - communication; Skill 6 - counseling; Skill 7 - negotiation; Skill 8 - requires to employ, or to advise a client about, the options of litigation and alternative dispute resolution; Skill 9 - identifies the administrative skills necessary to organize and manage legal work effectively; Skill 10 - recognizing and resolving ethical dilemmas. MacCrate Report, *supra* note 26, at 138-140. See also Blankenship, *supra* note 6.

121. Cavazos, *supra* note 19, at 6. (citing Anahid Gharakhanian, *ABA Standard 305'S Guided Reflections: A Perfect Fit for Guided Fieldwork*, 14 CLINICAL L. REV. 61, 79 (2007) (emphasizing that students who undertook demanding experiential education found it empowering and liberating)).

122. Blaze, *supra* note 87, at 945-46.

123. *Id.*

124. *Id.* at 946.

various aspects: legal and social.¹²⁵

In an article entitled, *Top 10 Reasons to Enroll in a Law School Clinic* in 2010,¹²⁶ the author states the main purpose to enter a clinical program is to "actively seek opportunities to train under licensed attorneys before representing your first client."¹²⁷ The article addresses the following reasons to take this opportunity:

1. Learn how to issue spot;
2. Experience what a small to mid-size firm is like;
3. Draft legal documents, meet with clients, and propose further legal recourse;
4. Work on your 'bedside manner';
5. Experience a niche field of law;
6. Work with professor-attorneys in the field;
7. Understand why legal ethics is such a big deal;
8. For the twofer: course credit and practical experience;
9. Serve the underserved; and
10. Collaborate with fellow law students, any of whom could become your future law firm partners.¹²⁸

An excellent example of a clinic that exemplifies the above reasons is the Housing and Consumer Law Clinic at the University of the District of Columbia David Clarke School of Law. The clinic's pedagogy is to teach students substantive housing and consumer law.¹²⁹ Clinical students apply what they learned in their traditional class course work, such as contracts, torts, real property, evidence, administrative law, business associations, trial practice and moot court.¹³⁰ Clinical students are immersed in motion practice, trial, and appellate advocacy in preparation to represent clients effectively.¹³¹

Clinical legal education is said to be "the most significant change in how law was taught since the invention of the case method."¹³² After more than fifty years, clinical education has become legitimate and an accepted

125. See *id.* at 945-46 ("The legal aid clinic is a device to improve legal education in the United States, with objectives in the field of practical training and public service." (quoting John S. Bradway, *The Objectives of Legal Aid Clinic Work*, 24 WASH. U. L.Q. 173, 176 (1939)). "The students 'learned by doing.' Experiential learning had come to legal education." *Id.*

126. See generally Neetal Parekh, *Top 10 Reasons to Enroll in a Law School Clinic in 2010* (January 6, 2010) http://blogs.findlaw.com/greedy_associates/2010/01/top-10-reasons-to-enroll-in-a-law-school-clinic-in-2010.html

127. *Id.*

128. *Id.*

129. Housing and Consumer law Clinic, THE UNIVERSITY OF THE DISTRICT OF COLUMBIA DAVID CLARKE SCHOOL OF LAW, <http://www.law.udc.edu/?page=HousingClinic>.

130. *Id.*

131. See *id.* Students also represent consumers against merchants and homeowners against home improvement contractors in disputes involving sales and services; and miscellaneous torts.

132. Barry, *supra* note 1, at 11-12.

method of teaching.¹³³ Nevertheless, legal clinics today are still not mandatory, and in some cases not even considered imperative to the education of a law student. The reality is that clinics provide students the opportunity to learn through real-world experience, and as a business in the legal services industry, law schools owe it to their clients to produce a marketable product.

C. Beneficiaries of Law School Clinics: Advocacy and Social Justice

A few years after joining Duke University in 1931, John Bradway¹³⁴ determined that "the object of the [clinical] course . . . [was] 'cultural and practical goals.'"¹³⁵ The cultural goal was exposing students to legal aid clients,¹³⁶ and the practical goal was supplementing orthodox instruction through application of substantive knowledge to a real client and a real problem.¹³⁷ Other scholars believed "a full understanding of the law in operation required examination of the social and psychological forces affecting all components of the legal system."¹³⁸ In 1951, the Dean of Southern Methodist University School of Law, Robert Storey, praised "the clinical method for exposing 'the student to actual problems by confronting him with actual people who are in actual trouble' and for furthering 'equality of justice' by helping to set up 'an adequate system of legal aid offices.'"¹³⁹

The purpose of this section is to illuminate clinical educators regarding the opportunities available to impact the community in a positive way through clinical training of student lawyers. The numbers of issues that fall within this category are innumerable. One method to accomplish this is to approach issues holistically and move away from specialization of subject matter representation because it is limiting.¹⁴⁰ The goal should be to implement a clinic that cross-trains students. In addition to the cross training in legal areas, student should be equipped to be responsive to the "client's 'non-legal' concerns within a broader conception of 'client-centeredness'"¹⁴¹ to achieve goals of social justice.¹⁴² For example, a student

133. Dubin, *supra* note 40, at 1462.

134. Blaze, *supra* note 87, at 940, 946.

135. *Id.* at 946.

136. *Id.*

137. *Id.*

138. *Id.* at 944.

139. Barry, *supra* note 1, at 9 (quoting Robert G. Storey, Law School Legal Aid Clinics: Foreword, 3 J. LEGAL EDUC. 533, 533 (1951)).

140. Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 309 (2001).

141. Katherine R. Kruse, *Lawyers Should be Lawyers, But What Does That Mean?: A Response to Aiken & Wizner and Smith*, 14 WASH. U. J.L. & POL'Y 49, 71 (2004) (discussing the different perspectives to lawyering).

142. See Lopez, *supra* note 140, at 325. Students are encouraged to see problems and issues holistically; they learn about collaborating with clients - by listening to the clients, and not

who is in the homelessness clinic does not necessarily handle only homeless issues, but could in fact address other legal challenges affecting the homeless such as drafting a will, assisting with VA benefits, and researching local community assistance programs. A holistic approach means a greater understanding that the homeless client has other legal concerns, such as issues in the family law area, consumer, housing-section 8 application denial, food stamp or even educational matters.¹⁴³ Instead of transferring the client to a specialized clinic to address each specific issue, the student will coordinate services from each clinic on behalf of the client.

Integrated in this holistic approach are the attributes of confidentiality, loyalty, and zeal, which are essential to obtain and maintain a client's trust.¹⁴⁴ Leading authors on client-centered lawyering agree that clients do not distinguish between legal and non-legal problems when seeking legal assistance.¹⁴⁵ The client's legal problem may be minor compared to the overall problem, and in some cases, a client's reasoning and goals are mainly based on the non-legal consequences.¹⁴⁶ Using the holistic approach, it is important to comprehend the client's perspectives in order to better guide and control the course of representation.¹⁴⁷ However, even in a legal clinic with a holistic approach, necessary limits and self-constraints would need to exist to ensure effective representation of clients.¹⁴⁸

Most students are interested in learning new areas of law and embrace the challenge.¹⁴⁹ Over the years, clinical education has undertaken the task of skills development and training as pedagogy, although there are different schools of thought on what type of programs clinics should offer.¹⁵⁰ With social justice as the foundation, the main clinical goal should be to meet and serve client needs and those of the community, instead of gearing the clinical education to just the subject matter.¹⁵¹ The pedagogy's

immediately trying to solve a problem that the student assumes the clients have. In doing so, students learn to respond to the needs of the community. *Id.*

143. See Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 69 (2000). This type of approach would require the attorney to participate in activities outside the scope normally associated with legal representation such as making calls to agencies, locating agencies that can offer assistance, assisting in locating adequate housing, etc. *Id.* at 69.

