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## Clinical Design for Social Justice Imperatives

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# CLINICAL DESIGN FOR SOCIAL JUSTICE IMPERATIVES

*Jon C. Dubin\**

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## I. INTRODUCTION

After more than fifty years of struggle for legitimacy and respectability within the academy, clinical legal education is enjoying an emerging foothold. Emboldened by the organized bar and judiciary's dissatisfaction with law schools' failure to provide law graduates with the skills and values necessary for responsible lawyering, law schools are institutionalizing and expanding clinical programs. This trend has been bolstered by the American Bar Association's (ABA) MacCrate Report and correspondingly clinic-supportive new ABA accreditation standards and has persisted notwithstanding the relatively high cost of clinical legal education and the elimination of several sources of soft money support. Although law schools' large scale experimentation with clinical education had its genesis in the strong social justice<sup>1</sup> and community service influences of the 1960s and 1970s, clinics' professional competency goals have been emphasized with greater frequency in the present era. Against this historical backdrop, several commentators have decried the "gentrification" or agnostication of clinical education,<sup>2</sup> as evidenced by the shifting of clinics' normative emphasis "to congeries of relatively safe, narrow goals" and the primacy of skills acquisition.<sup>3</sup>

This Article re-explores the social justice dimensions of clinical design features in the deeply underserved communities of South Texas's poverty belt. Part I summarizes the history of legal education and the evolution of social justice-oriented directions of clinical education. It concludes that the reported demise or deemphasis of those directions is premature. Part II identifies and describes the social justice mission of clinical education and the primary manifestations of that mission. Part III discusses goal identification in social justice-influenced clinical design and then explores the harmonization of client and community service imperatives with professional competency educational goals. Part IV examines some specific features of justice-oriented clinical design in deeply underserved communities utilizing as a model for discussion and analysis a work in progress—the nascent "in-house, live-client" clinical programs at St. Mary's University School of Law's Center for Legal and Social Justice.<sup>4</sup>

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1. For a discussion of the meaning of the term "social justice" and its relevance to clinical education see Part III *infra*.

2. See *infra* note 28 and accompanying text.

3. See Panel Discussion, *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U.L. REV. 337, 342 (1987).

4. After experimenting with a legal aid externship from 1948 to 1953 and several other externships referred to as "clinical internship programs," throughout the 1970s and 1980s, St. Mary's commenced its first "in-house live-client" clinical programs in 1990. See Jon C. Dubin, *Poverty, Pain and Precedent: The Fifth Circuit's Social Security Jurisprudence*, 25 ST. MARY'S L.J. 81, 82 n.1 (1993). Clinical legal education has been defined as: [F]irst and foremost a method of teaching. Among the principal aspects of that method are these features: students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problem in role; the students are required to interact with others in attempts

## II. THE EVOLUTION OF CLINICAL LEGAL EDUCATION

As clinical legal education has grown through several periods of development, the motivations for clinical creation and emphases of various clinical programs have evolved over time. The first phase of clinical education responded to the decline of apprenticeship requirements for law practice in the late 1800s, the dominance of Harvard Dean Christopher Columbus Langdell's casebook method of legal instruction by the turn of the century, the rise of the legal aid movement through the early 1900s, and the significant voices in legal academia urging curricular reform in the 1920s and 30s.<sup>5</sup> Legal realists,<sup>6</sup> led by Yale Professor Jerome Frank, called for "legal clinics or dispensaries" at law schools to supplement the predominant casebook method of legal instruction and to offer law students experiential learning opportunities similar to the medical school model while providing free legal services to indigent clients.<sup>7</sup>

In the same time period, Duke Professor John Bradway pioneered a model for a "legal aid clinic" which he instituted at Duke and USC and which was replicated at several other schools.<sup>8</sup> Some law schools entered

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to identify and solve the problem; and, perhaps most critically, the student performance is subject to intensive critical review.

If these characteristics define clinical teaching, then the live-client clinic adds to the definition the requirement that at least some of the interaction in role be in real situations rather than make-believe ones . . . . The in-house clinic further supplements the definition . . . by adding the requirement that the supervision and review of the student's actual case (or matter) experience be undertaken by clinical teachers rather than by practitioners outside the law school.

Robert D. Dinnerstein, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 511, 511 (1992) [hereinafter *In-House Clinic*].

5. See Douglas A. Blaze, *Deja Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 943-45 (1997); Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1100-08 (1997); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View From the First Floor*, 28 AKRON L. REV. 463, 465-70 (1995); Roy T. Stuckey, *Education for the Practice of Law: The Times They Are A-Changin'*, 75 NEB. L. REV. 648, 651-52 (1996).

6. The legal realists challenged the case method's exclusive focus on the study of judicial reasoning and the assumption that judicial decisionmaking is predicated upon the neutral application of a logically consistent set of legal rules. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s* chs. 3-4 (1983). The legal realists rejected the Langdellian notion that legal education was a "science" not a craft, and they believed that an understanding of judicial behavior requires that "the student look beyond the words of the opinion to the social and psychological forces which were at play upon the judge as an individual, and upon the institutional and professional system at the time of the opinion." George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 166-67 (1974). The realists insisted not only that law schools equip students to comprehend the social context in which law operates, but also to "train them by exposure to practice." *Id.* at 168; see also Karl Llewellyn, *On What's Wrong With So-Called Legal Education*, 35 COLUM. L. REV. 651 (1935).

7. See MacCrate, *supra* note 5, at 1105; see also Blaze, *supra* note 5, at 944.

8. See Quigley, *supra* note 5, at 467-68. See generally John M. Lindsey, *John Saeger Bradway—The Tireless Pioneer of Clinical Education*, 4 OKLA. CITY U. L. REV. 1 (1979). Legal aid clinics were initiated as individual experiments at a group of other law schools as early as 1893. See Quigley, *supra* note 5, at 468.

into partnerships with legal aid programs<sup>9</sup> while a handful of schools developed in-house legal aid programs.<sup>10</sup> By the late 1950s, about twenty-five law schools offered programs based on a legal aid clinic model.<sup>11</sup> In Bradway's words, the legal aid clinic was "a legal aid society under the guidance of a Law School and with the double purpose of legal aid to the poor as a public service and legal education by the clinical method."<sup>12</sup> While social justice considerations were not among the primary pedagogical objectives articulated by Bradway and other early proponents of clinical education,<sup>13</sup> public service remained at the "heart of their

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9. See John S. Bradway, *The Nature of A Legal Aid Clinic*, 35 S. CAL. L. REV. 173, 180 (1930) ("A legal aid clinic may be organized either in conjunction with a legal aid society, as at Northwestern and Minnesota, or independently, as at Harvard and Southern California."). For example, at St. Mary's University from 1948 to 1953, the law school maintained a "Legal Aid Clinic" in partnership with the Legal Aid Committee of the San Antonio Bar Association, whereby students received course credit for conducting screening interviews and providing assistance to individual lawyers participating in the Committee. See ST. MARY'S UNIVERSITY SCHOOL OF LAW, REPORT OF THE TASK FORCE ON PRACTICE SKILLS CURRICULUM 3-4 (Feb. 1992). The committee lawyers, not the law school or students, retained ultimate responsibility for the casework. See *id.*

10. See Blaze, *supra* note 5, at 941 and n.14 (noting that by the late 1950s, five schools, including SMU, had developed "in-house" legal aid clinics). Field placement or "externship" programs present significant cost advantages over in-house programs but suffer other potential problems and shortcomings. A supervising lawyer at the fieldwork agency—whose primary responsibility is the execution of that work—may not have the time, inclination, or ability to provide meaningful supervision of students or ensure that student fieldwork experiences are educationally challenging. See *In-House Clinic*, *supra* note 4, at 511. Students might also be frustrated by competing signals and directions from two different reviewers of their work. See Hope Babcock, *Environmental Justice Clinics: Visible Models of Justice*, 14 STAN. ENVTL. L.J. 3, 35 n.157 (1995). For a discussion of the relative merits of externships and in-house clinics, compare Robert J. Condlin, "Tastes Great, Less Filling": *The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1987) (arguing that critique is the *raison d'être* for clinical education and that externships are superior vehicles for generating critique because the supervising faculty member may more fully critique both the outside field placement supervisor's choices and the legal structure that encourages those choices, whereas the dual role in-house supervisor would be hindered from effectively critiquing her own choices) with Kenney Hegland, *Condlin's Critique of Conventional Clinics: The Case of the Missing Case*, 36 J. LEGAL EDUC. 427 (1988) (questioning the primacy of the critique function of clinics yet arguing that in-house clinics are superior critique vehicles because the supervisors do not have to depend upon the students to retrieve experiences and behaviors to critique) and *In-House Clinic*, *supra* note 4, at 513 n.5 (disputing Condlin's contention that in-house supervisors' dual roles as collaborators and evaluators present disabling conflicts of interest since such duality is common throughout the academy and clinical instruction is explicitly devoted to teaching self-critique). See also Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLINICAL L. REV. 413 (1996) (arguing that in-house clinics and externships offer two valuable and distinct methodological approaches for experiential learning and concluding that "law school[s] should devote more resources to the goals embodied in both types of clinic and to the integration of those goals with other curricular goals.").

11. See Blaze, *supra* note 5, at 954 ("Virtually all schools that created clinics in the 1940s and 1950s used the Duke model.").

12. MacCrate, *supra* note 5, at 1104-05 (quoting JOHN S. BRADWAY, *THE DUKE LAW CLINIC: FIRST ANNUAL REPORT* 5 (1932)).

13. See Blaze, *supra* note 5, at 951. Bradway described the pedagogical goals of clinical education as seeking to: (1) first, bridge the gap between the theory of law school and the practice of the profession; (2) second, synthesize the various bodies of substantive law learned by the student; (3) third, introduce the human element of the study and practice of law; (4) fourth, introduce unwritten lessons of advocacy in the practice of law; and (5) fifth, teach students to think of legal matters and issues from the beginning of their

work.”<sup>14</sup> Their programs “sought to advance public service in two ways: (1) by directly serving clients and (2) by producing a well-rounded [person] prepared to render public service.”<sup>15</sup>

A second considerably more significant period of clinical growth occurred during the period of social unrest and student activism of the 1960s and '70s. This was an era of civil rights activism, antiwar protests, the welfare rights movement and an emerging view of law as an instrument of progressive social change.<sup>16</sup> Two factors combined to produce unprecedented opportunities for clinical development: widespread student demand and substantial financial support for clinical programs from private foundations. Both influences underscored social justice oriented justifications for and approaches to clinical education. Heightened student activism triggered a growing student interest in serving the under-represented and transforming society through law reform.<sup>17</sup> This, in turn, fueled student demand for relevant educational experiences and the “tools to become legal activists.”<sup>18</sup>

In 1968 the Ford Foundation announced a commitment of \$12,000,000 over a ten year period to “incorporate clinical education as an integral . . . part of the curriculum of the country’s law schools.”<sup>19</sup> Ford created an entity to administer the program entitled the Council on Legal Education and Professional Responsibility (CLEPR) which was comprised of representatives from the Association of American Law Schools (AALS), the National Legal Aid and Defender Association (NLADA) and the American Bar Association (ABA).<sup>20</sup> CLEPR emphasized “public service aspects of professional responsibility, as opposed to the more operational aspects of lawyers’ ethics.”<sup>21</sup> CLEPR explicitly mandated that funded programs be not only “educationally sound and professionally relevant” but also “socially progressive.”<sup>22</sup> It also voiced the confident expectation that nascent programs would “make unique and valuable contributions to the improvement of the machinery of justice.”<sup>23</sup> As CLEPR President

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development rather than the end as appellate opinions. *See id.* at 947-48; Quigley, *supra* note 5, at 468 & nn.60-71 (citing John S. Bradway, *Some Distinctive Features of A Legal Aid Clinical Course*, 1 U. CHI. L. REV. 469 (1933)).

14. Blaze, *supra* note 5, at 952.

15. *Id.*

16. *See* Minna J. Kotkin, *The Violence Against Women Act Project: Teaching A New Generation of Public Interest Lawyers*, 4 J.L. & POL’Y 435, 446 (1996); Stuckey, *supra* note 5, at 653. *See generally* FRANCIS F. PIVEN & RICHARD CLOWARD, *POOR PEOPLE’S MOVEMENTS* (1976) (describing the history and characteristics of four poor peoples’ political and legal movements including the civil rights and welfare rights movements of the 1950s and 1960s).

17. *See* Stuckey, *supra* note 5, at 653.

18. Kotkin, *supra* note 16, at 446.

19. MacCrate, *supra* note 5, at 1111.

20. *See id.*

21. Frank S. Bloch & Iqbal S. Ishar, *Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States*, 12 MICH. J. INT’L L. 92, 107 (1990).

22. COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, *CLINICAL LEGAL EDUCATION IN THE LAW SCHOOL CURRICULUM* 1 (1969).

23. *Id.* at 2.

William Pincus explained:

So far as society is concerned it sorely needs the services which only law students and their professors can provide in the great mass of individual cases involving the 'little man.' . . . Fighting for justice for an individual is essential for the individual and for society if it is to continue to be a society worth living in. If lawyers don't do this, who will? And the regular participants in the machinery of justice need incentives to spruce up their own performance and keep the machinery up to date. One of the best incentives would be the regular appearance on the scene of a fresh crop of law students.<sup>24</sup>

Within a few years of CLEPR's formation, almost half of all law schools in the country had some type of a clinical program.<sup>25</sup> Consistent with then-prevailing social influences,

a major stimulus for many programs that developed during the 1960s and early 1970s was the desire to serve the needs of the unrepresented, to sensitize law students to their ethical and moral responsibilities to society, to train students in poverty law practice, and to give law schools a role in their communities.<sup>26</sup>

Beginning in the 1980s, clinical education experienced a shift in emphasis from its origins in client and community service, structural reform, and social justice ideals, "to a largely skills focused curriculum."<sup>27</sup> Commentators decried the "depolticization," agnostication, or "gentrification" of clinical legal education and the movement toward "the new orthodoxy of vocational education."<sup>28</sup> The reasons for this transformation were varied.

24. *Id.* at 3.

25. See MacCrate, *supra* note 5, at 1111 (credit-bearing clinical programs grew from 25 to 80 in CLEPR's first two years).

26. Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 *How. L.J.* 31, 32 (1993).