144. Kruse, *supra* note 141, at 71-72. Despite its benefits, the broader and more holistic social work approach toward gathering information from and about clients sometimes carries with it the risk of compromising the client's legal interests; an approach that abandons the framework of legal interests entirely would leave the client unprotected from those risks.

145. *Id.* at 71 (referring to David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* passim (1991)).

146. *Id.*

147. *Id.* at 71-72.

148. See *id.* at 96-97. (stating that despite its benefits, the broader and more holistic social work approach toward gathering information from and about clients sometimes carries with it the risk of compromising the client's legal interests; an approach that abandons the framework of legal interests entirely would leave the client unprotected from those risks).

149. See Lopez, *supra* note 140, at 324-25.

150. *Id.* at 337-38.

151. Lopez, *supra* note 140, at 309-10.

foundation would therefore follow the skills training and social justice.¹⁵² The bottom line is that lawyers are not normally trained to deal with forms of multi-dimensional problem-solving that include social or economic matters.¹⁵³ The holistic clinic can offer this method of training. The clinic can otherwise prepare future lawyers to be able to suggest approaches and solutions that transcend commonly recognized legal resolutions or remedies.¹⁵⁴

Encompassing social justice are the areas of interdisciplinary collaborations and collaborative enterprises. In order to incorporate interdisciplinary collaboration, clinics must offer a variety of programs, not just clinical courses. These programs should include seminar courses with a social justice focus, and programs that enhance a student's ability to understand and perceive a different community from that which was taught to him in the casebooks, such as a domestic violence workshop, a workshop on mortgages, or a tax preparation clinic.

A clinic's mission should include teaching future lawyers about serving the needs of the underrepresented and providing them fair access to justice. But in order to succeed in the mission and effectively teach, clinical education must include an essential lawyering skill important to the social justice aspect, not taught in casebooks, known as "empathy".¹⁵⁵ Empathy allows a student a better understanding of the client's substantive goals and aspirations – in essence, the client's "social world."¹⁵⁶ This is why empathy has been described as "the cornerstone of not only professional interpersonal relations, but also [of] any meaningful human relationship."¹⁵⁷ Through empathy, a client is more likely to trust and confide in the student lawyer, the clinic professor, and the legal system.¹⁵⁸ Legal clinics also allow law students to act as facilitators.¹⁵⁹ A facilitator enables communication "across lines of social difference" between the client and the law, and ultimately, the legal decision maker.¹⁶⁰

As noted earlier, the mission of the clinic is for law students "[t]o serve the underserved."¹⁶¹ They can make a difference to society while at the same time improve their lawyering skills. Law school clinics "can plant the seeds of impact."¹⁶² The professional connections made during a clinical

152. *Id.*

153. Diamond, *supra* note 143, at 76.

154. *Id.*

155. Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and The Teaching of Empathy*, 7 CLINICAL L. REV. 273, 275-78 (2000) (teaching of these empathy skills needs to take place at all three stages of the clinical learning process: planning, doing and reflecting).

156. *Id.* at 275.

157. *Id.* (citing ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION 117 (1990)).

158. *Id.* at 275-76.

159. *Id.*

160. *Id.*

161. Parekh, *supra* note 126.

162. *Id.*

program can also lead to a future public interest legal career, which can be a very rewarding area of law.¹⁶³

D. Community Building

To effectively accomplish the social justice mission, legal clinics need to take into consideration both traditional and non-traditional ways of serving the community, focusing on serving the needs of the community and its members and not limiting areas of representation.¹⁶⁴ Clinical programs with a holistic approach can teach students that there will be instances that non-legal remedies or solutions are necessary to solve the problems of the community.¹⁶⁵ Clients such as those who are poor and/or underrepresented might require various creative solutions to their problem, such as organizing the community or empowering the community to work on the issues.¹⁶⁶

Community lawyering means the lawyers' "practice is located in a poor, disempowered, and subordinated community and is dedicated to serving the communities' goals."¹⁶⁷ In order to serve the communities' goals, collaborative interaction with members of the community must exist.¹⁶⁸ In considering the community's problems and ways in which to address them lawyers must consider the economic, social, and political aspects of the people being served.¹⁶⁹

For example, in-house clinics should hold community educational outreach programs where the goal is community awareness of the clinic and its functions.¹⁷⁰ These programs focus: (1) on the services offered, (2) to whom services are provided, and (3) on accessibility to justice involving representation and/or education.¹⁷¹ Empowerment is a result of community awareness. In addition, in-house clinics can confer with members of the community, local community groups, local government, national

163. *Id.*

164. Lopez, *supra* note 140, at 312-13.

165. *Id.* at 325.

166. *Id.*

167. Diamond, *supra* note 143, at 75.

168. *Id.*

169. *Id.* at 76.

170. Eloísa Ruano González, *FAMU Law Students Educate Pine Hills Residents on Loan-Modification Scams*, ORLANDO SENTINEL (June 5, 2010), http://articles.orlandosentinel.com/2010-06-05/news/os-pine-hills-foreclosure-20100605_1_loan-modification-scams-face-foreclosure-highest-foreclosure-rates (describing FAMU COL's recent community outreach program where clinic participants went out to the local community and spoke with locals regarding the housing clinic and the services offered).

171. The University of Dayton law Clinic have held presentations to area youth and seniors; residents of various neighborhoods; and women residing in a shelter for battered women; topics have included individual rights with respect to police practices and procedures; and legal relationships that can be created between a child and a grandparent or other non-parent relative who is raising the child. University of Dayton School of Law, *Real Law, Real Clients, Real Experience*, UNIVERSITY OF DAYTON, http://www.udayton.edu/law/academics/law_clinic.php.

organizations, and other legal services programs such as legal aid societies. This has shown to be effective in areas dealing with immigrant groups that have collaborated together to improve their employment conditions, which include pursuing litigation and effectuating legislation.¹⁷² These types of campaigns were empowered by legal resources provided by a few law school clinics.¹⁷³ Likewise, other law school clinics have also collaborated with community development organizations, environmental justice, and welfare rights.¹⁷⁴

A good example of community collaboration is the University of Dayton law clinic, whose community work is conducted in direct collaboration with community groups committed to rebuilding their neighborhoods. The clinic provides community education, legal assistance in community building, and various types of problem solving on behalf of community members.¹⁷⁵ The law clinic also assisted grassroots community organizations in obtaining non-profit and tax-exempt status.¹⁷⁶ The Dayton law clinic demonstrates respect for these community organizations by emphasizing the organizations' autonomy, expertise, and self-determination.¹⁷⁷ Through these partnerships, the law clinic believes it creates a mutually beneficial relationship with those who might not otherwise have access to legal information or representation.¹⁷⁸

Florida A&M University College of Law legal clinic has an innovative program that collaborates with various national, state, and local organizations such as the NAACP,¹⁷⁹ the City of Eatonville, and NeighborWorks America.¹⁸⁰ NeighborWorks America is a national nonprofit organization created by Congress to provide financial support, technical assistance, and training for community-based revitalization efforts.¹⁸¹ It is a unique experience to collaborate with community organizations, national organizations, and other legal societies, including law school clinics, on issues that impact the nation as a whole. Bringing resources together to collaborate on tasks such as legal research, case precedents, case strategy, and legal development can lead to the creation of special working relationships with members of the legal profession throughout the country while emphasizing social justice.¹⁸²

172. Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 361 (2008).