27. Kotkin, *supra* note 16, at 448.

28. *Id.* at 450. See, e.g., Lucie E. White, *The Transformative Potential of Clinical Legal Education*, 35 *OSGOODE HALL L.J.* 603, 605 (1997) (discussing "the 'generic' approach to teaching clinical skills that became popular in the 1980s, . . . [and] how that tradition, through its purported blindness to race and class subordination, worked to reinforce rather than reduce, race and class privilege."); Louise G. Trubek, *U.S. Legal Education and Legal Services for the Indigent: A Historical and Personal Perspective*, 5 *MD. J. CONTEMP. LEGAL ISSUES* 381, 389 (1994) (discussing the debate over why and whether clinical programs since 1985 "were losing their commitment to serve the poor and deemphasizing professional responsibility for the unrepresented"); Tarr, *supra* note 26, at 35-36 (noting "attempts to legitimize and/or sanitize clinical legal education as simply skills training" and the deemphasis of "poverty law and justice" concerns); David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 *N.Y.L. SCH. L. REV.* 87, 122 (1990) ("Clinical faculty must ask themselves whether their increasing preoccupation with technique has diminished concern for the themes of practical justice and knowledge."); Bloch & Ishar, *supra* note 21, at 92 ("Enough time has passed, however, to notice a trend: public service goals for clinical programs are being pressed as such less often and with less intensity."); Daniel Greenberg, *Reflections on the New Mexico Conference: What Would You Have Said Before You Came to Law School?*, 19 *N.M. L. REV.* 171, 172 (1989) (noting that at the 1989 ABA Conference on Professional Skills "to the extent that speakers mentioned the progressive component of clinical work at all it was in a negative context."); Panel Discussion, *supra* note 3, at 342 (describing the "gentrification of clinical legal education" as evidenced by the shifting of clinics' normative emphasis "to congeries of relatively safe, narrow goals" and the primacy of skills acquisition, i.e., "how to interview, how to bargain, how to conduct a deposition,

The termination of Ford Foundation CLEPR funding coupled with changing priorities from a less ideological and more pragmatic student body, compelled alternative justifications and directions for clinical education.<sup>29</sup> Clinicians' priorities also changed.<sup>30</sup> Seeking regularization of their faculty status and integration of clinics within the law school curriculum,<sup>31</sup> clinicians responded to the influential voices of an organized private bar and judiciary that had grown increasingly disenchanting with the absence of effective skills training at American law schools and the resulting unpreparedness of law school graduates for the practice of law.<sup>32</sup>

A steady stream of blue ribbon ABA task force reports<sup>33</sup> and public judicial criticisms<sup>34</sup> of legal education have provided substantial impetus

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etc."); Marc Feldman, *On the Margins of Legal Education*, 13 N.Y.U. REV. L. & SOC. CHANGE 607, 610 (1985) (noting critics' concerns that clinical education had "turned away from earlier motivating concerns of access and justice [and that] [t]he commitment to meaningfully expose students to gross injustice and unfairness of our legal system had been abandoned.").

29. See Barnhizer, *supra* note 28, at 120 (describing the "demise of CLEPR" and "the declining interest in clinical courses among law students raised in the 'me generation of the 1970s.'"). As Professor Minna Kotkin observed:

Incoming law students lacked the ideological commitment of their predecessors to a vision of law as a tool of empowerment for the poor and disadvantaged. Indeed, these students were more careerist, particularly as the financial toll of legal education increased and the private bar was in a boom period. Even committed students were lured away from low-paying public interest jobs into law firms. Students increasingly made the connection between work experience in law school and their own post-graduate marketability, making them more practical in their choices of clinical activities.

Kotkin, *supra* note 16, at 448-49; see also Stuckey, *supra* note 5, at 680-81 ("Unlike their peers of the late 1960s, . . . law students do not want to shake up the system; they want to make it in the system.").

30. See Kotkin, *supra* note 16, at 448-49 (noting many newly hired clinicians did not have the historical commitment to law reform and public service as their 1960s counterparts who largely came from public interest lawyering backgrounds); see also Barnhizer, *supra* note 28, at 87-88 n.3 & 106-107, nn.70-74 (describing and detailing the dominant public interest legal backgrounds and perspectives of clinical faculty hired in the "first phase of the modern clinical movement" from 1968-76).

31. See Bloch & Ishar, *supra* note 21, at 92; see also Kotkin, *supra* note 16, at 449 (noting that clinicians' reduced caseloads, lowered student faculty ratios, and increasingly changed teaching methodologies from live-client to simulation in order to assume scholarship, committee service and other tenure track or long-term faculty obligations).

32. See Barnhizer, *supra* note 28, at 120; see Kotkin, *supra* note 16, at 448-49.

33. See, e.g., SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AMERICAN BAR ASSOCIATION, REPORT OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS (1979) (finding lack of sufficient preparedness among law school graduates for the practice of law, and challenging law schools to assume more responsibility for professional training); SPECIAL COMMISSION FOR A STUDY OF LEGAL EDUCATION, AMERICAN BAR ASSOCIATION, LAW SCHOOLS AND PROFESSIONAL EDUCATION (1980) (urging implementation of skills training recommendations of the 1979 Task Force).

34. Chief Justice Burger was a particularly vocal critic of law schools' failure to prepare law graduates for the practice of law. Justice Burger believed that "[t]he modern law school [was] not fulfilling its basic duty to provide society with people-oriented counselors and advocates to meet the expanding needs of our changing world." Quigley, *supra* note 5, at 469-70 (quoting Warren Burger, Address Before the ABA Convention Prayer Breakfast (Aug. 10, 1969)). To Burger, "[t]he shortcomings of today's law graduate lies not in a decent knowledge of law but that he has little, if any, training in dealing with facts or people—the stuff of which cases are really made." *Id.*; see also Warren E. Burger, *Some Further Reflections on The Adequacy of Trial Counsel*, 49 FORDHAM L. REV. 1, 5 (1980)



for the institutionalization of clinical legal education. The most influential of these reports was the 1992 REPORT OF THE AMERICAN BAR ASSOCIATION, TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, chaired by ABA President Robert MacCrate (MacCrate Report).<sup>35</sup> The MacCrate Task Force found pervasive deficiencies in the preparation of lawyers for the competent practice of law. It recommended significant curricular changes at law schools, and greater participation by the Bar for new law graduates, to ensure that lawyers are taught the skills and values basic to the competent and ethical practice of law.<sup>36</sup> With respect to law schools, the Report's primary thrust was that law schools overemphasize doctrine at the expense of skills and values.<sup>37</sup>

The MacCrate Report includes a lengthy explication of ten skills and four values deemed central to competent law practice in its Statement of Skills and Values (SSV).<sup>38</sup> While the Report disclaims use of the SSV in

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(noting that during the 1960s and 1970s in "lectures, speeches and articles, [he] emphasized that the law schools' insistence on single-minded, rigid, and universal adherence to the Langdellian approach was causing them to fail in a basic duty of providing society with people-oriented and problem-oriented counselors and advocates."); cf. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992) (criticizing law schools emphasizing "abstract theory" while abandoning mission of professional and practical scholarship and training).

35. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AMERICAN BAR ASSOCIATION, LEGAL AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, 1992) [hereinafter MACCRATE REPORT].

36. Law school deans have criticized the MacCrate Report for failing to sufficiently acknowledge the cost burdens associated with significant expansion of professional competency instruction. See, e.g., John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1993) (elaborating on expenses associated with the implementation of the MacCrate Report and recognizing that none of its recommendations address ways of generating the needed additional resources for the law school). See also Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLIN. L. REV. 457 (1994) (arguing that in light of the high cost of clinical education, the fee-generating approach is the only way to offer valuable "in-house live-client" clinical opportunities to a large number of students). For discussion of proposals to accomplish MacCrate's objectives through curricular reform, law school resource shifting, bar revision, post-law school training, and bar assisted financing schemes, see Rodney J. Uphoff, et al, *Preparing the New Law Graduate to Practice Law: A View from the Trenches*, 65 U. CIN. L. REV. 381, 409-422 (1997); David Barnhizer, *Of Rat Time and Terminators*, 45 J. LEGAL EDUC. 49 (1995); cf. Gerald P. Lopez, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Education*, 91 W. VA. L. REV. 305 (1989).

37. See Gerald J. Clark, *Book Review, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 27 SUFFOLK U.L. REV. 1153 (1993) (noting that the Report's critique of legal education and call for a shift from doctrinal teaching to skills and values instruction are not "particularly new" and echo the realists' arguments made over 50 years ago); cf. *supra* notes 6-15 and accompanying text.

38. The fundamental lawyering skills in the SSV are as follows: (1) Problem Solving; (2) Legal Analysis and Reasoning; (3) Legal Research; (4) Factual Investigation; (5) Communication; (6) Counseling; (7) Negotiation; (8) Litigation and Alternative Dispute Resolution Procedures; (9) Organization and Management of Legal Work; (10) Recognizing and Resolving Ethical Dilemmas. See MacCrate, *supra* note 5, at 138-40. The fundamental values "central to the legal profession" are: (1) Provision of Competent Representation; (2) Striving to Promote Justice, Fairness, and Morality; (3) Striving to Improve the Profession; and (4) and Professional Self-Development. *Id.* at 140-41.

the process of accrediting law schools,<sup>39</sup> the ABA House of Delegates has responded to the Report with several recent amendments to accreditation standards with the potential for strengthening clinical education. These new standards make explicit that law schools are required to maintain an educational program "designed to prepare their graduates to participate effectively in the legal profession,"<sup>40</sup> that they "shall offer to all students: . . . adequate opportunities for instruction in professional skills"<sup>41</sup> and more specifically that each law school "shall offer live-client or real-life practices experiences through clinics or externships" although it "need not offer this experience to all students."<sup>42</sup> From 1992 to 1998, the number of law school faculty teaching in clinical courses has increased from approximately 850 to 1150.<sup>43</sup> Since the 1980s, the emerging emphasis on clinical education's skills training and professional competency functions has led to law schools' increased reliance on less resource intensive models of instruction that downplay social justice and public service concerns. These models include non-client simulation courses<sup>44</sup> and fee-

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39. See MACCRATE REPORT, *supra* note 35, at 132 (SSV "is not to be used as a measure of performance in the accreditation process.").

40. American Bar Association, Standards For Approval of Law Schools And Interpretations Standard 301 (Aug. 1993) [hereinafter ABA Standard 301].

41. ABA Standard 302(a) (August 1996).

42. ABA Standard 302(d) (August 1996). The ABA has also helped elevate the status of clinical faculty by providing that law schools *shall* provide clinicians an opportunity to achieve a form of job security reasonably similar to tenure as well as an opportunity to participate in law school governance in a manner reasonably similar to other full-time faculty members. See ABA Standard 405(c); Interpretation 405-8 (August 1996).

43. These figures are derived from a comparison of the membership lists of the AALS Clinical Section in 1991-92 and 1997-98. Compare THE AALS DIRECTORY OF LAW TEACHERS 1991-92 980-85 (1991) with THE AALS DIRECTORY OF LAW TEACHERS 1997-98 1077-85 (1997).

44. See Richard A. Boswell, *Keeping the Practice in Clinical Education and Scholarship*, 43 HASTINGS L. J. 1187, 1189 (1992). See, e.g., William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201 (1996) (describing proposal for a required doctrinal curriculum in "important" subjects coupled with exclusive use of simulation courses to address schools' professional competency obligations and touting the advantages of cost and control of the learning experience for simulations over clinics). For alternative views of the relative merits of simulation and live-client clinical courses see Rodney J. Uphoff, et al., *Preparing the New Law Graduate to Practice Law: A View from the Trenches*, 65 U. CIN. L. REV. 381, 401 n.72 (1997) (arguing that simulation courses "cannot replicate the pressure and tension involved in a live-client setting," offering observation based on authors' experiences that "graduates of a well-designed, live-client clinic are considerably more advanced professionally than those who only have had simulation courses" and collecting articles extolling the comparative advantages of live-client instruction); *id.* at 412-413 (criticizing the Trail & Underwood proposal on that basis); Ann Jurgens, *Using the MacCrate Report to Strengthen Live Client Clinics*, 1 CLIN. L. REV. 411, 416-18 (1994) (noting that while simulation provides a foundation for many important lawyering skills, live-client clinics are needed to teach important aspects of MacCrate's ten fundamental skills "to approximate the complexities of those skills in the real world," as well as to teach ethical judgment and values, moral responsibility, the distribution of justice and *pro bono* obligations); Tarr, *supra* note 26, at 36 ("[S]imulations have limited value and do not begin to teach a fraction of what is taught in a live-client clinic . . . [o]nly real cases create the challenge of interviewing a person who is both similar and different from the student, the frustration of developing a legal strategy that takes into account the strengths and weaknesses of real facts, the patience of counselling someone whose life is complex

for-service clinics representing paying clients.<sup>45</sup>

More recently, however, clinical legal education has experienced some resurgence in focus on its social justice dimensions. The emergence of critical lawyering theory, theoretics of practice scholarship and the influence of other postmodernist critical schools of legal thought have heightened the academy's interest in conceptions of client and community empowerment and on transforming the social consciousness of law students by deconstructing power and privilege in law.<sup>46</sup> The Clinics are

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and uncertain, the insight required to negotiate with attorneys, the shock of experiencing the gaps between the theories of procedure and the realities of actual courtrooms, and the intimidation of looking in the eyes of a person wearing a robe who has the power of a judge.”).

Most live-client clinical programs include a classroom component, and most clinical classroom components integrate significant use of simulations to incorporate the benefits of skills instruction in a controlled environment with well-defined boundaries, escalating levels of challenge, and opportunities to see a matter through from beginning to end. This instruction serves as preparation and support for student lawyering in unpredictable and fluid real world live-client settings. See generally *In-House Clinic*, *supra* note 4, at 555 (stating that 89% of all live-client clinical courses employ classroom components). All five of St. Mary's clinics have classroom components and teach various legal skills employing a simulation method. For example, the St. Mary's Civil Justice Clinic employs simulations in the clinical classroom component to teach interviewing, counselling, negotiation, fact investigation, discovery practice, and trial advocacy. Students are also encouraged to avail themselves of non-clinical simulation course offerings that focus in greater depth on the simulated instruction of many of these specific skills as well as other skills such as alternative dispute resolution and appellate advocacy. Cf. *The Real World Comes to the Classroom*, NYU THE LAW SCHOOL MAGAZINE 51 (Autumn 1993) (describing NYU's multi-tiered sequence of professional training including a required lawyering course in the first year, followed by recommended simulation courses in the second year and then live-client clinical work in the third year).

45. For an interesting exchange of opinions on the merits of fee generating clinics, compare Matasar, *supra* note 36 (arguing in light of the high cost of clinical education, that the fee-generating approach is the only way to offer valuable in-house, live-client clinical opportunities to a large number of students) and Gary S. Laser, *Significant Curricular Developments: The MacCrate Report and Beyond*, 1 CLIN. L. REV. 425 (1994), with Martin Guggenheim, *Fee-Generating Clinics: Can We Bear the Costs?*, 1 CLIN. L. REV. 677 (1995) (arguing that fee generating clinics undermine educational goals of clinical education, compromise clinics' traditional commitment to public interest lawyering, and jeopardize the academic standing of clinical teachers forced to raise money from clients to retain their jobs), and Lisa Lerman, *Fee for Service Clinical Teaching: Slipping Towards Commercialism*, 1 CLIN. L. REV. 685 (1995) (contending that fee generating clinics force clinicians to select cases from profit rather than pedagogical perspective, pose ethical issues by using unpaid student labor to raise money, alienate the private bar by providing competition for remunerative cases, and undermine ability of clinical faculty to produce scholarship due to time pressures associated with billing and collection) and Patricia Pierce & Kathleen Ridolfi, *The Santa Clara Experiment: A New Fee-Generating Model for Clinical Legal Education*, 3 CLIN. L. REV. 439 (1997) (defending a newer fee-generating clinical model against the above critiques).

46. See *Theoretics of Practice: The Integration of Progressive Thought and Action: Foreword*, 43 HASTINGS L. J. ix (1992) (describing purpose and substance of 16-article symposium issue dedicated to “promot[ing] the reciprocal integration of insights between progressive legal theories and the teaching and practice of law,” to exploring the “intersections of gender, race, class, ethnicity, sexual orientation and disability as they affect and are reflected in the habits of practice,” and “to consider the implications of recent progressive movements for the actual practice of law, particularly lawyering for social change.”); see also Minna J. Kotkin, *Essay, My Summer Vacation: Reflections on Becoming a More Critical Lawyer and Teacher*, 4 CLIN. L. REV. 235, 238 & n.9 (1997) (describing practical utility of critical lawyering theory “that attempts to empower clients traditionally subordinated by

fertile laboratories for exploring these concepts.<sup>47</sup>

The MacCrate Report's call for professional competency training also included a plea for instruction in the values of the profession. These values include promoting "Justice, Fairness and Morality" and "Improving the Profession"—values for which clinical programs have proven to be particularly effective mechanisms for instruction.<sup>48</sup> Indeed, the MacCrate Report offers suggestions for promoting the fundamental value of justice, fairness, and morality. Suggestions include (1) refraining from "any form of discrimination on the basis of gender, race, religion, ethnic origin, sexual orientation, age, or disability in one's professional interactions with clients, witnesses, support staff, and other individuals;"<sup>49</sup> (2) contributing to the profession's responsibility to "ensure adequate legal services are provided to those who cannot afford to pay for them;" and (3) enhancing "the capacity of law and legal institutions to do justice."<sup>50</sup>

Perhaps also spurred on by the MacCrate Report and the ABA,<sup>51</sup> (together with increasingly negative public perceptions of the legal profession),<sup>52</sup> a growing *pro bono* movement in the Bar and Academy has

our legal system" and which shares conceptions of client empowerment with various critical post-modernist schools of thought).

47. See, e.g., White, *supra* note 28, at 611 (discussing the need to embrace visions of clinical education adapted to evolving "non-elitist" concepts of lawyering for poor people that seek "new ways to ally with 'clients' and to join in mutual, but keenly self-reflective, power-sensitive projects of change"); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE L. REV. 345 (1997) (developing cross-cultural lawyering and student self-awareness training model for clinical instruction based on analysis of social scientists' empirical data documenting the significance of race in client-counselor interactions); Robert A. Williams, *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741, 762-65 (1997) (describing operation of critical race practice clinic focused on Indian Law at the University of Arizona); see also Margaret Russell, *Beginner's Resolve: An Essay on Collaboration, Clinical Innovation and the First Year Curriculum*, 1 CLIN. L. REV. 135 (1994) (describing use of clinical methodology to elucidate critical "outsider" perspectives in first year courses). Professor Russell points out that "one of the most promising directions for future growth in feminist and critical race scholarship lies in clinical work" that probes the practical significance of such theory by exploring whether these ideas: (1) can improve real clients' situations; (2) can be employed to teach effective lawyering skills to students; and (3) can be examined "to explain the underpinnings of legal doctrine in a way which could enlighten, engage, and persuade the decisionmakers (judges, legislators, administrators) whose acts profoundly affect the lives of clients." *Id.* at 147; see also Phyllis Goldfarb, *Beyond Cut Flowers: Developing A Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L. J. 717 (1992) (describing shared legal realist roots of clinical education and critical legal studies and suggesting ways in which clinics can enrich and broaden critical theory).

48. Jane H. Aiken, *Striving to Teach "Justice, Fairness and Morality,"* 4 CLIN L. REV. 1, 30-46 (1997).

49. *Id.* at 12 n.41 (citing MACCRATE REPORT, *supra* note 35, at 213-14).

50. *Id.* at 5 n.7 (citing MACCRATE REPORT, *supra* note 35, at 213).

51. In August 1996 the ABA House of Delegates adopted an Accreditation Standard urging law schools to encourage students to participate in *pro bono* activities and to provide opportunities for them to do so. See ABA Standard 302(e).

52. See Marriane Lavelle & Marcia Coyle, *Former Chief Justice Pans 'Shyster' Lawyers*, NAT'L L.J., April 26, 1993, at 51 (quoting former Chief Justice Warren Burger as stating that the standing of the legal profession is "at its lowest ebb in the history of our country"); Stephen Wizner, *What is a Law School?*, 38 EMORY L.J. 701, 701 (1989) ("The public views lawyers—law school graduates—as a necessary evil, at best, and more often as greedy, sleazy technicians who prosper from the problems and misfortunes of others."); see

emerged and fostered heightened awareness of the responsibility of all members of the profession, including law schools, to provide service to persons lacking meaningful access to justice.<sup>53</sup> Law faculty have also increasingly initiated a variety of interdisciplinary law reform and related projects to reinvigorate poverty law teaching and scholarship and to address identified community needs.<sup>54</sup> Many *pro bono* programs and poverty law projects collaborate with or otherwise support clinical programs.<sup>55</sup>

In addition, newer post-CLEPR sources of clinical funding have emphasized the "access to justice" goals of clinical education by imposing various indigent service obligations on funded programs. These funding sources include the Department of Education's (DOE) Title IX Clinical Legal Experience Program,<sup>56</sup> the Legal Services Corporation's Civil Clinical Program (LSCCP),<sup>57</sup> and various states' Interest on Lawyer's

also Marc Galanter, *Predators and Parasites: Lawyer-Bashing and Civil Justice*, 28 GA. L. REV. 633, 634 (1994) (organizing a "taxonomy of anti-lawyer themes" including complaints "that lawyers are: (1) corrupters of discourse; (2) fomenters of strife; (3) betrayers of trust; or (4) economic predators").

53. See Steven Lubet & Cathryn Stewart, *A "Public Assets" Theory of Lawyers' Pro Bono Obligations*, 145 U. PA. L. REV. 1245 (1997); Michelle S. Jacobs, *Pro Bono Work and Access to Justice for the Poor: Real Change or Imagined Change?*, 48 FLA. L. REV. 509 (1996); Roger C. Cramton, *Mandatory Pro Bono*, 19 HOFSTRA L. REV. 1113 (1991); Michael Millemann, *Mandatory Pro Bono in Civil Cases: A Partial Answer to the Right Question*, 49 MD. L. REV. 18 (1990) (discussing propriety of mandatory *pro bono* obligation for practicing lawyers). SMU was one of the first law schools to implement a mandatory *pro bono* program for both law students and faculty. See Rochelle Riley, *SMU law school adds pro bono rule*, DALLAS MORNING NEWS, April 20, 1992, at 18A. For discussion of legal education and *pro bono* programs, see *Symposium, Legal Education and Pro Bono*, 13 LAW & INEQ. 1 (1994) (introducing several articles on the topic). See also Jill Chaifetz, *The Value of Public Service: A Model for Instilling A Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695 (1993) (describing purposes, structure and operation of voluntary and mandatory extra-curricular *pro bono* programs at law schools); Frederick C. Martin III, *Law School's Pro Bono Role: A Duty to Require Student Public Service*, 17 FORDHAM URB. L.J. 359 (1989) (same).

54. See Howard Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress*, 43 J. LEGAL EDUC. 199 (1993); Bernard K. Freamon, *A Blueprint for a Center for Social Justice*, 22 SETON HALL L. REV. 1225, 1237-1240 (1992) (describing interdisciplinary anti-poverty projects at various law schools); see also Louise G. Trubek, *Introduction to Symposium on New Approaches to Poverty Law, Teaching, and Practice*, 4 B.U. PUB. INT. L.J. 235 (1995) (introducing multi-article symposium describing various law school projects to combat poverty); Gabrielle Lessard, *Introduction: The Interuniversity Poverty Law Consortium*, 42 WASH U.J. URB. & CONTEMP. L. 57 (1992) (same).

55. See *id.*

56. See 34 C.F.R. pt. 639 (1996).

57. The LSCCP program started as a pilot program in 1983-84 and continued until terminated after the 1995-96 school year. See generally *Funding Availability for Law School Civil Clinical Programs*, 60 Fed. Reg. 7224 (1995) (describing program and history). It required funded clinical programs to serve the same indigent client population served by legal services offices generally. See *id.* The broad goals of the LSCCP, as described in its last year, were to:

1. Increase collaboration between law schools and legal services programs;
2. Encourage law schools to become more involved in addressing the legal problems of the poor;
3. Develop among law students an awareness of legal issues affecting low-income people and appropriate advocacy skills to address those issues;

Trust Account (IOLTA)<sup>58</sup> programs. The most significant of these sources was the DOE's Title IX program.<sup>59</sup> Title IX provided up to three years' funding per clinical program, permitted law schools to obtain funding for multiple clinics, and increased funding from \$100,000 per year to a maximum of \$250,000 per year per school from the 1993-94 school year until the Gingrich Congress terminated funding in 1996-97.<sup>60</sup> The DOE's selection criteria reward demonstration of meeting underserved needs and attempts to serve traditionally underrepresented populations through client service.<sup>61</sup> Title IX also values efforts to include members of underserved groups through selection of students to the program, and through the hiring of faculty and staff.<sup>62</sup>

Finally, the recent creation or modification of several clinical programs with unapologetically paramount social justice goals, such as programs at

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4. Encourage law students to pursue careers in legal services and other public interest areas; and

5. Assist legal services programs, through summer fellowships, in identifying potential legal services attorneys.

*Id.*

58. IOLTA programs were created in the mid-1980s to provide funding for organizations that provide legal services to the poor with funds derived from the interest on client trust accounts. See Risa I. Sackmary, *IOLTA's Last Obstacle: Washington Legal Foundation v. Massachusetts Bar Foundation's Faulty Analysis of Attorneys' First Amendment Rights*, 2 J.L. & POL'Y 187, 188-92 (1994). Before IOLTA, lawyers used non-interest-bearing checking accounts for client trust purposes, thus providing a windfall to the banks. See *id.* As of February 1998, all 50 states and the District of Columbia had IOLTA programs approved by their state supreme courts, yielding \$150 million annually and funding legal services for 1.7 million poor people per year. See Marcia Coyle, *High Court Eyes Client Trust Funds: Is Directing Interest on Such Accounts a Taking?*, NAT'L L.J., Jan. 19, 1998, at A1. In 1996 the Fifth Circuit invalidated Texas's IOLTA program in a challenge by a conservative think tank, claiming that the state's redirection of the client's trust fund interest to public service legal organizations amounted to a government taking without just compensation in violation of the Fifth Amendment. See *Washington Legal Found. v. Texas Equal Access to Justice Found.*, 94 F.3d 996 (5th Cir. 1996), *aff'd in part and remanded sub nom.*, *Phillips v. Washington Legal Found.*, 118 S. Ct. 1925 (1998) (holding that trust account interest is client "property" for Taking Clause purposes but remanding to lower court for determination whether a "taking" occurred).

59. See generally Title IX of Higher Education Act of 1969, 20 U.S.C. § 1134 (1994).

60. See THE U.S. DEPARTMENT OF EDUCATION, OFFICE OF HIGHER EDUCATION PROGRAMS, *International and Graduate Programs, Law School Clinical Legal Experience Program*, <<http://www.ed.gov/offices/OPE/OHEP/iegps/lisce.html>>, (noting that Title IX is a "Closeout program" and that "no new funds have been requested for FY 1997"); 34 C.F.R. § 639.40(b) (1994) (noting that Title IX funds may not exceed \$250,000 for a particular school in any fiscal year).

61. See 34 C.F.R. §§ 639.11, .31(a)(2)(v) (1997).

62. See *id.* From 1990 to the present, St. Mary's has been awarded \$2,006,056 in clinical grants. The largest portion (\$1,037,442) has come from the DOE's Title IX program.

Georgetown,<sup>63</sup> Catholic,<sup>64</sup> and Seton Hall,<sup>65</sup> is further evidence of a resurgence in social justice-oriented clinical design. At Seton Hall, Professor Bernard Freamon has recently expounded a “new clinical pedagogy” grounded in “an evolving sense of responsibility and concern for justice in our society.”<sup>66</sup> He writes:

Any law school clinic that myopically defines its educational mission as simply ‘skill development’—the teaching of professional ethics and methods of critique and self-critique—without explicitly identifying the larger, more philosophic goal of improving the quality of justice in American society will have little success in preparing its graduates for a rewarding and satisfying career in the practice of law in the twenty-first century. . . . This new clinical pedagogy is one that demands from its adherents an explicit dedication to the attainment of goals and objectives that are specifically justice oriented and morally rigorous and challenging. It abhors clinical training that is morally and jurisprudentially neutral. Such neutral training pretends that lawyering in American society can continue as it has for the last one hundred years, and that no fundamental difference exists between destitute clients—who are subordinate and often cannot afford legal services—and those who occupy the power centers and top echelons of society.<sup>67</sup>

In short, the reported demise of clinical education’s social justice dimensions appears premature.

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63. See, e.g., Babcock, *supra* note 10, at 32 (describing Georgetown’s Environmental Justice Clinic and opining that “[l]earning how to tackle injustice in the pursuit of justice should, therefore, be the dominant pedagogical and normative goal of any clinical program with a legal services purpose, and the primary standard to apply when evaluating an environmental justice clinic.”); see also *id.* at 29 n.122 (quoting William Greenhalgh, former professor and director of Georgetown’s Criminal Justice Clinic as stating that “[t]he goal of the Criminal Justice Clinic is to turn out young ‘ministers of justice’ in the representation of clients and defense of their freedom.”); Ken Myers, *Georgetown to Teach Lobbying at Federal Legislation Clinic*, NAT’L L.J., Dec. 13, 1993, at 4 (discussing “social justice” focus of Georgetown’s Federal Legislation Clinic).