173. *Id.* at 361-62.

174. *Id.*

175. University of Dayton School of Law, *supra* note 171.

176. *Id.*

177. *Id.*

178. *Id.*

179. National Association for the Advancement of Colored People

180. NEIGHBORHOODWORKS AMERICA, *Working Together for Stronger Communities*, <http://www.nw.org/network/index.asp>. See also LOAN MODIFICATION SCAM ALERT, <http://www.loanscamalert.org/>.

181. NEIGHBORHOODWORKS AMERICA, *Working Together for Stronger Communities*, <http://www.nw.org/network/index.asp>.

182. Press Release, FAMU, FAMU College of Law and Orlando-area Community Groups launch

Another example is the Community Development Clinic of the William Mitchell College of Law that was started as a pilot project in Spring 2005.¹⁸³ In the academic year of 2008-09, the clinical program served nearly 300 clients with more than 14,000 hours of legal service.¹⁸⁴ These clients were individuals who might not otherwise have been able to afford legal representation.¹⁸⁵ The clinic collaborates with nonprofits and community groups by partnering these groups with clinical students to work on issues involving neighborhood revitalization, community economic development, poverty, and fair and affordable housing.¹⁸⁶ "William Mitchell's history is steeped in community involvement, and this clinic continues that tradition," says Diane Dube '82, resident adjunct professor and supervisor of the clinic. "The community tells us what it needs, and we respond."¹⁸⁷

Through these various methods of collaboration, partnerships, and community building, students can learn to be creative, cooperative, and to solve complex problems by optimizing limited community resources.¹⁸⁸ Despite the proven effectiveness in the community law school clinics are an underutilized resource for social justice.

V. LAW SCHOOL CLINICS IN THE 21ST CENTURY AND THE HOUSING CRISIS: A CASE STUDY

In the United States today, the American dream of homeownership has become the American nightmare as many have attained and lost the dream of homeownership. These individuals and families have no one to help them once they find themselves unable to meet the financial demands of homeownership. Soon after, they are in foreclosure without any knowledge of where to turn for assistance. Then there are the renters whose rental home, unbeknownst to them, is in foreclosure, and yet they are required by the homeowner/landlord to pay monthly rent – only to be evicted when the home is foreclosed. This is the main area where law school legal clinics are making an impact, and in doing so they are playing a major role

education campaign to stop loan modification scams (June 5, 2010), <http://law.famu.edu/download/file/news/Press-Release-Loan-Scam-Alert-FINAL.pdf>. ("Today, we went right into the heart of a neighborhood hit hard by foreclosures to make sure the owners who are at risk of losing their homes recognize the red flags concerning loan modification scams," said NeighborWorks Southern District Director Donald Phoenix. . . . Orange County Commissioner Tiffany Moore-Russell joined the law school students and the other neighborhood canvassers, which included volunteers from the Orlando Neighborhood Improvement Corporation, Federal Deposit Insurance Corporation (FDIC), Lawyers' Committee for Civil Rights under Law, and the Florida Department of Financial Services").

183. William Mitchell College of Law, *The Community Tells Us What It Needs*, WILLIAM MITCHELL NEWS (Sept. 13, 2010), <http://web.wmitchell.edu/news/index.php/2010/09/the-community-tells-us-what-it-needs/>

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. Lopez, *supra* note 140, at 309-10.

throughout the country in assisting individuals during the housing crisis.

A. The Genesis of the Current Housing Crisis

An understanding on how the problem originated can be useful in structuring both short (temporary) and long (permanent) term solutions. Thus, how the crisis arose and the culpable player is instructive and pertinent. The great housing bubble that would ultimately explode in 2007 and 2008 had many causes. Wall Street investment bankers who packed mortgage bonds with increasingly risky loans, historically low interest rates, and adjustable mortgages allowed banks to lend money freely to almost anyone; government policy which pushed Fannie Mae and Freddie Mac to expand homeownership so that more Americans could obtain the American dream.¹⁸⁹ This combination of government policy that encouraged homeownership and Wall Street's greed led the country into economic despair and ended American dominance of the world's financial system.¹⁹⁰ As a result, many homeowners defaulted on mortgages for lack of understanding that they could not truly afford a \$500,000 home on a \$50,000 salary.¹⁹¹ Experts believe that "the proximate cause of the financial turmoil was the steep increase . . . in housing prices."¹⁹² This was followed by a "sharp decline of housing prices nationwide, which together with poor lending practices led to large losses on mortgages and mortgage-related instruments at a wide range of financial institutions."¹⁹³ Then there was the attempt to rescue the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).¹⁹⁴ These government-sponsored mortgage enterprises were caught up in scandal related to improper accounting and management of financial derivatives.¹⁹⁵ The crippling of these institutions also could have added home price weakness to the deflation of financial assets in the wake of the high-tech and stock market crash.¹⁹⁶

In addition to the foreclosures, there is a growing problem with

189. CHARLES GASPARINO, *THE SELLOUT: HOW THREE DECADES OF WALL STREET GREED AND GOVERNMENT MISMANAGEMENT DESTROYED THE GLOBAL FINANCIAL SYSTEM* 107 (2009). See also Al Granberg, *Welcome to CDO World!*, PROPUBLICA, Aug. 26, 2010, <http://www.propublica.org/special/cdo-world>.

190. GASPARINO, *supra* note 189, at 4.

191. *Id.*

192. Eamonn K. Moran, *Wall Street Meets Main Street: Understanding the Financial Crisis*, 13 N.C. BANKING INST. 5, 7 (2009) (providing a practical and comprehensive understanding of the financial crisis—how we ever got to this point—as well as a sense of how this financial crisis, unprecedented in its scale, monetary value, complexity, and the speed with which it has happened, became not just a Wall Street phenomenon, but one with painful and widespread ramifications for ordinary Americans.).

193. *Id.*

194. KEVIN PHILLIPS, *BAD MONEY: RECKLESS FINANCE, FAILED POLITICS, AND THE GLOBAL CRISIS OF AMERICAN CAPITALISM* 114–15 (2008).

195. *Id.*

196. *Id.*

scams.¹⁹⁷ Most common types of loan modification scams include: phantom foreclosure counseling, sale/lease-back or repurchase scams, "bait and switch" scams, fraudulent modification, bankruptcy foreclosure, and reverse mortgage fraud.¹⁹⁸ The States' Attorney Generals monitor and prosecute alleged scammers.¹⁹⁹

The stark reality is that in August 2010, banks repossessed 95,364 properties, an increase of twenty-five percent from August 2009, which was the highest in any month since the start of the U.S. mortgage crisis.²⁰⁰ Overall, more than 2.3 million homes have been repossessed by lenders since the recession began in December 2007.²⁰¹ The ten states with the highest foreclosure rate in August, 2010, were Georgia, Michigan, Illinois, Hawaii, Florida, Arizona, California, Idaho, Utah, and Nevada. Nevada posted the highest rate, with one in every eighty-four households receiving a foreclosure notice, which is 4.5 times the national average.²⁰²

It is estimated that more than one million Americans are likely to lose their homes to foreclosure this year.²⁰³ Given these figures, there have been attempts to slow the foreclosures. For example, 1.3 million homeowners enrolled in the new federal government mortgage-relief program known as Making Home Affordable.²⁰⁴ Making Home Affordable is a government program set up to assist homeowners facing foreclosures by offering opportunities to refinance or modify their current loans.²⁰⁵ However, over half those modified loans have re-defaulted within six months.²⁰⁶ Lenders are also delaying the initiation of the foreclosure process on homeowners who have missed payments, letting borrowers stay in their homes longer.²⁰⁷ Additionally, lenders are offering a variety of programs to help homeowners modify their loans.²⁰⁸ This is in contrast to October 2009, when the Boston-based National Consumer Law Center reported that many large banks and other mortgage servicers had decided it was economically more feasible to foreclose than to offer more affordable loan terms, although

197. See Loan Modification Scam Alert, <http://www.loanscamalert.org/>.

198. Loan Modification Scam Prevention Network – Resources For Homeowners: What are loan modification scams?, http://www.preventloanscams.org/resources/for_homeowners?id=0001; See also Loan Modification Scam Alert— *How to Spot Scams: Common Scams*, <http://www.loanscamalert.org/common-scams.aspx>.

199. See e.g., Florida Attorney General, Consumer Protection, <http://myfloridalegal.com/> (follow "What Florida Law Provides" under "Consumer Protection"; then follow "here" hyperlink).

200. Alex Veiga, *US Homes Lost to Foreclosure Up 25 pct on Year*, THE ASSOCIATED PRESS, Sept. 16, 2010, available at http://news.findlaw.com/ap_stories/f/1310/09-16-2010/20100916003502_32.html.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* See also Making Home Affordable, <http://www.makinghomeaffordable.gov/>

205. See generally, Making Home Affordable, <http://www.makinghomeaffordable.gov/>

206. Obama Loan Modification Program, <http://www.shortsalehelp.com/obamaplan.html>

207. *Id.* (protecting the real estate market from being overwhelmed by foreclosed properties).

208. Veiga, *supra* note 200.

mortgage modifications had increased.²⁰⁹

The latest legal battle in the foreclosure war is with the foreclosure litigation process. GMAC Mortgage LLC said, on Monday September 20, 2010, that it has halted certain evictions and sales of foreclosed homes as it corrects "a potential issue" in its foreclosure process in twenty-three states.²¹⁰ This potential issue signifies what has become a problem for lenders and servicers—that they may have illegally foreclosed on homes.²¹¹ On September 24, 2010, GMAC further elaborated by stating that "procedural errors were made in certain affidavits required by some states as part of the foreclosure process."²¹² The ramifications of GMAC's errors are far-reaching and have added fuel to an already overloaded foreclosure process.²¹³ The Florida Attorney General, among other state attorney generals, is investigating three law firms for allegedly providing fraudulent affidavits identifying the original holder of the mortgage note in foreclosure cases.²¹⁴ In Florida, as in other states, this affidavit allows lenders to bypass a costly trial and proceed with a foreclosure.²¹⁵ Homeowners without the wherewithal to address these legal and procedural issues fall victim to unscrupulous lenders and their counsels without their own legal representative to battle for them.

There are also many homeowners who are or are becoming overwhelmed by the process, and there are those who are unaware of the options and rights available to them.²¹⁶ Last but not least, there are hundreds of thousands of homeowners who do not qualify for programs, or if they do qualify, they go back into default.²¹⁷

Approximately one year ago, *Time Magazine* elaborated even further on the foreclosure problem by bringing to light that "with foreclosures continuing to rise, the shortage of lawyers available to represent homeowners trying to save their most precious asset has reached emergency proportions."²¹⁸ According to a report by the Brennan Center for

209. Tim Padgett, *Where Are All the Foreclosure Lawyers?*, TIME MAGAZINE (Oct. 24, 2009), <http://www.time.com/time/nation/article/0,8599,1932075,00.html?artId=1932075&contType=article?chn=us>.

210. Janna Herron, *GMAC Suspends Certain Evictions and Foreclosed Home Sales As It Addresses Procedure Issue*, THE ASSOCIATED PRESS, Sept. 20, 2010, available at <http://mortgagedefaultinformation.com/gmac-stops-evictions-foreclosed-home-sales-1446949a>. See also Martha Neil, *GMAC Suspends Foreclosures in 23 States After Questions About Legal Paperwork*, ABA JOURNAL, Sept. 20, 2010, available at http://www.abajournal.com/news/article/gmac_suspends_foreclosures_in_23_states_citing.

211. Herron, *supra* note 210.

212. Alex Veiga, *California's Attorney General Asks GMAC to Cease Foreclosures*, ASSOCIATED PRESS, Sept. 24, 2010, available at http://www.forbes.com/feeds/ap/2010/09/24/business-financials-us-gmac-foreclosures_7959446.html.

213. Herron, *supra* note 210.

214. Veiga, *supra* note 212.

215. *Id.*

216. Veiga, *supra* note 200.

217. *Id.*

218. Padgett, *supra* note 209.

Justice at the NYU School of Law in 2009, as many as 86% of foreclosure victims in hard-hit areas did not have legal counsel last year.²¹⁹ However, times are changing. There was once a time when a number of the members of the legal community "deemed foreclosure victims foolish, lazy or unethical borrowers but who now realize 'this is often about decent, hardworking people who fell prey' to loans whose conditions weren't always clear," stated Carolina Lombardi, Senior Attorney for Legal Services of Greater Miami.²²⁰

The situation in this country is dire, with Americans losing their homes and with little hope for the future. In 2009, there were 43.6 million people in poverty – the largest number in the fifty-one years for which poverty estimates have been published.²²¹ Now more than ever, there is a great need and calling for attorneys to pursue social justice by providing legal assistance to those whom otherwise are not able to afford it. Law schools can make a difference by collaborating and offering necessary services, such as in the area of housing.