64. See, e.g., Margaret M. Barry, *A Question of Mission: Catholic Law School’s Domestic Violence Clinic*, 38 HOW. L.J. 135, 160-61 (1994) (describing Catholic University’s Families and the Law Clinic and concluding that law schools abdicate responsibility to serve the poor and to pay attention to “the social justice obligation to respond to what is really happening in the communities ostensibly served,” when they “dabble in people’s lives to sharpen a few skills”).

65. See, e.g., Freamon, *supra* note 54 (describing plans for an entire social justice center with nine clinical programs at Seton Hall).

66. *Id.* at 1230.

67. *Id.* at 1230-31; see also Aiken, *supra* note 48, at 6 (“We communicate a great deal about the (un)importance of justice when we do not focus on it explicitly. The professor who responds to the student concerned about fairness with questions that are limited to what ‘the law says’ . . . may communicate that those concerns have no place in the practice of law.”); cf. Warren Burger, *The State of the Federal Judiciary-1971*, 1971 A.B.A. J. 855, 857 (1971) (noting that a lawyer “must be more than simply a skilled legal mechanic.”).

### III. THE SOCIAL JUSTICE MISSION OF CLINICAL LEGAL EDUCATION

While clinical education's articulation of social justice idealism has persevered through several epochs, the practical application of those ideals can take a variety of forms. Notwithstanding the indeterminacy of principles like "justice,"<sup>68</sup> "to many people the relationship between clinical programs and the justice mission of American law schools is so clear as to be self-evident."<sup>69</sup> Clinical legal education furthers social justice imperatives in three primary ways. First, social justice is furthered through the provision of services and pursuit of legal and social reform on behalf of clients and community groups lacking meaningful access to society's institutions of justice and power.<sup>70</sup> Indeed, some commentators have argued that client and community representation and advocacy devoted to the legal problems of the unrepresented and underrepresented should be the "dominant orientation of clinical activities."<sup>71</sup> With substantial reductions in federal funding for legal services to the poor, coupled with the unprecedented dismantling of the American safety net,<sup>72</sup> the need for clinical programs to help address pervasive unmet legal needs has scarcely been greater.<sup>73</sup>

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68. See David Barnhizer, *The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 285, 291 (1992) ("While justice is undeniably representative of a slippery and evasive set of concepts, it paradoxically reflects the fundamental values of Western society without which we cannot hold together the thin tissue of political organization that we call the 'Rule of Law.'"). Professor Barnhizer has argued that justice "is in fact a simple metaprinciple" reflected in the Biblical Golden Rule of "the healthy human treating others as he or she would wish to be treated." *Id.* at 293 & n.18. This is because any society committed to democratic governance "in which security, trust, promise, dignity and minimal use of force are characteristics" recognizes that the above principle is fundamental to the generation of shared values and behaviors that promote participation in a healthy community in which human dignity is recognized and fairness, concern for others and tolerance is encouraged. *Id.* at 293 n.18, 338. While acknowledging that the "cosmic validity" of this explication of the meaning of justice cannot be proven, Barnhizer concluded that it is still sufficient as "the most prudential expression of how to create a society that is most likely to best secure, nurture and protect our interests." *Id.* at 293 n.18; see also David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 N.Y.L. SCH. L. REV. 87, 112-13, 124-25 (1990) (arguing that it is the viability of justice that determines the ultimate fairness and quality of democratic societies and concluding that the primary intellectual contributions of clinical faculty, whether through scholarship, teaching, litigation or legislation, should be "speaking truth to power"—confronting people and institutions that are responsible for injustice).

69. Robert D. Dinnerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469, 469 (1992); see also Aiken, *supra* note 48, at 31 ("Many argue that the most effective way to teach about justice is in a real-client clinical setting.").

70. See Dinnerstein, *supra* note 69, at 469; see also Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37, 39-40 (1995) ("Lack of access to counsel usually equates to a denial of justice due to our legal systems' demonstrated hostility toward *pro se* litigants.").

71. Feldman, *supra* note 28, at 637.

72. See Randy Albelda, et al., *The War on the Poor: A Defense Manual* (1996); Jon C. Dubin, *Developments in the Law of Government Benefit Programs*, 42 LOY. L. REV. 33, 34-35 nn.1-12 (1996).

73. Justice Sandra Day O'Connor has gone as far as to advocate "mandatory" clinical education for all law students to further service objectives. Even prior to the major cuts in



Second, justice ideals are served by exposing law students to an ethos of public service or *pro bono* responsibility in order to expand access to justice through law graduates' pursuit of *pro bono* activities or public service careers.<sup>74</sup> Clinic graduates' greater involvement in *pro bono* and public service activities is not simply the end product of instruction in the professional obligations of responsible lawyering. Rather, their heightened involvement also stems from their deepened awareness of the importance of public service work and from their clinic-inspired confidence in the ability to provide effective legal assistance in this context.<sup>75</sup> Through *pro bono* and public service work, clinic graduates may also seek to recapture experiences of professional fulfillment, gratification, or a sense of purpose often missing from traditional legal careers. As Justice Sandra Day O'Connor observed:

Each year, my law clerks tell me about the experiences they had in clinical programs in law school, and describe the thrill of being able to take the skills they are learning and to put them to practice in a way that makes a huge difference in someone's life. Law school experiences like this stick with the students throughout their careers. As my former law clerks describe it, once they are in private practice, they miss the feeling of personal connection they got out of their

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legal services funding and safety net programs, Justice O'Connor observed that 80% of the nation's poor people's civil legal needs were unserved. She then opined that:

Mandatory law school clinical programs could take a big bite out of the legal services shortage. There are over 130,000 law students in the country right now. If each could assist one client a year, it would have quite an impact. And if students could be supervised by their professors, we would avoid quality control problems. . . .

Sandra Day O'Connor, *Good News and Bad News*, Presentation at American Bar Association, Annual Meeting, *Pro Bono Awards Luncheon*, Atlanta, Georgia (August 12, 1991). The need for University students to address unmet service needs has been recognized in fields other than legal education. In 1990, Ernest Boyer of the Carnegie foundation wrote:

Beyond the campus, America's social and economic crises are growing—troubled schools, budget deficits, pollution, urban decay, and neglected children, to highlight problems that are most apparent. . . . Given these realities, the conviction is growing that the vision of service that once so energized the nation's campuses must be given new legitimacy. The challenge then is this: Can America's colleges and universities, with all the richness of their resources, be of greater service to the nation and the world?

Clay Calvert, *Smoking Out Big Tobacco: Some Lessons About Academic Freedom, the World Wide Web, Media Conglomeration, and Public Service Pedagogy from the Battle Over the Brown & Williamson Documents*, 24 PEPP. L. REV. 391, 44-50 (1997) (urging journalism schools to create service-learning opportunities for students to fill "vacuum" created by "cowering" corporate dominated broadcast news organizations that are unable to cover "off-limits" subjects).

74. See Quigley *supra* note 5, at 42-43; Dinnerstein, *supra* note 69, at 469. At St. Mary's, we are starting to obtain anecdotal evidence of the link between clinical work and future service activities. For example, St. Mary's clinical alumni captured all of the major individual awards for *pro bono* service provided by Bexar County Legal Aid's *Pro Bono* project in its last award function and the expansion of clinics has significantly increased the number of graduates working in and seeking public interest employment.

75. See Henry Rose, *Law Schools Should Be About Justice Too*, 40 CLEV. ST. L. REV. 443, 451-52 (1980); see also *In-House Clinic*, *supra* note 4, at 512 (including as an express purpose or goal of clinical legal education "[i]mparting the obligation for service to indigent clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people").

clinical work in school. They recapture that feeling by taking on a steady stream of *pro bono* clients, which in turn, benefits us all.<sup>76</sup>

Finally, as Professor Fran Quigley has pointed out, clinical instruction in social justice issues cannot be limited to advocacy of *pro bono* involvement because "social justice instruction cannot be considered successful if its sole effect is to inspire future lawyers who will operate without conscience in their primary work to donate a few *pro bono* hours to the poor of their community."<sup>77</sup> Rather, "a larger [clinical] goal of social justice instruction should be the learner's attainment of a level of understanding of the relationship between law and issues of social justice at both broad based and personal levels."<sup>78</sup> Clinical education serves this function by facilitating transformative experiential opportunities for exploring the meaning of justice and developing a personal sense of justice,<sup>79</sup> through exposure to the impact of the legal system on subordinated persons and groups<sup>80</sup> and through the deconstruction of power and privilege in the law.<sup>81</sup>

Relying on adult learning theory or "andragogy,"<sup>82</sup> Professor Quigley

76. O'Connor, *supra* note 73, at 7.

77. Quigley, *supra* note 70, at 43 & n.22 ("If you spend the day on corporate takeovers and plant closings without thinking about the people you put out of work, you cannot make up for the harm that you do by giving a woman free legal advice in the evening when her unemployed husband takes out his frustration by beating her.").

78. Quigley, *supra* note 70 at 43.

79. Professor Barnhizer implores clinical faculty to design clinical courses with "sound defensible visions of social justice in mind" and accept as a primary mission "the creation of visible models of justice in action that demonstrate a deep commitment to achieving justice and challenging injustice." Barnhizer, *supra* note 28, at 123-24. However, the point of this function "is not to proselytize law students into accepting the law teacher's personal vision of justice but to assist students, in fact to demand that students become aware of their responsibility to do justice and the need to develop their own reflective system of justice." *Id.* at 112. Georgetown and Seton Hall have expressly implemented Barnhizer's normative justice-oriented clinical model. See Babcock, *supra* note 10, at 30-32 (describing the focus of the environmental justice clinic at Georgetown); Freamon, *supra* note 54, at 1234 & n.25 (describing the approach for all of the clinical programs at Seton Hall's Center for Social Justice).

80. Justice O'Connor further observed that:

Law students gain from clinical work in a more direct sense as well, and again we all gain as a result. Many students go through college and law school without any exposure to poverty, without any understanding of what its like to be poor. Clinical programs fill this gap, and that's important, because these same law students will be our judges and government leaders in the future. We all benefit when our leaders have a sense of what life is like for *all* sectors of the population.

O'Connor, *supra* note 73, at 7; see Feldman, *supra* note 28, at 638 ("Even if the majority of our students go on to professional lives entirely unrelated to the lives of the poor and underrepresented, we should at the very least, impart to them an informed sense of what the legal system looks like to many Americans. If ignorance breeds intolerance, our teaching may be a potent antidote."); see also DEREK BOK, HIGHER LEARNING 100 (1983) ("The act of representing real clients from poor neighborhoods probably did more to raise student consciousness about the adequacy of legal services and the moral dilemmas of practice than did most of the existing courses on the subject.").

81. See Aiken, *supra* note 48, *passim*; Quigley, *supra* note 70, at 44-45.

82. See generally Frank Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982) (describing the difference between andragogy and pedagogy, and explaining the centrality of learning from experience for adults, as opposed to chil-

has articulated a social justice instructional model designed to create opportunities for clinical students to experience “disorienting moments”—“when the learner confronts an experience that is disorienting or even disturbing because the experience cannot be easily explained by reference to the learner’s prior understanding of how the world works.”<sup>83</sup> With proper follow-up, these disorienting moments can produce “perspective transformation” where the student “engages in critical thinking focusing on reassessment of societal and personal beliefs, values and norms.”<sup>84</sup> This learning pattern possesses, at least three stages: “[f]irst the disorienting moment; second, the exploration and reflection, and finally reorientation . . . —[where] the learner’s perspective is transformed in such a way that the previously disorienting experience is explained.”<sup>85</sup> Because many law students come to clinics with neither significant exposure to the victims of injustice nor experience “attempting to wring a just result from an often unresponsive legal system,” Quigley concludes that the experiential basis of the live-client clinic is an “ideal setting for the learning of social justice concepts” through the provision of disorienting moments for the learner.<sup>86</sup>

Professor Jane Aiken expounds on Quigley’s social justice andragogy to develop an approach for instructing students in the MacCrate Report’s identified core professional value of “Fairness, Justice and Morality.”<sup>87</sup> Aiken posits that “justice,” however defined, “is about the exercise of power” and that in order to promote it “one must be explicit about how power operates, particularly in its subtle and invisible manifestations.”<sup>88</sup> Teaching students “how to deconstruct power, to identify privilege, and to take responsibility for the ways in which the law confers dominance” through Quigley’s three stages of perspective transformation, promotes learning about justice, fairness, and morality and also understanding of how “to use our power and privilege in socially productive ways.”<sup>89</sup>

#### IV. RECONCILING SERVICE AND INSTRUCTIONAL GOALS IN SOCIAL JUSTICE-ORIENTED CLINICAL DESIGN

The rational design of clinical programs ordinarily commences with the identification of goals.<sup>90</sup> There are numerous catalogs of clinical goals available to inform clinical design. They include the conventionally ac-

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dren, and concluding that live-client clinical programs are particularly well supported by andragogical theory because the best way to teach an adult to be a lawyer is to let the adult experience the lawyer role).

83. Quigley, *supra* note 70, at 51.

84. *Id.* at 52.

85. *Id.*

86. *Id.* at 52-53.

87. Aiken, *supra* note 48, at 10.

88. *Id.*

89. *Id.* at 10-11; *see also id.* at 30-46 (describing application of this methodology through perspective-transformative clinical experiences where students confronted disorienting issues of privilege and subordination in the course of representing indigent clients).

90. *See* Philip G. Schrag, *Constructing a Clinic*, 3 CLIN. L. REV. 175, 179 (1996).

cepted nine goals of clinical education identified in the AALS Report of the In-House Clinic,<sup>91</sup> Bradway's seven goals,<sup>92</sup> Schrag's fifteen goals,<sup>93</sup> Barnhizer's twenty goals,<sup>94</sup> and Freamon's four goals and thirteen sub-goals of a clinical Center for Social Justice,<sup>95</sup> to name a few. All of these clinical goals may be viewed as components of or elaborations on one of

91. Those goals are:

1. Developing modes of planning and analysis for dealing with unstructured situations;
2. Providing professional skills instruction;
3. Teaching means of learning from experience;
4. Instructing students in professional responsibility;
5. Exposing students to the demands and methods of acting in role;
6. Providing opportunities for collaborative learning;
7. Imparting the obligation for service to indigent clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people;
8. 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 law;
9. Critiquing the capacities and limitations of lawyers and the legal system.