B. The Housing Crisis and the Legal Clinic Connection

At the William Mitchell College of Law, students work for renters' rights during a foreclosure crisis.²²² Recently, the law clinic has represented a large number of tenants in fair housing and eviction matters.²²³ The college's Community Development Clinic in collaboration with the Minnesota Justice Foundation made a positive impact on the community.²²⁴ Law students volunteer with the Minnesota Justice Foundation's foreclosure project, which helps protect the legal rights of tenants living in foreclosed rental properties.²²⁵ The foreclosure project was started in the wake of a forum sponsored by the Federal Reserve entitled: *What about Renters? Foreclosures, Recession, and the Prospects for Affordable Rental Housing*.²²⁶ The keynote speaker for the forum was William Mitchell alumnus Larry McDonough, who was the managing attorney for the housing unit of the Legal Aid Society of Minneapolis. Mr. McDonough discussed eviction issues associated with renters of foreclosed properties.²²⁷ Even though

219. *Id.*

220. *Id.* State bar associations like Florida's are also promoting pro bono foreclosure work which has helped to bring a new awareness to the housing crisis. *Id.*

221. United States Census Bureau, Poverty – Highlights, <http://www.census.gov/hhes/www/poverty/about/overview/index.html>.

222. Joe Mielenhausen, *Mitchell Students Work for Renters' Rights During Foreclosure Crisis*, WILLIAM MITCHELL COLLEGE OF LAW (Aug. 23, 2010), <http://web.wmitchell.edu/news/2010/08/mitchell-students-work-for-renters-rights-during-foreclosure-crisis>.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

lessees are paying rent, they are often unaware that their landlords have defaulted on their mortgages and the property is in foreclosure.²²⁸ Professor Diane Dube, law professor and Director of the William Mitchell Community Development Clinic, stated, "I spoke with Larry after the program to find out if there was a need for law student help," and "[t]hat conversation led to the creation of three Minnesota Justice Foundation foreclosure projects."²²⁹

This project involved various aspects of the housing crisis and renters' rights. For instance, over a period of a few months, students in conjunction with three Minnesota law schools researched landlord properties in the metropolitan area that were in foreclosure.²³⁰ The students compiled a list of legal resources that the tenants of these properties in foreclosure could use to protect their rights.²³¹ With this information, the students embarked on a door-to-door campaign to empower these individuals/families.²³² The goal was basic as expressed by a clinical student, "[o]ur duties were to meet with the tenants to make sure they knew the properties were being foreclosed, how the foreclosure process works, and that they-as renters-have legal rights in the situation."²³³ While some tenants were aware that the property was in foreclosure, most were unaware of their legal rights.²³⁴ Clinical student, Janet Neidt further elaborated by stating that "[t]he residents were very grateful that we took the time to show up, and many of them were excited to learn of the hotline where they could receive free legal advice," and "I believe many of them felt relieved to know someone cared about their rights."²³⁵ This is a great example of community education and outreach, and empowering through education.

From the onset of the foreclosure program, more than 500 tenants have been helped by law students offering them information, advice about who can help them, and most importantly, hope.²³⁶ In addition to the community impact, this social justice endeavor, in combination with the traditional law education, prepared clinic students to take their knowledge and apply it to the real world through the clinical program. As so eloquently expressed by second year law student Janet Neidt, "[a]fter learning about foreclosures in property class, I was well equipped to explain things like the redemption period [and by] [p]articipating in this clinic showed me that not only am I learning things applicable to the real world, but also that the training I am receiving at Mitchell is preparing me

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

to help the community."²³⁷

In Dayton, Ohio, the University of Dayton School of law's school clinic took the "leading role in landlord-tenant defense in the community," stated Professor of Law, Kimberly O'Leary.²³⁸ Professor O'Leary shared her experience in working with the law school clinic and how social justice and collaboration filled a need to serve the community. As stated earlier, some law schools allow the administration to decide the type of law to be practiced or offered at the clinics. In Dayton, the surrounding community was involved in the decision, and the members of the community expressed a need for legal assistance in the area of landlord/tenant law. The legal aid societies there were unable to offer legal assistance to growing numbers of indigent individuals because landlord/tenant cases were inappropriate for volunteer lawyers, who handled such cases only occasionally through the local bar pro bono program.²³⁹ These cases were usually complex and time sensitive, requiring an interview, answer and counterclaims, discovery, investigation, and trial or settlement in approximately ten days.²⁴⁰ From a holistic approach, these cases could also pose other issues that would need to be addressed, such as domestic violence, loss of children, marital counseling, and even more debt problems.²⁴¹ The law school clinic also held presentations on the rights of tenants, methods for addressing public nuisance, and building code enforcement standards in metropolitan neighborhoods.²⁴²

The consensus was that clinic students who earned five credits in a one-semester clinic could undertake these types of cases with passion while developing a local expertise in the subject.²⁴³ The law clinic and the clinic students are now important to the community. The clinic also provides students the ability to seek social justice through a hands-on learning experience while being motivated to work harder.²⁴⁴

The University of the District of Columbia David Clarke School of Law combines both traditional legal education with mandated clinical participation by students.²⁴⁵ The main purpose of the clinic is to pursue social justice by providing services to citizens of the District of Columbia who could not otherwise access or afford legal representation.²⁴⁶ The clinic

237. *Id.*

238. Kimberly E. O'Leary, *Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of The Social Justice Agenda of Clinics*, 11 CLINICAL L. REV. 335, 343-44 (2005).

239. *Id.*

240. *Id.*

241. *Id.*

242. THE UNIVERSITY OF DAYTON SCHOOL OF LAW'S CLINICAL LAW PROGRAM, http://www.udayton.edu/law/academics/law_clinic.php (last visited Apr. 15, 2011).

243. O'Leary, *supra* note 238, at 343-44.

244. *Id.*

245. THE UNIVERSITY OF THE DISTRICT OF COLUMBIA INTRODUCTION TO THE CLINICAL PROGRAM, <http://www.law.udc.edu/?ClinicIntro> (last visited Apr. 15, 2011).

246. *Id.*

was ranked 10th out of 188 ABA accredited law schools by US News and World Report in 2010 for clinical legal education.²⁴⁷ The clinical pedagogy has proven its effectiveness as a method of teaching the law by placing students in actual legal disputes that further their education in substantive law and lawyering skills. This clinical experience not only contributes to a better understanding of the law learned in the classroom, but also gives graduates a significant advantage in the workplace over those whose legal education lacks such practical experience. Currently, all law students participate in at least two of the following credit clinics: Community Development Clinic, Government Accountability Clinic, HIV/AIDS Legal Clinic, Housing & Consumer Law Clinic, Juvenile & Special Education Law Clinic, Legislation Clinic, Low Income Taxpayer Clinic, and starting this Fall, an Immigration and Human Rights Clinic.²⁴⁸

The in-house Housing and Consumer Law Clinic provides representation to individuals and small groups in housing-related litigation, such as but not limited to: illegal rent increases, eviction defenses, affirmative habitability actions, fair housing, predatory loans, foreclosure and more.²⁴⁹ The main problem of indigent clients is usually housing.²⁵⁰ The Housing and Consumer Law Clinic has nearly forty years of experience, and has developed an expertise over the last decade in fair housing eviction issues, affirmative warranty litigation, and administrative rental housing litigation.²⁵¹ The clinic has also adjudicated more tenant petitions than any other public interest organization before D.C. administrative law judges.²⁵²