*In-House Clinic*, *supra* note 4, at 511.

92. *See id.* at 179 nn.13-15.

93. Schrag's goals include instruction in: (1) responsibility; (2) doctrine and institutions; (3) the provision of service; (4) problem-solving; (5) collaboration; (6) cross-cultural awareness; (7) the role of emotions; (8) coping with facts; (9) values; (10) ethics; (11) creativity; (12) exercising authority; (13) learning to learn; (14) traditional technical lawyering skills; and (15) students' identified goals. *See* Schrag, *supra* note 90, at 179-86.

94. Barnhizer's goals include seven goals involving elements of professional responsibility, four goals involving judgment and analysis, eight goals involving various technical lawyering skills, and one goal regarding substantive law. *See* David Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 76-79 (1979).

95. Freamon's objectives of a social justice center include:

1. To enable each student to embark on a career of continuous professional and personal growth;
  - a. by guiding each student in integrating the basic skills of lawyering with his or her personal style and values;
  - b. by incorporating reflective self-critique into the evaluation of lawyer performance and interaction;
  - c. by emphasizing and reinforcing the tangible and intangible rewards and sense of self-worth that comes from practicing law in the public interest;
  - d. by imparting a sense of personal and social justice to all students that will guide them through their professional careers;
  - e. by teaching the skills required to achieve excellence in the practice of law;
2. To provide high quality services to those who could not otherwise afford a lawyer;
  - a. by giving full service, within recognized priorities to the legal needs of individual clients;
  - b. by identifying issues and developing advocacy strategies to remedy or improve systemic problems;
  - c. by teaching and empowering clients and client groups to take charge of their own legal affairs and to effectively resolve problems;
3. To encourage the ideal of community service as a primary responsibility of the lawyer;
  - a. by modeling respect and concern for clients and the importance of their legal problems;
  - b. by exploring the various ways a lawyer can be of special service to the community;

two broader objectives: 1) client and community service; or 2) professional competency instruction in the skills and values of the profession. Manifestations of these two broad goals are indispensable components of justice-oriented clinical programs.<sup>96</sup> While some commentators have identified inherent dissonance between clinics' educational and service objectives,<sup>97</sup> upon closer inspection these objectives are largely reconcilable. Moreover these goals are overlapping in several respects, and the previously identified three primary social justice purposes of clinical education cut across both broad categories.

The proper provision of student supervised legal services to clients and community groups requires appropriate professional competency instruction to assure the quality of the services provided.<sup>98</sup> While, it is true that the clinical supervisor could likely provide superior service by handling the work herself and minimizing the students' roles,<sup>99</sup> such restriction of responsibility would undermine the students' ability to provide future public service by retarding their development as practitioners and by limiting their potential for transformative experiences to help develop and guide the pursuit of justice throughout their careers. Moreover, since an attorney's professional competency is ascertained by reference to the quality of services performed in the role of lawyer, the provision of services by students who have assumed the lawyer role is particularly effective

4. To serve as a catalyst for the discussion of issues and as a resource center for the academic community, the judiciary, the organized bar and the lay community on questions of law and justice;

a. by involving every law student in the law school in *pro bono* service;

b. by establishing a social justice curriculum in the law school and involving members of the judiciary, the organized bar and community organizations in the formulation and presentation of coursework;

c. by utilizing public colloquia to initiate a dialogue among members of the community on the ideal of social justice.

Freamon, *supra* note 54, at 1241-42.

96. While the provision of service alone may be a sufficient goal of a law school *pro bono* program, the structuring of that service and coordinated instructional activities to ensure valuable educational experiences for students should be a "self-evident" goal for any clinical course awarding academic credit. See Jeffrey S. Lehman & Rochelle E. Lento, *Law School Support for Community-Based Economic Development in Low-Income Urban Neighborhoods*, 42 WASH. U.J. URB. & CONTEMP. L. 65, 72 (1992).

97. See, e.g., Grossman, *supra* note 6, at 186 & n.108 (referring to a "strain of schizophrenia" in clinical education from conflicting educational and service objectives).

98. See Barnhizer, *supra* note 28, at 124 ("Clinical courses . . . teach technical skills . . . as a necessary and important by-product of their basic mission."); see also *In-House Clinic*, *supra* note 4, at 555 (noting that 89% of all clinics teach a classroom component to teach skills and values of the profession associated with live-client clinical work, and noting specifically that all five of St. Mary's clinics employ classroom simulation exercises to provide skills instruction to support and supplement live-client experiences).

99. See Michael Meltsner & Phillip G. Schrag, *Report From A CLEPR Colony*, 76 COLUM. L. REV. 581, 592 n.17 (1976) ("[W]hile we thought that student participation would make a larger caseload easier to carry, we discovered that it took more time, not less, to write a brief with student help (to edit patiently through five or six drafts instead of just batting out the job)."); see also Peter Pitegoff, *Law School Initiatives in Housing and Community Development*, 4 B.U. PUB. INT. L.J. 275, 285 (1995) ("Supervision of often inexperienced student attorneys proves more time-consuming and labor intensive, requiring attention to education, mentoring, and reflection.").

experiential education for competent long-term role assumption. Thus, the very circumstances that further valuable clinical professional competency instruction can contribute to the service mission.<sup>100</sup>

That the social justice service goals of clinical legal education are also educational goals is further underscored by analogy to the service-learning model—an increasingly valued component of secondary and higher education.<sup>101</sup> Service-learning has been defined as “a particular form of experiential education, one that emphasizes for students the accomplishment of tasks which meet human needs in combination with conscious educational growth.”<sup>102</sup> The National and Community Service Trust Act of 1993 further describes service-learning as an educational experience:

[(1)] under which students learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs and that are coordinated in collaboration with school and community;

[(2)] that is integrated into the students' academic curriculum or provides structured time for the students to think, talk, or write about what they did and saw during the actual service activity;

[(3)] that provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their own communities; and

[(4)] that enhances what is taught in school by extending students' learning beyond the classroom and into the community and helps to foster the development of a sense of caring for others.<sup>103</sup>

While there is a surprising reciprocal dearth of cross referencing of service-learning and clinical scholarship, it is apparent that most clinical programs qualify as service-learning educational activities as a matter of law.

Some commentators have suggested that clinical instructional goals undermine service imperatives because proper experiential learning man-

100. See Earl Johnson, Jr., *Education Versus Service: Three Variations on the Theme*, in CLINICAL EDUCATION FOR THE LAW STUDENT 417 (The Council on Legal and Professional Responsibility, Inc. ed., 1973).

101. See Cynthia L. Brennan, *Mandatory Community Service as a High School Graduation Requirement: Inculcating Values or Unconstitutional*, 11 T.M. COOLEY L. REV. 253, 253-54 & nn.6-11 (1994) (noting that “[a] relatively recent trend in education is to require community service as a condition to the receipt of a high school diploma,” and describing the many state bills and the federal Service-Learning Act of 1993 that establish and subsidize service-learning efforts); Jeremy Cohen & Dennis F. Kinsey, ‘*Doing Good*’ and *Scholarship: A Service-Learning Study*, 48 THE JOURNALISM EDUCATOR 4 (Winter 1994) (finding that “interest and participation in community service has become well entrenched on American college campuses over the past decade” and identifying 305 college campuses encouraging community service by undergraduates).

102. JANET LUCE, SERVICE LEARNING: AN ANNOTATED BIBLIOGRAPHY LINKING PUBLIC SERVICE WITH THE CURRICULUM i (Janet Luce ed. 1988).

103. Joan Schine, *Looking Ahead: Issues and Challenges*, in SERVICE LEARNING 186, 188 (Joan Schine ed. 1997); see also 45 C.F.R. § 2500.2(a)(29) (1997). The National Community Service Acts of 1990 and 1993 have established the Commission on National and Community Service which was succeeded by the Corporation for National Service. See Schine, *supra*, at 198 n.5; Cohen & Kinsey, *supra* note 10, at 14 n.16. These Acts established several grant programs that encourage student participation in community service as part of their education. See *id.*

dates that students assume modest caseloads and receive close day-to-day supervision. Caseloads are resultingly smaller and fewer clients are able to obtain service.<sup>104</sup> Professor Earl Johnson has observed that this clinical phenomenon is not really a conflict between educational and service goals but between a more familiar legal aid/legal services dilemma of quality versus quantity of services.<sup>105</sup> He posits that just as it is preferable not to spread limited legal aid resources among too many clients and preclude the opportunity for providing more effective representation in a lesser number of cases, so too, the quality of both short-term and future services provided by clinical students will be higher if their caseloads are carefully limited and supervised.<sup>106</sup>

What Johnson presents as a more vexing quandary is the also familiar debate in legal aid circles over the relative merits of law reform and direct client service. Law reform presents opportunities for more efficient class representation and sometimes systemic change. The community need for clinical programs to step in and lead law reform efforts has never been greater in light of Congress's elimination of funding for legal services backup (law reform) centers and funding restrictions on the use of class actions, lobbying, or rulemaking advocacy by LSC-funded offices.<sup>107</sup> Law reform clinical work can present difficult educational obstacles. Law reform cases and projects often take longer than the school year to complete or even for meaningful action to occur, and they frequently require faculty to assume primary lawyering responsibilities because of the difficulty and magnitude of those needed tasks.<sup>108</sup> Because the exercise of professional responsibility and development of professional identity from role assumption lie at the heart of the clinical method,<sup>109</sup> the characteristics of law reform work portend a potentially diminished educational experience for the student. Johnson concedes that in addressing this dilemma, a certain amount of compromise may be unavoidable but argues that "with sufficient imagination and determination, it may be possible to design comprehensive clinical programs that as a whole handle enough short-term, comparatively simple cases to teach basic skills, yet balance these with carefully planned research and advocacy of major social and economic causes."<sup>110</sup>

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104. See Johnson, *supra* note 100, at 417-20.

105. See *id.*

106. See *id.*

107. See Ingrid V. Eagley, *Community Education: Creating a New Union of Legal Services Practice*, 4 CLIN. L. REV. 433, 438-40 (1998); *Recent Legislation, Constitutional Law—Congress Imposes New Restrictions on Used Funds by the Legal Services Corporation—Omnibus Consolidated Rescissions and Appropriation Act of 1996*, Pub. L. No. 104-134, 110 Stat. 1321, 110 HARV. L. REV. 1346, 1377 nn.6-14 (1997); Dubin, *supra* note 72, at 66 n.224.

108. Cf. Kotkin, *supra* note 46, at 244 (describing the related problem of overpreparing students facing daunting lawyering tasks in big cases).

109. See Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 616-17 (1984).

110. Johnson, *supra* note 100, at 425.

V. A CASE STUDY IN SOCIAL JUSTICE-ORIENTED  
CLINICAL DESIGN: FROM THE ALAMO TO THE  
BORDER AND BEYOND AT ST. MARY'S  
CENTER FOR LEGAL AND  
SOCIAL JUSTICE

Clinics serve many important and overlapping educational, social justice, and community service goals; and clinical design involves a balancing or calibration of these objectives. That balance is influenced by each law school's or university's unique institutional needs and prerogatives. At St. Mary's, the reanimation of Catholic social teachings embodied in the University's mission statement provided a degree of impetus and institutional prerogative for clinical education with a social justice imperative.<sup>111</sup>

As stated by Barbara Bader Aldave, the Dean who established St. Mary's first in-house live-client clinics in 1990:

If any one thing should be of central importance in a Catholic law school, it is a commitment to justice—not only justice under the law, but justice and fairness in society. . . . A law school can eloquently and effectively express its commitment to justice, and encourage its students to nourish and develop their highest and best instincts, by founding and supporting clinical programs that are designed to make the law more responsive to the needs of the poor or to provide legal services to unrepresented groups of people. Because St. Mary's is a

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111. See Panel Discussion, *supra* note 3. Dean Aldave served as Dean of the law school from 1989-1998, and she is currently Dean Emeritus. At the time of her arrival in the fall of 1989, the law school was a considerably less progressive institution. Reflecting on 1989, she observed:

The curriculum was extremely limited, and most of the course of study was mandatory. In an area of the country in which Hispanics constitute the majority, the student body was overwhelmingly Anglo, and the faculty was almost exclusively white and male. A dress code and strict disciplinary rules were in effect. The place reminded me of a military camp. . . . Nevertheless, I was attracted to the institution—primarily because I thought that a Catholic law school could and should be different from its secular counterparts. Both the University and the Law School had adopted "mission statements" that espoused ideals that I shared. As I saw it, the challenge was to translate those ideals into reality.

Barbara Bader Aldave, *The Reality of a Catholic Law School*, 78 MARQ. L. REV. 291, 292 (1995). The University's Mission Statement provides in pertinent part:

. . . REACHING OUT IN SERVICE TO SOCIETY

St. Mary's University serves the various communities of San Antonio, the Southwest, the nation, and the world through the intellectual, spiritual, moral and professional leadership of its faculty, administration, staff and students. The University continually engages in a dialogue with these communities in order to understand their needs and to offer appropriate spiritual and intellectual responses.

Rooted in the Catholic intellectual tradition, the University strives to contribute to the urgent task of extending justice, freedom, and dignity to all people. . . . By all that the University is, it espouses a philosophy that is based on spirit not matter, on liberty not determinism, on both time and eternity as the context in which all members of the University community promote social justice and peace.

ST. MARY'S UNIVERSITY, STATEMENT OF MISSION (undated).