The Florida A&M University College of Law (FAMU-COL) was ranked seventh in the nation by the National Jurist magazine in 2008 for providing clinical opportunities.²⁵³ A main goal of the in-house clinic is to provide free civil legal services of the highest quality to low-income residents and the underserved community in a professional manner. The Clinic Program offers various disciplines of law including a Housing Clinic, which encompasses counseling and legal advice, outreach, community education, pre-litigation consultation and legal representation. In the area of landlord/tenant law, the clinic handles pre-eviction disputes such as shut-

247. *Id.*

248. *Id.*

249. See Clarke School of Law *supra* note 129. Students also represent consumers against merchants and homeowners against home improvement contractors in disputes involving sales and services; and miscellaneous torts. *Id.* Students are normally certified to appear in the District of Columbia Superior Court as well as the Office of Administrative Hearings and are primary counsel on a wide variety of civil litigation matters. Students interview clients, draft complaints and answers, propound interrogatories, conduct depositions, and write a wide variety of civil motions and appellate briefs. Many students represent clients at trials or lengthy administrative hearings. The professors select the clinic's cases based upon their compelling pedagogical value and the needs of the client community. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. Michelle Weyenberg, *Best in Practical Training*, NATIONAL JURIST, Sept. 2008, at 26, 28.

offs, lock-outs, and non-compliance by landlords obligated to make necessary repairs. The clinic also represents individuals in eviction litigation in small claims court for recovery of security deposits, post-eviction claims regarding denial and termination of subsidized and public housing, fair housing discrimination and actions against scammers.

The Housing Clinic, in collaboration with national, state and local agencies, represents clients in foreclosure and related actions, such as prevention and default. The Clinic partners with HUD approved housing counseling agencies, Community Legal Services of Mid-Florida²⁵⁴ and Reliable Business Solutions,²⁵⁵ on loan modification counseling. The Federal Deposit Insurance Corporation,²⁵⁶ Attorney General's Office,²⁵⁷ Civil Rights Lawyers Committee,²⁵⁸ and NeighborWorks America also assist the loan scam education, prevention, and enforcement clinical campaigns.²⁵⁹ The Housing Clinic has an emphasis on foreclosure litigation defense and pro-se assistance, with the clinic collaborating with Community Legal Services of Mid-Florida (CLSMF).

Other Housing clinic related services include credit counseling and disputes in collaboration with Reliable Business Solutions; home buying counseling in conjunction with Reliable Business Solutions; Bankruptcy pro-se assistance with CLSMF; assistance with housing related forms such as pro se pleadings, quit claim deeds, powers of attorney, demand letters, etc.; referrals to alternate housing services; and assistance with utilities and rent. The FAMU-COL clinic also sponsors and hosts seminars, symposiums and training presented by different agencies. During the summer of 2010, FAMU law students held a community outreach education program where clinic students, local officials, community partners and news crew canvassed local community. The students spoke with homeowners regarding the housing clinic and educated residents about the loan-modification scams.²⁶⁰

University of Miami law professor Michael Froomkin created an exceptional foreclosure-defense program in what has been called "ground

254. COMMUNITY LEGAL SERVICES OF MID-FLORIDA, <http://clsmf.org/> (last visited Apr. 15, 2011).

255. RELIABLE BUSINESS SOLUTIONS, http://reliablebusinesssolutions.org/index_files/Page490.htm (last visited Apr. 15, 2011).

256. FEDERAL DEPOSIT INSURANCE CORPORATION, <http://www.fdic.gov/> (last visited Apr. 15, 2011).

257. OFFICE OF THE ATTORNEY GENERAL OF FLORIDA, <http://myfloridalegal.com/> (last visited Apr. 15, 2011). See also *Protect Yourself from Mortgage Fraud*, OFFICE OF THE ATTORNEY GENERAL OF FLORIDA, <http://www.myfloridalegal.com/mortgagefraud> (last visited Apr. 15, 2011).

258. *Fair Housing and Fair Lending*, THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, http://www.lawyerscommittee.org/projects/fair_housing/about/ (last visited Apr. 15, 2011).

259. NEIGHBORWORKS AMERICA, <http://www.nw.org/network/index.asp> (last visited Apr. 15, 2011).

260. Eloísa Ruano González, *FAMU Law Students Educate Pine Hills Residents on Loan-Modification Scams*, ORLANDO SENTINEL (June 05, 2010), http://articles.orlandosentinel.com/2010-06-05/news/os-pine-hills-foreclosure-20100605_1_loan-modification-scams-face-foreclosure-highest-foreclosure-rates. This effort was partnered with NeighborWorks America as a pilot program for a nationwide campaign for scam alerts. NEIGHBORWORKS AMERICA *supra* note 259.

zero" for the national foreclosure crisis.²⁶¹ The University of Miami School of Law is one of the first in the nation to establish Foreclosure Defense Fellowships that will enable newly admitted lawyers to give legal assistance free of charge to local residents caught in the foreclosure crisis.²⁶² Recent graduates acquire real-world work experience and address a critical need in the community at the same time.²⁶³ In addition to the fellowships, the School of Law's Graduate Program in Real Property Development (RPD) has a clinical track that provides fifteen hours of student work per week for free foreclosure defense representation under the supervision of local lawyers, who also offer their services for free.²⁶⁴ These fellows will be placed at The Foreclosure Project, which provides free legal representation to homeowners facing foreclosure in Broward and Dade counties.²⁶⁵ Professor Froomkin stated that it is a great opportunity for law students and graduates to acquire invaluable experience assisting the community through the foreclosures crisis and possibly ending it sooner.²⁶⁶

Using the pedagogy discussed, clinical students make a difference in a world that has few advocates, while at the same time, gaining real world experience to make them marketable in a highly competitive job market.

VI. LAW SCHOOL CLINICS TAKE ACTION

Last fall, I was standing in front of the courthouse one evening talking to a local lawyer who was telling me about the thousand of foreclosure cases stacking up in the judges' chambers, many with unrepresented parties who had valid defenses that were not being made because they didn't have a lawyer. Froomkin recalls the lawyer stating, "Someone should do something." And, right there, I decided that if no one else would do it, that it would be me.²⁶⁷

In our nation today, it is difficult to ignore the demand for more attorneys to pursue social justice, especially in the areas of housing. In a utopian society, all people would have access to legal representation, but that is not the reality. From the clinical housing case study, one can see that combined resources can and do make a difference. "In hard-hit counties like

261. University of Miami School of Law, *Fighting the Foreclosure Crisis: UM Law Creates Foreclosure Defense Fellowships to Help Local Residents*, UNIV. MIAMI SCH. L. (Oct. 1, 2009), <http://www.law.miami.edu/news.php?article=1342>.