Catholic law school and is located in one of the poorest large cities in the United States, I believe that we have a special obligation to do everything possible to introduce our students to the rewards of helping or empowering others.<sup>112</sup>

Consistent with Aldave's vision, in 1995, St. Mary's purchased from the Marianist sisters the "Our Lady of the Pillar Marianist Retreat Center," a 28,000 square-foot residence one block from the campus. Renamed the "Center for Legal and Social Justice," it now houses all of St. Mary's clinical and public interest programs, offers a public lecture series entitled "Legal and Social Justice: The Catholic Tradition," and provides office space to several cooperating community service organizations.<sup>113</sup> A new jurisprudence course entitled "Critical Lawyering Theory" will commence at the Center this fall. The course will only be available to students with past or concurrent live-client clinical or *pro bono* program experience and will explore the practical significance and application of critical theory in lawyering for subordinated persons and groups. The predominant purpose in establishing the Center was "to create a synergistic environment which students, faculty members, and community activ-

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112. Aldave, *supra* note 111, at 294; see also Sister Grace M. Walle, *Doing Justice: A Challenge for Catholic Law Schools*, 28 ST. MARY'S L.J. 625 (1997) (describing St. Mary's social justice mission from the campus minister's perspective). See generally Randy Lee, *Catholic Legal Education at the Edge of a New Millennium: Do We Still Have the Spirit to Send Forth Saints?*, 31 GONZ. L. REV. 565, 583 (1996) ("Given the Christian calling to serve the poor, a Catholic law school must embrace a goal of increasing legal services available to the poor. It must do this in two distinct ways. It must first instill in its students a desire to provide legal services to poor people. Second, it must seek to prevent its students from falling prey not only to greed, but also to the fear that lures students into the materialism that can block service to others." (footnotes omitted)); Michael J. Perry, *The Idea of A Catholic University*, 78 MARQ. L. REV. 325, 359 n.96 (1995) ("[T]he Catholic University is perhaps most easily seen as a community of service to those less fortunate, locally, nationally, and internationally. This caring has both an intellectual and a practical aspect. The community does not only study phenomena like poverty, migration, refugees, homelessness, hunger. We also try to cope with these problems in a hands-on fashion through personal service in a variety of practical ways both here and abroad."). Cf. *supra* notes 62-66 and accompanying text (discussing the social justice orientation of clinical programs at three other Catholic law schools: Georgetown, Seton Hall, and Catholic). Of course, many non-sectarian universities possess similar missions, whether derived from the recognized obligation of government-supported institutions to serve the public good, or from varying private universities' public interest commitments. See, e.g., *Community Legal Resource Network (CLRN) Proposal, submitted to the Open Society Institute by The City University of New York (CUNY) School of Law, Northeastern University School of Law, St. Mary's University School of Law and University of Maryland School of Law* at 35 (Nov. 1997) (referring to "the articulated mission of CUNY [as] 'Law in the Service of Human Need'" [hereinafter CLRN]); Calvert, *supra* note 73, at 449 n.388 (describing reference to NYU's letter head denoting service mission: "NEW YORK UNIVERSITY/A PRIVATE UNIVERSITY IN THE PUBLIC SERVICE."). See also *id.*, at 449 ("public universities have a service mission to their states and to the nation.").

113. See generally Brett Martin, *Why Most Law Schools Are Failing At Public Interest Law*, NATIONAL JURIST, Oct. 1997, at 16, 20 (reporting that St. Mary's was among the schools commended by Ralph Nader's Appleseed Foundation for "raising awareness about public interest through classes and legal clinics" through "its new Center for Legal and Social Justice."); Suzanne Hoholik, *St. Mary's Law Program Honored for Public Service*, SAN ANTONIO EXPRESS NEWS, August 29, 1997, at 38 (discussing role of the Center for Legal and Social Justice in helping St. Mary's garner the 1997 ABA law student division's award for public interest law school of the year).

ists alike will find motivating and supportive, and which is dedicated to educating our students and addressing otherwise unmet needs of low-income people in San Antonio and South Texas."<sup>114</sup>

A. A DEEPLY UNDERSERVED COMMUNITY: FROM THE ALAMO TO THE BORDER

San Antonio is the nation's tenth largest city with a population of nearly one million people.<sup>115</sup> The 1990 census places the poverty rate in San Antonio at 23%—second only to Detroit among cities with more than 750,000 residents.<sup>116</sup> San Antonio is in some ways a "tale of two cities," as it "*stands alone as the single big city in the country with high rates of both growth and poverty.*"<sup>117</sup> It is a majority-minority city because Latinos, primarily of Mexican descent, comprise 56% of the population. African-Americans and White Anglos account for 8% and 35%, respectively.<sup>118</sup> Both Latinos and African-Americans are disproportionately represented among San Antonio's low-income population. In Bexar County, which comprises the San Antonio metropolitan area, the overall poverty rate is 19.9%, but the rates for Latinos and African Americans rise to 29.2% and 26.3%, respectively.<sup>119</sup>

As could be expected for a large city just a two-hour drive from the Texas-Mexico border, a significant segment of the population is comprised of immigrants.<sup>120</sup> Many immigrants face language and cultural barriers to employment, housing, and government services. San Antonio also has a rapidly growing homeless population which has quadrupled between 1991 and 1997.<sup>121</sup> Over 50% of San Antonio's homeless are families with children,<sup>122</sup> and African-Americans are disproportionately represented among the homeless in nearly three times their proportion to the general population.<sup>123</sup> San Antonio is plagued by an extremely tight job market for unskilled workers, a high incidence of substandard or

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114. CLRN proposal, *supra* note 112, at 74.

115. See U.S. BUREAU OF THE CENSUS, THE FORTY LARGEST CITIES: 1990, TABLE 2 (Dec. 16, 1991).

116. See BUREAU OF THE CENSUS, POVERTY LEVEL, RATES AND RANKS, PLACES OF AT LEAST 100,000, 1990 CENSUS.

117. THE URBAN INSTITUTE, GROWTH WITHOUT PROSPERITY: SAN ANTONIO'S EXPERIENCE IN THE NEW ECONOMY 3 (April 1993).

118. See *Postal Service Official Attacks Underrepresentation of Hispanics*, SAN ANTONIO EXPRESS NEWS, August 4, 1994, 1994 WL 3535777.

119. See Lori Rodriguez, *Hispanics, Blacks Fared Worst in Rise of Poverty*, HOUSTON CHRONICLE, February 11, 1993, at 25.

120. See Bill Ong Hing, *Don't Give Me Your Tired, Your Poor: Conflicted Immigrant Stories and Welfare Reform*, 33 HARV. C.R.-C.L. L. REV. 159, 182 (1998) (referring to San Antonio as a "high-immigration" city).

121. In 1991, the homeless population was reported as 4,100. See NATIONAL CONFERENCE OF MAYORS, STATUS REPORT ON HUNGER AND HOMELESSNESS 1991 (Dec. 1991). Now it is estimated to be over 16,000. See NATIONAL CONFERENCE OF MAYORS, STATUS REPORT ON HUNGER AND HOMELESSNESS 1997 (Dec. 1997).

122. See Dubin, *supra* note 4, at 83 n.7.

123. See 1997 NATIONAL CONFERENCE OF MAYORS, *supra* note 121, at 76 (African-Americans constitute 22% of San Antonio's homeless).

overcrowded low-income housing stock,<sup>124</sup> and a grossly disproportionate and inadequate distribution of public educational resources to school districts in lower-income communities.<sup>125</sup>

As severe as the nature and degree of poverty in urban San Antonio appears, the largely rural 35,000 square mile region south of San Antonio to the border suffers from even more extreme conditions. Three of the counties in this region have poverty rates over 50%—among the highest in the country.<sup>126</sup> This region also includes *colonias*, in the Rio Grande Valley and in Webb County, which amount to more than 70% of Texas's *colonias*.<sup>127</sup> The *colonias* present squalid living conditions of a magnitude generally found only in less developed, third-world countries. They are defined as "rural, unincorporated subdivisions along the U.S.-Mexico border in which one or more of the following conditions exist: substandard housing, inadequate roads and drainage and substandard or no water and sewer facilities."<sup>128</sup> As described by one commentator:

[T]he unregulated *colonias* lack the basics that residents of other jurisdictions take for granted: safe drinking water, sewers for carrying away human waste, and housing with minimally adequate wiring, plumbing, and construction. Elsewhere in the world, the health and safety risks and severe environmental degradation endemic to such shantytown settlements are well known. Main Street America, however, has not typically contemplated such third world problems.<sup>129</sup>

A 1990 GAO study found that less than one percent of the *colonias* visited in Texas had sewage systems and while about 60% had water supplies, many only possessed outside water spigots and lacked indoor plumbing.<sup>130</sup> Residents of *colonias* are mostly Mexican-Americans and Mexican immigrants. Many work as seasonal farm laborers and have incomes well below the poverty line at \$6,784 per capita in Texas.<sup>131</sup> Third

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124. Approximately 39% of low-income households live in substandard or "physically deficient" housing. See PARTNERSHIP FOR HOPE, A DIFFERENT AMERICAN DREAM: THE LOW INCOME HOUSING CRISIS IN SAN ANTONIO 25 (Nov. 1993). Another 18% lives in overcrowded conditions. See *id.* at 22. Approximately 72% of low income renters and 62% of low-income homeowners live in substantially unaffordable housing and pay over 50% of their income on rent or mortgage payments. See *id.* at 50.

125. See *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989) (discussing substantially inferior public education provided to low income children due to Texas's unconstitutionally inefficient system of school financing system based on district property taxation); cf. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973) (upholding the same inequitable school financing system in San Antonio against federal equal protection challenge).

126. See TEXAS DEPARTMENTS OF HEALTH AND OF HUMAN SERVICES, COUNTY POVERTY POPULATION MODEL AND ESTIMATES (1988).

127. See UNITED STATES GENERAL ACCOUNTING OFFICE REPORT TO THE CHAIRMAN, COMMITTEE ON AGRICULTURE, HOUSE OF REPRESENTATIVES, RURAL DEVELOPMENT: PROBLEMS AND PROGRESS OF COLONIA SUBDIVISIONS NEAR THE MEXICO BORDER (NOV. 1990) [hereinafter GAO COLONIA REPORT].

128. *Id.* at 1.

129. See Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 GEO. L.J. 179, 183 (1995).

130. See GAO COLONIA REPORT, *supra* note 127, at 1.

131. See Leslie Newman, *Money, Bankruptcy and El Cenizo: A Solution for the Colonias*, RURAL VOICES 10 (1996).

world diseases such as hepatitis and tuberculosis still thrive and "15% of *colonia* households do not usually have enough to eat."<sup>132</sup>

Due to the unavailability of conventional mortgage credit for low-income persons, many *colonia* residents purchase homes or land under exploitative real estate devices known as contracts for deed. Under these contracts, no equity is transferred to the buyer until the final payment is made and interest rates are usually quite high (12-14% in most cases). Many contracts incorporate property tax payments and late penalties, causing residents often to fall behind on their payments, thereby never achieving an equity position in their property. These contracts usually contain a standard forfeiture clause which permits the seller, after default, to terminate the contract, recover possession of the property, and to retain all installments paid as liquidated damages.<sup>133</sup> "The risk of instantaneous dispossession for missing one or two payments threatens *colonia* householders throughout the duration of the contract."<sup>134</sup>

Low-income persons throughout Texas suffer from one of the most parsimonious safety nets of social welfare programs in the country.<sup>135</sup> "Texas is one of only five states with neither a [statewide] general assistance nor emergency assistance program" for the poor.<sup>136</sup> It pays joint federal-state Temporary Assistance to Needy Families welfare benefits at a level below 48 other states, amounting to only \$1.89 per recipient per day.<sup>137</sup> Indeed, Texas is the only state that has a ceiling on expenditures for welfare programs in its state constitution and limits welfare spending to 1% of the budget.<sup>138</sup> Even so, it fails to spend up to the 1% level.<sup>139</sup> "While Texas has established a process for judicial review of state agency decisions [in its Administrative Procedure Act], it is one of the few states that have specifically excluded agency welfare decisions from its process."<sup>140</sup>

Texas's regressive taxation policies further erode the minimal resources of the poor. "In Texas, the poorest families spend 17% of their income on local and state taxes, the second highest portion among all 50 states. The wealthiest Texans, meanwhile devote just 3 percent of their earnings to state taxes, the fourth lowest amount nationwide."<sup>141</sup> Approximately 26% of all Texans lack any form of health insurance—the highest unin-

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132. Texas Department of Human Services, *The Colonias Fact Book 1-3* (1988).

133. See Newman, *supra* note 131, at 9-11.

134. Larson, *supra* note 129, at 209.

135. Texas is "one of only two states in the country that does not meet any of the ten survey standards of assistance to the poor established by the United States Center on Budget and Policy Priorities." STATE BAR OF TEXAS, COMMITTEE ON LEGAL SERVICES TO THE POOR IN CIVIL MATTERS, REPORT ON MANDATORY PRO BONO 3 (1991).

136. Dubin, *supra* note 4, at 85 & n.17.

137. See PARTNERSHIP FOR HOPE, PRIDE AND POVERTY: A REPORT ON SAN ANTONIO 110 (Aug. 1991).

138. See *id.* at 112 (alluding to art. 3, § 51-a of the Texas Constitution).

139. See *id.*

140. Dubin, *supra* note 4, at 87 & n.26 (citing TEX. REV. STAT. ANN. art. 6252-13a, § 21(b) (Vernon Supp. 1998)).

141. Dubin, *supra* note 4, at 122.

sured rate in the country. Texas also ranks first in the percentage of uninsured poor.<sup>142</sup>

In Texas in general and in South Texas in particular, the poor face unusually strong obstacles to securing effective representation in the legal system. In 1992, the Texas State Bar estimated that 94% of low-income Texans' civil legal needs remain unmet.<sup>143</sup> The amount of unmet needs undoubtedly runs higher in poorer portions of the state such as South Texas and has been further increased by the massive reductions in federal support of legal services to the poor since that time.<sup>144</sup>

Legal Services Corporation (LSC) programs are prohibited from representing undocumented immigrants, pursuing class action litigation, conducting lobbying or administrative rulemaking advocacy, and challenging federal welfare reform among other restrictions.<sup>145</sup> LSC-funded offices are also precluded from using non-LSC money for any of these purposes, they have suffered a 30% reduction of their overall budgets, and all funding support for their national network of backup and support centers has been eliminated.<sup>146</sup> There are only 14 legal services attorneys with jurisdiction in San Antonio and only a small group of attorneys with Texas Rural Legal Aid and smaller legal aid programs in the rest of South Texas. Unlike other large cities, there are very few public interest legal organizations providing representation to subordinated groups.<sup>147</sup>

In the criminal justice system, Texas does not have a state-sponsored public defender system and there is no state public defender office in San Antonio or the entire South Texas region with the exception of Laredo. Accordingly, in South Texas, indigent criminal appointments are made at the state trial court level to attorneys in private practice. Lawyers representing indigent defendants pursuant to an individual appointment or contract basis receive no required training in criminal defense representation.<sup>148</sup> These court appointments carry maximum fees thereby providing a financial disincentive for zealous advocacy. For example, as in a handful of other southern states, it is conceivable that "[a]n . . . attorney who spends 500 hours preparing for a death penalty trial will be paid \$4 an hour."<sup>149</sup> Texas possesses the nation's largest death row and since 1973

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142. See *Pride & Poverty*, *supra* note 137, at 6 (explaining that 58% of the Texas's poor lack any form of health care compared with 34% nationally).