262. *Id.*

263. *Id.* In exchange for working at least three days a week for 27 weeks, commencing in early October, they will receive a \$10,000 grant. *Id.* The fellows will also receive intensive training at a foreclosure workshop hosted by the UM School of Law. *Id.*

264. *Id.*

265. *Id.* The Foreclosure Project was created by Richard Burton, JD '74. *Id.*

266. Padgett, *supra* note 210.

267. University of Miami School of Law, *supra* note 263 (quoting UM law professor A. Michael Froomkin).

Miami-Dade, bar associations are responding by holding foreclosure-defense clinics for local lawyers."²⁶⁸ Without the legal community involvement and commitment to this crisis, the fear that far more people than necessary stand to lose their homes is well-founded.²⁶⁹

From reading the stories and headlines, it is well-known that numerous homeowners do not know their rights or legal defenses available to them. Homeowners are contending with lenders to keep their properties. "Potentially, one of the most significant [defenses] is that the lender, because so many home loans were securitized during the housing boom, often doesn't even know who owns the mortgage anymore," says Professor Froomkin.²⁷⁰ He further elaborates that the question of who owns the mortgage goes to the heart of whether or not that lender has a right to bring the foreclosure case in the first place.²⁷¹ In addition, foreclosure defendants need legal assistance to help fend off common lender practices like exorbitant escrow claims, says Carolina Lombardi, a senior attorney at Legal Services of Greater Miami Inc., who mentors some of the University of Miami fellows.²⁷²

Legal Aid Societies have guidelines that need to be met in order to qualify for assistance through their agencies.²⁷³ Due to the number of potential clients, they are consistently engaging in triage for potential clients that qualify. Homeowners who fall below the federal poverty line qualify.²⁷⁴ There is also a category of working poor that are not impoverished by that standard, but are now losing their homes due to a loss of employment, underemployment, or other factors.²⁷⁵ Economic catalysts such as unemployment or reduced income drive foreclosures in this group.²⁷⁶ In addition, these people cannot afford legal representation and now find themselves in even greater trouble, for even legal agencies are unable to assist them.²⁷⁷ The obvious outcome is that homeowners who have legal representation are more likely to prevail when challenging lenders in certain types of housing cases.²⁷⁸

Law schools are underutilized resources for providing essential legal representation. Foreclosure and housing lawyers are in need during this ongoing housing crisis. Law firms and government agencies are seeking individuals who have already acquired practical skills and experience

268. Padgett, *supra* note 210.

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.* One example would be homeowners who secured a sub-prime mortgage with an eye toward refinancing before payments would increase, only to have that option removed because of declining values of their homes.

276. Veiga, *supra* note 200.

277. Padgett, *supra* note 210.

278. *Id.*

before entering the market place. On one hand, you have a need and on the other you have the resources to fill that need in both situations—a quid pro quo.

VII. COST BENEFIT ANALYSIS: GRADUATING COMPETENT PRACTITIONERS

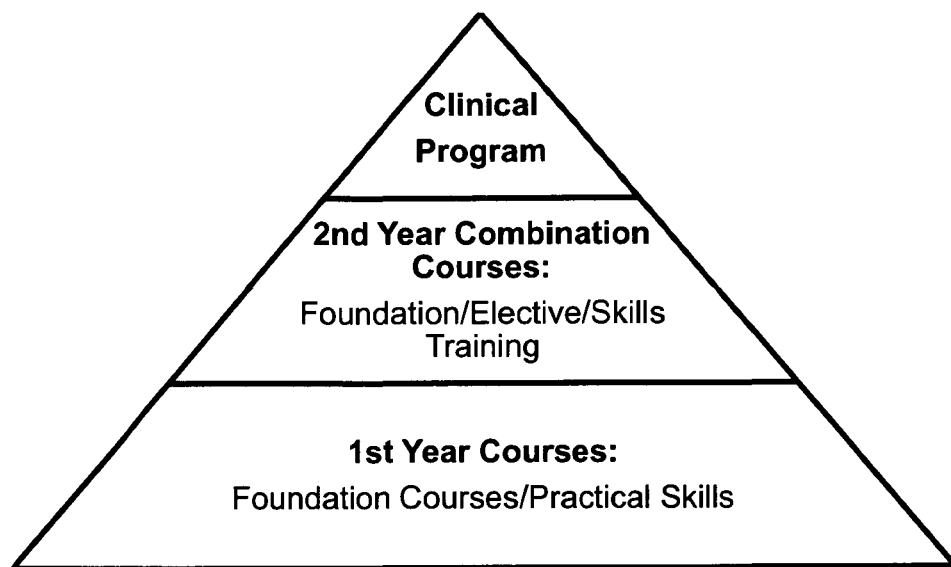


Fig. 1

Clinical legal education cost has been controversial for many decades. However, many do not realize that private funding nurtured this emerging pedagogy.²⁷⁹ From 1959-1978, the Ford Foundation funded legal clinics to serve the needs of the poor. In the first six years, the Ford Foundation, through a program called the National Council on Legal Clinics (NCLC),²⁸⁰ provided \$500,000 to nineteen law schools, followed by an additional grant of \$950,000.²⁸¹ The Ford Foundation granted an additional \$11 million to the Council on Legal Education for Professional Responsibility—CLEPR (formerly NCLC) to provide support for clinical legal education programs, which in turn awarded 209 grants to 107 ABA-approved law schools totaling approximately \$7 million.²⁸² The Ford Foundation financial support ended in 1978.²⁸³

279. See Barry et al., *supra* note 1 at 18-20.

280. "[The] NCLC was renamed the Council on Education in Professional Responsibility (COEPR), and then later renamed the Council on Legal Education for Professional Responsibility (CLEPR) in 1968." *Id.* at 19.

281. *Id.* at 18-19.

282. *Id.* at 19.

283. *Id.*

Around this same time, Title XI Law School Clinical Experience Program of the Department of Education which was later renamed Title IX Law School Clinical Experience Program (hereinafter Title IX), became a "much larger source of funding for clinical legal education programs."²⁸⁴ From 1978-97, Congress appropriated over \$87 million to clinical education, which was instrumental in placing clinical programs into the curriculum at nearly every law school in the United States.²⁸⁵ Ford Foundation and Title IX programs were not the exclusive financial supporters of clinical education, as there were and continue to be other sources of private foundation and government funds.²⁸⁶ By fall of 1997, there were at least 147 law schools with in-house legal clinical programs.²⁸⁷ Unfortunately, the Title IX program ended in September of 1997.²⁸⁸

The largest growth in clinical programs occurred between the 1970's to the 1990's, which helped drive the concern over funding for in-house clinical legal education.²⁸⁹ Over the next few years, some critics questioned the practicality of in-house clinical education due in part to the high cost per student ratio.²⁹⁰ However, by 1980, the AALS and the ABA in a joint report explained that the cost per student for clinical programs differed significantly among the various types of clinical programs with the main issue being faculty resources.²⁹¹ Generally, in-house programs require greater faculty resources to support in-house programs than "field-placement" programs or externships.²⁹² Other variables affecting costs identified were:

- (1) the status of the faculty teaching the courses,²⁹³
- (2) student/faculty ratios,
- (3) the number of credit hours awarded, and
- (4) the classroom component of externships.