143. See TASK FORCE ON THE DELIVERY OF LEGAL SERVICES TO THE POOR, STATE BAR OF TEXAS, Study Report 12 (May 13, 1992).

144. See Ingrid V. Eagley, *Community Education: Creating A New Vision of Legal Services Practice*, 4 CLIN. L. REV. 433, 438-40 (1998); Eagley, *supra* note 107, at 1347 nn.6-14; Dubin, *supra* note 72 at 66 & n.224.

145. See Eagley, *supra* note 107, at 1347 & nn.9,12.

146. See *id.*

147. The private, non-profit, public interest legal community is limited to small branch offices of the Mexican American Legal Defense Fund (MALDEF), the Texas Lawyer's Committee for Civil Rights, and Advocacy, Inc.—a civil rights firm for the disabled.

148. See generally Uphoff, et al., *supra* note 44, at 389 n.33.

149. Bob Herbert, *Cheap Justice*, N.Y. TIMES, Mar. 1, 1998, at D15 (referring to Alabama); see also Uphoff et al., *supra* note 44, at 389 (describing court-appointed defense

has produced one-third of all executions in the country.<sup>150</sup>

While criminal defendants at least have a constitutional right to some degree of representation, there is no mechanism by which Immigration Judges can appoint counsel in cases where persons detained by the Immigration and Naturalization Service (INS) face deportation or exclusion.<sup>151</sup> Moreover, based on figures from the American Immigration Lawyers Association, there are only eight immigration attorneys in San Antonio and only seven dispersed among the South Texas cities of Corpus Christi, Laredo, Eagle Pass and Del Rio.<sup>152</sup> Further, the general private bar does not provide much assistance in immigration cases because "the practice of immigration law is considered so specialized."<sup>153</sup> Thus, the vast majority of detainees faces deportation and exclusion hearings *pro se*.<sup>154</sup>

Law schools are often not considered significant legal resources relative to other public interest legal providers in a given locale.<sup>155</sup> However, as the only law school centered in this South Texas region characterized by intractable poverty and overwhelming and pervasive unrepresentation and underrepresentation in the legal system, St. Mary's has an opportunity to play a more significant role in the service network.<sup>156</sup> Accord-

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lawyer in Houston who slept through the testimony of several witnesses in a death penalty case).

150. See NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., DEATH ROW, U.S.A., 13-46 (Summer 1997). As one defense attorney explained:

One would think that counsel in a capital case would tend to be the most competent members of the criminal bar, but my own experience—somewhat limited, although I'm familiar with particular situations in the State of Texas—is that quite the opposite is true. Most criminal defense lawyers, the particularly capable ones, will shy away from these kinds of cases because they are so difficult. They are emotionally draining. They're physically draining. And there is, in many states like Texas, very little in the way of financial reward for participating in such cases. In fact, I know several lawyers there who have done some of these cases but I think they are unanimously of the view that you cannot make any money representing capital defendants. So you get some rather remarkable and bizarre situations where counsel is extremely unqualified even though on the surface, they may appear qualified. . . . In Texas, where they have about 400 people now on death row, many of those people on death row are completely unrepresented. They have no lawyers. Many of them are facing execution dates that have been imposed and they are without lawyers.

Stephen B. Bright, et al., *The Death Penalty in the 21st Century*, 45 AM. U.L. REV. 239, 264-65 (1995).

151. See Letter from United States Immigration Judge Susan E. Castro to Mr. John J. Lank, Department of Education (January 24, 1994) (on file with author).

152. See AMERICAN IMMIGRATION LAWYERS ASSOCIATION, AILA MEMBERSHIP DIRECTORY AND BYLAWS 199-200 (1997-98).

153. Judge Castro, *supra* note 151.

154. See Margaret Taylor, *Promoting Legal Representation for Detained Aliens: Litigation and Administrative Reform*, 29 CONN. L. REV. 1647, 1664-65 (1997). Approximately 90% of INS detainees appear without counsel. See *id.* Non-detained individuals have a better chance of obtaining counsel, but nonetheless approximately 50% appear *pro se*. See *id.*

155. See generally Grossman, *supra* note 6, at 186 n.108 ("We rather doubt that loosing a group of law students on an unsuspecting world will or could effect a major change in the quality of life.").

156. Cf. Bloch & Ishar, *supra* note 21, at 118 (noting that in India, clinical education furthers a "mission of contributing to the national cause of legal aid service" and the view-

ingly, the selection of substantive areas of clinical involvement has been influenced by concerns for addressing otherwise unmet community needs and responding to the expression of service or design preferences by community leaders, client groups, or the public interest legal community in order to become part of the service network within the city and region.<sup>157</sup>

## B. SOME SELECT DESIGN FEATURES

Professor Phillip Schrag has described the many layers of details and features involved in the design of clinical programs.<sup>158</sup> I have chosen only to describe a few features of St. Mary's programs that are animated by social justice concerns and that have not been widely discussed in existing clinical literature.

### 1. *Holistic Representation and Service*

Consistent with critical service needs identified above, St. Mary's first three live-client clinics addressed civil, criminal and immigration issues respectively. The Civil Justice Clinic (CJC) is a general civil legal services clinic, representing low-income clients in family law, public benefits, housing, wills and probate matters. Influenced by community leaders and other service providers, the CJC developed a concentration on the civil legal problems of a growing homeless population that was particularly underserved in the legal system and largely isolated from existing service networks. In the words of one community advocate: "Homeless persons living in shelters are often focused on survival and do not have the privacy, psychic energy or often the know how to determine whether their rights are being violated."<sup>159</sup>

The CJC was also advised that homeless persons often lack the mobility and resources to travel to and from legal services offices or to persevere through those offices' intake processes. Thus, legal outreach to the shelters was deemed a necessary component of this service link. The CJC obtained a series of grants to hire a paralegal outreach coordinator to maintain a regular presence in the shelters. The clinic then structured its program to contemplate ongoing student and supervisor follow-up with clients at the shelters. Apart from providing a necessary functional link to the provision of services to the homeless, students have the potential to experience more transformative "disorienting" moments when venturing

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point that "law students can and should take a leading role in providing legal aid and assistance to the poor" as a matter of necessity due to massive poverty and illiteracy).

157. See Schrag, *supra* note 90, at 177 n.9 (noting that communities can become reliant upon law school clinics as part of a "service network of a city or region"); *id.* at 191-93 (describing extrinsic factors influencing clinical design such as desire to meet otherwise unmet needs and community leaders' preferences).

158. See *id.*, *passim*.

159. Dubin, *supra* note 4, at 92 & n.48 (citing letter from Sr. Neomi Hayes, Visitation House, (Jan. 10, 1991)).

into their clients' worlds in the shelters and out from the secure confines of the center offices.<sup>160</sup>

The Criminal Justice Clinic provides representation to indigents of all ages charged with crimes ranging from misdemeanors to state jail felonies. In addition, the criminal clinic assists in post-conviction proceedings in capital cases. The Immigration Clinic handles a variety of immigration cases with emphasis on the representation of individuals facing expulsion or women and children seeking the benefits of the Violence Against Women Act. The Immigration Clinic primarily represents clients in San Antonio but faculty and students also travel to the border in Laredo to provide services to persons detained by the INS and to residents of the impoverished *colonias*.

Recognizing that clients often present interrelated legal problems cutting across the subject matter of two or more clinical programs, St. Mary's has created a holistic model of clinical representation and collaboration. Priority is provided to addressing the multiple legal needs of clients in order to represent the whole person. For example, a battered immigrant woman charged with assaulting her batterer spouse would benefit from representation from three clinics: VAWA representation to secure lawful permanent residency without the batterer; criminal defense representation to avert the assault charge and its adverse implications on her residency petition; and civil representation to obtain a protective order against future abuse. Students working in an interclinic team on such a case will acquire important skills in collaborative lawyering. They will also develop insight and awareness of the interrelationships of different doctrinal areas and varying legal mechanisms for effectively representing clients, and a deeper understanding of the skills needed for legal problem solving and diagnosis.<sup>161</sup>

Indeed, because low-income and homeless clients not only often possess multiple legal problems but usually present a wide range of interconnected social problems,<sup>162</sup> the Center has entered into a cooperative arrangement with the University's Counseling and Human Services De-

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160. See Aiken, *supra* note 48, at 46 (describing educational value of clinic students' visits to clients' homes and neighborhoods); see also Aiken, *supra* note 89 (describing clinical perspective transformation that occurs from exposure to disorienting moments).

161. See David Barnhizer, *Of Rat Time and Terminators*, 45 J. LEGAL EDUC. 49, 53 (1995) ("Law schools should also begin to focus more explicitly and effectively on developing what might be called holistic and problem-solving skills—e.g., diagnosis, conceptualization, synthesis, problem definition, and problem-solving. These kind of skills tend to be ignored even in law schools that offer a wide range of technical skills instruction. Yet these are the skills that allow lawyers to operate effectively."); Robert Seibel et al., *An Integrated Training Program for Law and Counseling*, 35 J. LEGAL EDUC. 208, 209 (1985) ("Lawyers . . . must have the insight to understand their clients more holistically.").

162. As one poverty lawyer recently described:

The first thing that most poverty lawyers notice when interviewing clients is that their legal problems are rarely their only problems. Similarly, social workers, counselors, and educators have found that low-income families tend to have a range of interconnected problems. These problems commonly involve issues such as public benefits, housing, mental and physical health, and education. Accordingly, programs that serve low-income clients are begin-



partment to provide holistic counseling services to center clients.<sup>163</sup> A counseling professor and two counseling students maintain offices at the Center and work in conjunction with clinic students to provide holistic services to Center clients. There are also many service and educational benefits from this arrangement. They include the opportunity to:

- (1) provide for interdisciplinary learning to give both professions a more comprehensive perspective; each discipline gains from the other a different view of facts, roles, and goals in the client situation;
- (2) integrate legal and nonlegal analyses and solutions to the client's situation;
- (3) provide an environment where law students can learn more effective communication and listening skills and counselling students can become more sensitized to legal issues and their implications;
- (4) provide a learning situation in which law students can address directly the affective dimension of lawyering, and counseling students can focus on the problem analysis in helping clients;
- (5) examine the commonly held assumptions and stereotypes about each profession through personal interaction and collaboration;
- (6) investigate issues that arise uniquely from this team approach in assisting clients;
- (7) address the professional ethics and responsibilities of each discipline;
- (8) assist the faculty of each discipline to improve their teaching skills in both content and process; and
- (9) provide quality legal and counseling services to clients of the . . . [c]linic.<sup>164</sup>

One early joint initiative between the clinical programs and the counseling department that focuses on the intersection of three clinical subject areas has been the creation of a Battered Immigrant Womens' Support Group.

This holistic approach is also benefitted by the work of the Center's Outreach Coordinator, Mary Mendez, who has been described in the local press as a "one woman resource center."<sup>165</sup> She has been particularly adept at obtaining a full range of services for our clients such as medical care, furniture and clothing, child care, and job counselling, and at teaching students how to maintain contact with homeless clients who frequently move from shelter to shelter. The holistic model is also furthered through collaboration with the other non-profit community organizations

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ning to respond to the varied and mutually reinforcing problems faced by their clients.

Leigh Goodmark, *Can Poverty Lawyers Play Well With Others?: Including Legal Services In Integrated, School-Based Service Delivery Programs*, 4 GEO. J. ON FIGHTING POVERTY 243, 245-46 (1997); see also Richard C. Reuben, *Keeping Legal Aid Alive*, 82 A.B.A. J. 20, 21 (1996) (describing low-income service providers that take "a holistic approach, in which you look at the whole person at [the] moment of crisis, and try to see what service or combination of services will best help . . . immediately, and over the long term.").

163. Cf. Randy Retkin et al., *Attorneys and Social Workers Collaborating in HIV Care: Breaking New Ground*, 24 FORDHAM URB. L.J. 533, 547 (1997) (Elder and HIV attorneys "realize that it is best to approach their clients' concerns in a holistic manner rather than approaching legal issues separately from financial, psychological, and other concerns.").

164. Seibel et al., *supra* note 161, at 209-210.

165. Melissa F. Stoeltje, *Extending a Hand to the Homeless, Coordinator Provides Aid, Counselling*, SAN ANTONIO LIGHT, Oct. 19, 1992 at H1.

housed in the Center,<sup>166</sup> and through coordination with the law school's *pro bono* and public interest programs.

## 2. Community Empowerment

A 1994 legal needs study by the ABA concluded that the category of "community and regional legal needs" was one of the most frequently reported unmet needs.<sup>167</sup> This category included inadequate municipal services, abandoned buildings, and decaying infrastructure, among others.<sup>168</sup> The impoverished urban and rural communities of San Antonio and South Texas also suffer from lack of access to counsel in matters involving affordable housing stock creation, job and small business development, affordable child care development, job training, and credit access, among others.

Since the 1980s, community economic development (CED) strategies for addressing issues of community poverty have gained increasing credibility among low-income client groups, members of Congress and policy makers.<sup>169</sup> CED strategies seek to empower "clients to become producers not just consumers, providers not just users and owners, not just employees."<sup>170</sup> These strategies are predicated on the assumption that the paramount problem in low-income communities is their poverty and structural and institutional disadvantage, not the personal pathology of their residents.<sup>171</sup> Accordingly, the stimulation and creation of community centered institutions and structures to improve the quality of residential life lie at the heart of this work.

CED legal work involves the pursuit of approaches for addressing long-term problems of poverty.<sup>172</sup> If litigation and direct service attempts to build a safety net for the poor for example, by not letting clients' civil or criminal or immigration problems push them below a certain basic

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166. These organizations include: *Partners for the Common Good 2000*, which provides financing for low-income housing, microenterprises, and other programs to bring low income persons into the economic mainstream; a small satellite of *Bexar County Legal Aid*, the local legal services provider whose funding has been substantially reduced; *The Appleseed Foundation*, an organization of Harvard Law graduates dedicated to public interest law that has established its fourth national Center for Law and Justice at St. Mary's; and *Hispanas Unidas*, an organization dedicated to assisting *Latinas* to realize their full potential.

167. See AMERICAN BAR ASSOCIATION CONSORTIUM ON LEGAL SERVICES, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS—MAJOR FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY (1994).

168. See *id.* at 11.

169. See Economic Development and Law Center Report, *Community Economic Development: A Crucial Role for Legal Services Attorneys* (Jan./Feb. 1980).

170. National Economic Development and Law Center, *Community Economic Development and Legal Services in the 80's: A Continuing Discussion* (1980).