It was found that there is a correlation between these factors regarded as increasing expenditures, and the more intensive and seemingly superior learning conditions for students.²⁹⁴

Most curricular decisions in law school are seldom decided on cost

284. *Id.*

285. *Id.*

286. *Id.* at 20.

287. *Id.*

288. *Id.* In the subsequent years, clinical education had strong supporters that included former Chief Justice Warren Burger who called for enlarging law school skills programs, and the ABA that required law schools to teach lawyering skills and professional values through well-structured clinical programs offering live-client or some form of real-life practice experience. *Id.* at 20-21.

289. *Id.* at 22.

290. *Id.* at 21.

291. *Id.* at 21.

292. *Id.*

293. The status of the law school faculty teaching the courses affects their relative salaries. *Id.*

294. *See id.*

alone.²⁹⁵ As educators and scholars, it would be nonsensical to limit or eliminate clinical programs on cost alone and should not be the basis for ignoring demands of the marketplace and those of law students.²⁹⁶ Dialogue concerning clinical programs should extend past the cost/benefit analysis and focus on the benefits, predominately to better prepare today's law students.²⁹⁷ Focusing on the quality of the educational experience, rather than on budget increases or reallocations, facilitates dialogue in a more realistic and acceptable manner on the issue of funding in-house clinical programs.²⁹⁸ Early on, the law school model consisted of "few poorly paid full-time faculty, large faculty teaching loads, large classes, high student/faculty ratios, and a large number of adjunct faculty. . . [which] would still be the model employed today if cost were the sole basis for curriculum and pedagogy changes."²⁹⁹

To further elaborate, the question was been posed on whether a person would prefer to be a passenger in an airplane whose pilot had obtained high marks in aviation courses but no actual flying experience, or a pilot who had learned by in-flight training with an instructor at their side.³⁰⁰ Although this is a rhetorical question, it emphasizes common sense that a person would want the pilot with the acquired practical skills. Similarly, the ideal instruction for the law student is to have both classroom *and* practical skills. Prospective students search for law schools that will facilitate their learning of the law and practical skills, while providing them with opportunities to make them marketable upon graduation. Legal Clinic Programs accomplish these goals as they complement the theoretical aspect of legal education.

Foundational courses and elective areas of law permit schools to maximize the number of students in any given course while emphasizing the initial cost benefit to the student/professor ratio. However, in today's market place, employers and prospective students are aware that practical skills are a necessity to be able to competently practice law upon graduation. This theory, viewed as innovative in the 21st century, was actually the foundation of legal education centuries ago. Schools that do not acknowledge this reality and accommodate for the changing atmosphere in legal education will fall short of what is required and demanded by the marketplace today.

295. *Id.* at 25.

296. *See id.*

297. *See id.* at 23, 25.

298. *See id.* at 23.

299. *Id.* at 25.

300. Richard J. Wilson, *Western Europe: Last Holdout in The Worldwide Acceptance of Clinical Legal Education*, 10 GERMAN L.J. 823, 824 (2009).

VIII. SETTING SIGHTS EVEN HIGHER: GLOBALIZATION OF CLINICAL EDUCATION LEGAL

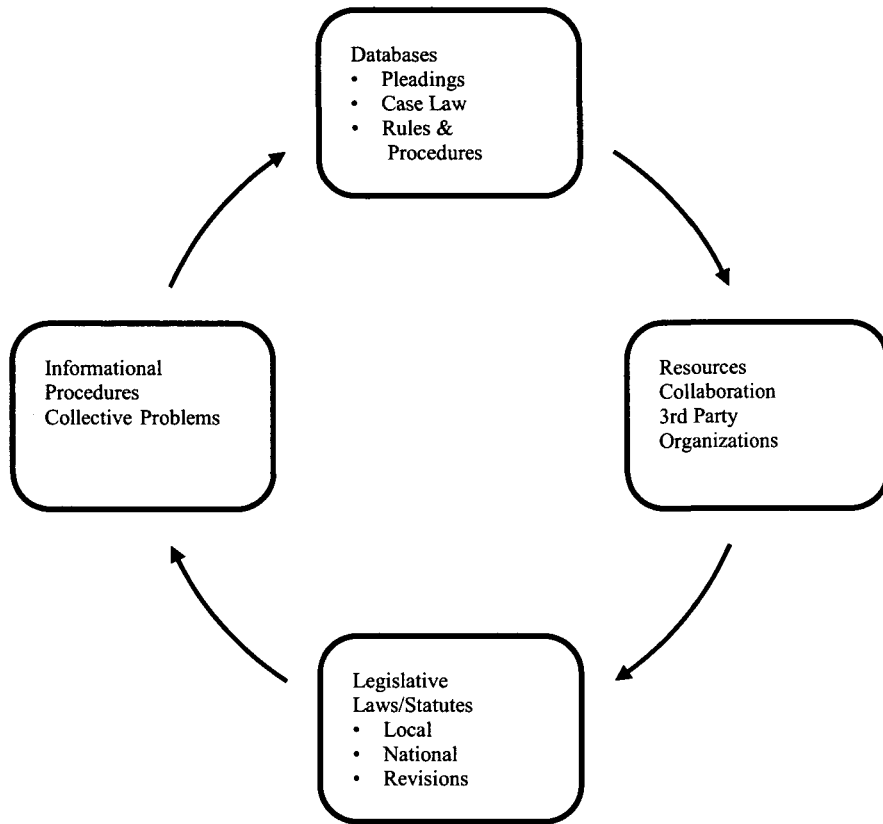


Fig.2: Clinic Global Coalition

Clinical education has traversed borders and cultures, as there has been resurgence for law graduates to have practical skills.³⁰¹ The trend is to incorporate clinical education with doctrinal courses. The next step should be acceptance of this trend throughout the United States, and the exporting of its benefits, resulting in the globalization of legal clinics. The vision would consist of databases containing pleadings, case precedent for persuasive law, and local and national rules and regulations. Collaboration is necessary among the law school clinics and third party organizations to discuss and advise on current issues affecting various areas throughout the nation and globally. Clinicians would then be able to research areas of law unknown to them but already familiar to other law school clinics. It would provide access to the procedures on how to attack a legal problem while

301. See *id.* at 827-28. Private foundations, particularly the Ford Foundation, the American Bar Association's Rule of Law Initiative, and various Soros-funded initiatives have done much to promote clinical methodology outside of the United States, primarily in developing and transitional countries, but also in established legal cultures. *Id.* at 827.

simultaneously addressing common concerns. The collaboration and networking would also facilitate the ability to impact legislation on a local, state, and national level.

IX. CONCLUSION

Traditional legal education is mainly individual-based, whereas legal practice is a collaborative environment that requires collective preparation and performance.³⁰² The in-house clinic provides the opportunity to engage in collaborative learning.³⁰³ As seen in the case studies, law school clinics that partner with other local and national agencies intensify the effectiveness of their legal representation. Therefore, in order to meet the demands of the marketplace, it is imperative to implement a curriculum change. Law school has to be relevant and competitive to stay in the market. Introducing clinics into the classroom is a must for legal education in the 21st century to remain relevant.

302. Committee On the Future of the In-House Clinic, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 511, 515 (1992).

303. *Id.*