171. See *id.*

172. See Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLIN. L. REV. 195, 205 (1997); Leslie Newman, National Economic Development and Law Center, *Law Schools and Community Economic Development* 1-2 (1993).

level of human dignity or survival, CED work is designed to create a ladder for community residents to escape poverty.

Community development lawyers and community development clinical programs ordinarily represent groups and not individuals.<sup>173</sup> They emphasize non-litigation approaches to public interest law and problem solving.<sup>174</sup> The substantive legal work involves the tools of business law and the law of other institutions—corporate, tax, real estate, contract, banking, municipal law, and finance.<sup>175</sup> By applying “corporate law for the poor,” CED lawyers can create institutions such as community development corporations (CDCs) that can obtain grants and funds and provide much needed services and institutions in underserved areas such as infrastructure improvement, child care, job training, and affordable housing.

CED lawyers are transactional lawyers, deal makers and counselors and they can serve as advisors and counselors to these CDCs much as would an in-house counsel to a for-profit corporation.<sup>176</sup> Consistent with the approach of helping communities develop their own community-based mechanisms for addressing poverty, CED lawyers can also engage in community legal education to bring knowledge of the legal process to residents of isolated and underserved areas. This includes “educat[ing] clients about how they can be effective in legal matters without the help of lawyers and of how to maximize client control over their lawyers in situations where they are represented.”<sup>177</sup> CED lawyers also engage in lobbying and rulemaking advocacy on behalf of CDC’s, other community groups and affected communities themselves.<sup>178</sup>

There are many educational benefits of community development clinics. They teach clinic participants transactional skills in a fluid real world context. They provide opportunities for professional growth for students who do not fancy themselves litigators and are more attracted to “a private consensual side of legal practice to which many lawyers are inclined.”<sup>179</sup> They also teach students interdisciplinary and collaborative problem-solving skills and demonstrate the ethical and functional issues involved in group representation.<sup>180</sup> Finally, they require students to immerse themselves in the affected communities thereby creating additional opportunities for transformative experiences.

The St. Mary’s Community Development Clinic is such a non-litigation community centered clinic. One area of emphasis is institution building and real estate and finance transactional work attacking the contract for

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173. See Pitteffoff, *supra* note 99, at 283.

174. See *id.*; see also Jones, *supra* note 172, at 204-05.

175. See Pitteffoff, *supra* note 99, at 283.

176. See Louise G. Trubek, *The Worst of Times . . . and the Best of Times: Lawyering for Poor Clients Today*, 22 *FORDHAM URB. L.J.* 1123, 1130-32 (1995).

177. Lehman & Lento, *supra* note 96, at 73; see also GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

178. See Lehman & Lento, *supra* note 96, at 73.

179. Pitteffoff, *supra* note 99, at 285.

180. See *id.*

deed system in the *colonias* of Webb county and the Rio Grande Valley. Students are helping residents convert these exploitative contracts to more consumer-oriented financing instruments such as deeds of trust. They are working in collaboration with a local non-profit organization that provides no-interest or low-interest loans for refinancing.<sup>181</sup> The clinic also conducts community legal education on contracts for deeds and the earned income tax credit in the *colonias*.<sup>182</sup>

Students are also creating CDCs in urban San Antonio including an effort to incorporate a child care project out of a small homeless shelter for single mothers with children. This work also reflects an extension of the center's holistic model as the shelter's residents are regularly represented by the civil and immigration clinics. The Clinic is also engaging in drafting legislation and lobbying on behalf of the NAACP on state Enterprise Zone and Historically Underutilized Business legislation. The Community Development Clinic has commenced a new community centered project to further invest community residents and groups in the work of the Center and provide an ongoing structural mechanism for community input. The Clinic is creating a community advisory board to guide and inform the work of all five of St. Mary's clinics as well as the ongoing operation of the entire Center for Legal and Social Justice.

### 3. *The Clinic Without Borders: International Human Rights*

Consistent with the globalization of economic and legal arrangements generally, the future of lawyering for low-income and subordinated persons and groups will be increasingly linked to understanding global political and economic ripple effects and cooperating with public interest lawyers across national borders.<sup>183</sup> "Specifically, the study of developing countries is increasingly important to fully understand the political economy of poverty in the United States."<sup>184</sup> The unmistakable influence of political and economic trends in Mexico and Central America on conditions in South Texas and the Texas border regions presents unusual opportunities for clinical advocacy and study of the practical role of international law and international institutions in addressing conditions of poverty and human suffering.

San Antonio and South Texas receive a steady influx of political and economic refugees from Mexico and other developing countries of Latin

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181. See generally Newman, *supra* note 172, at 11-12 (describing contract for deed system in El Cenizo *colonia* and the work of Tejas Community Credit Opportunities in facilitating refinancing).

182. The law school's pro bono program, in conjunction with both the Community Development Clinic and the Immigration Clinic, conduct a large Earned Income Tax Credit program every winter where students, faculty and staff travel to the Webb County *colonia* of El Cenizo on successive weekends to help low-income working residents file for the credit.

183. See Louise G. Trubek, *U.S. Legal Education and Legal Services for the Indigent: A Historical and Personal Perspective*, 5 MD. J. CONTEMP. LEGAL ISSUES 381, 392 (1994).

184. *Id.* at 393.

America and the Caribbean.<sup>185</sup> Thus, one focus of the St. Mary's International Human Rights Clinic (IHRC) is the representation of refugees in political asylum cases. The IHRC has for example, obtained the first INS hearing decision from an immigration judge granting asylum to a Mexican woman.<sup>186</sup> Although Americans tend to view Mexico as a free and open democracy, clinic students demonstrated that the woman had suffered political persecution in Mexico and was threatened with incarceration, torture and perhaps disappearance if she were returned to Mexico in retaliation for her political activism and participation as a leader of the opposition party, the Democratic Revolutionary Party (PRD).<sup>187</sup> IHRC students also successfully represented a Brazilian man fleeing persecution and torture based on his sexual orientation,<sup>188</sup> and other refugees from Guatemala, El Salvador, and Mexico. Current IHRC asylum cases include gender based claims on behalf of women from Mexico and Morocco who suffered severe violence inflicted by their spouses—so severe they are afraid to return to their home countries.

The IHRC also balances its individual client asylum cases with larger law reform projects that focus more directly on the application of international human rights law and international institutions. Students are instructed in the multifaceted and interdisciplinary skills and techniques of international human rights lawyering to induce compliance with the human rights norms of various treaties and international instruments. Their work involves:

documenting, reporting and pressuring governments to change abusive practices; engaging in international and domestic legal research and analysis to demonstrate why the law requires particular actions; recommending specific changes in law, policies, or practices to bring government into accord with human rights requirements; developing community education campaigns to help people understand what their rights are and how to exercise them; bringing abuses to the attention of the international institutions such as the United Nations and the Inter-American Commission on Human Rights; and litigation in domestic and international courts.<sup>189</sup>

Consistent with this focus, IHRC students have pursued a diverse range of projects including preparing submissions to President Clinton's Intelligence Oversight Board on the CIA's possibility complicity in the coverup of the murder of an American innkeeper, Michael Devine, by

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185. See generally, PLACES OF BIRTH OF THE TEXAS FOREIGN BORN POPULATION, U.S. DEPT. OF COMMERCE, BUREAU OF CENSUS (1990).

186. See Maria F. Durand, *S.A. Judge OKs Asylum for Matamoros Woman*, SAN ANTONIO EXPRESS NEWS, Nov. 28, 1995 (describing this case and the Clinic's work).

187. See *id.* See generally, Sam H. Verhovek, *In a Shift, U.S. Grants Asylum For Mexicans*, NEW YORK TIMES, December 1, 1995, at A5 (describing increasing INS recognition of human rights abuses in Mexico).

188. See Russell Gold, *U.S. Opens Door to Persecuted Gays*, SAN ANTONIO EXPRESS NEWS February 2, 1997, at 1N (describing this case and the Clinic's work).

189. Introductory memorandum from Professor Schurtman to incoming Human Rights Clinic students (August 15, 1997) (on file with author).

members of the Guatemalan military;<sup>190</sup> research and drafting of portions of the International Treaty on Landmines that garnered a nobel prize for the International Campaign to Ban Landmines;<sup>191</sup> a report to the U.N. Special Rapporteur on Torture in Mexico; and ongoing investigations on the non-enforcement of environmental and labor standards provided in international treaties, domestic law and under the North American Free Trade Agreement (NAFTA), and the misuse of funds under the San Antonio-based NAFTA institution, the North American Development (NAD) Bank.

IHRC students have also worked collaboratively with students in other clinics under the holistic model. For example, when an IHRC investigation of environmental human rights abuses on the border near Laredo revealed serious health and environmental risks posed by hazardous materials and a lack of enforcement of laws to control "hazmats" by state and federal authorities, the IHRC together with the Community Development Clinic helped educate and lobby government officials on the problem and then drafted a hazardous materials ordinance for the City of Laredo which can be enforced by municipal authorities.<sup>192</sup> Several students have been provided potentially transformative experiences to conduct on-site investigation in Guatemala on the Devine case; to work with indigenous groups to develop legal arguments and strategies to contest large-scale industrial development plans in Oaxaca, Mexico; and in the *Maquiladoras*<sup>193</sup> of Northern Mexico to help educate *Maquila* workers on the health risks of chemicals they work with and on their workplace safety rights. One bilingual student has successfully appeared and argued in a Mexican appeals court in Tamaulipas to obtain release of a young Mexican woman who was arrested on false criminal charges, tortured, forced to sign a fabricated confession, denied trial, and sentenced to ten years incarceration in a Nuevo Laredo prison. This case history and accompanying research also supported the preparation of a final report to the United Nations on the use of forced confessions in judicial proceedings in Nuevo Laredo, Mexico. The law school has recently created a "clinical fellowship" and hired a recent graduate of the IHRC—the lead

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190. See Ken Dilanian, *Woman Sues Government, With an Assist—St. Mary's Professor, Class Help Out*, SAN ANTONIO EXPRESS NEWS, March 26, 1996, 1996 WL 2826258 (describing case and the Clinic's work); see also Maria F. Durand, *Guatemala Report Hit By Women*, SAN ANTONIO EXPRESS NEWS, June 29, 1996, 1996 WL 2838927 (same and providing update). See generally Tim Weiner, *For the U.S., A Bad Bedfellow in Guatemala*, NEW YORK TIMES, May 12, 1996, § 4, p.1 (describing U.S. State Department revelations on this case).

191. See Tom Bower, *St. Mary's Prof., Student Share Piece of the Honor*, SAN ANTONIO EXPRESS NEWS, October 11, 1997, at 9A (describing Clinic's involvement in drafting of the Landmine treaty).

192. See Laredo Municipal Code § 15.68.110 *et seq.*

193. "Maquiladoras" are low wage, largely unregulated Mexican manufacturing plants that produce goods for sale in the United States. See Susanna Peters, *Labor Law for the Maquiladoras: Choosing Between Workers' Rights and Foreign Investment*, 11 COMP. LAB. L.J. 226, 226-227 (Winter 1990). "Maquila refers to the process of production or assembly operations; the factory within which the operations are housed is called a 'maquilador.' Managers and assembly workers in the border region refer to their jobs as 'Maquila.'"

advocate on the Nuevo Laredo forced confession case and UN Report—to create a pilot office of the Center for Legal and Social Justice in Laredo. The fellow will work out of a Laredo church and coordinate and help supervise the IHRC's work in northern Mexico, the Immigration Clinic's work at the INS detention center, and the Community Development Clinic's work in the *colonias* on the border.

4. *Clinical Diversity as a Social Justice Imperative: Multicultural Lawyering Education, Non-Discrimination, Role Modelling and Legal Services Operational Needs*

Diversity and inclusion with respect to faculty, students and staff are critical to the goals of social justice-oriented clinical programs. “[M]uch of the point of [higher] education is to teach students how others think and to help them understand different points of view—to teach students how to be sovereign, responsible, and informed citizens in a heterogeneous democracy.”<sup>194</sup> As a general matter, this proposition applies with greater force to an educational discipline like the study of law that is informed so deeply by human experience and personal interaction. More specifically, the proposition applies with greatest force to clinical legal education which focuses on lawyering in an increasingly pluralistic and multicultural society and which usually entails small classes and interactive and collaborative educational experiences.

Moreover, instruction in lawyering in a multicultural context should be an important element of the continuum of professional competency instruction and a mandatory component of social justice-oriented clinical programs.<sup>195</sup> Professor Charles Calleros writes:

[S]ome law students may expect to practice law in a field in which race, gender, sexual orientation, age, religion, physical and mental ability, economic class, and other significant personal characteristics simply do not matter. Thus, a graduate may try to define a narrow legal niche in which he or she can maintain at least the illusion that

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194. Akil R. Amar & Neal K. Katyal, *Bakke's Fate*, 43 U.C.L.A. L. REV. 1745, 1774 (1996).

195. Professor Bill Ong Hing has identified multicultural or “personal identification” instruction as essential to teaching about good community-oriented lawyering in subordinated communities. He writes:

Good community oriented lawyers, I believe, are humble, not paternalistic, identify and work with other allies in the community, respect the client's own talents and skills, work in partnership with the client, respect the client's informed judgment on case strategies, strive to demystify the law and procedure for clients, engage in substantial amounts of community education, consider an array of alternative approaches to legal problems, and get to know the community, much like a legal anthropologist. In teaching about good community lawyering, I stress that lawyers need to be conscious of the class, race, ethnicity, culture, gender, sexual orientation, possible physical disability, and age of the attorney, the client, their allies, their enemies, and other institutional players.

Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1808 (1993).

sensitivity to diverse perspectives is unnecessary for a successful practice of law. However, even those who do not seek to challenge the legal system's claims of objectivity will find it difficult to deny or escape the cultural pluralism of our national identity, because that pluralism often introduces an extra layer of complexity to legal disputes and may create special challenges in representing diverse clients.<sup>196</sup>

Professor Michelle Jacobs has observed that even the application of basic professional lawyering skills such as interviewing and counseling can cause marginalization, as opposed to empowerment, of clients in the lawyer-client relationship unless students are instructed on how to interact with clients who are different from them.<sup>197</sup> She advocates a form of cross-cultural counseling instruction that teaches students how to interact with clients and calls for examining our students' and our own limited pre-understandings and misconceptions about our clients.<sup>198</sup> Diversity of faculty, students and staff and the inclusion of both "insider" and "outsider" perspectives in the clinical firm enhance the learning environment for lessons of multiculturalism as they are not only a focus of discussion in a given class or case but can be reinforced through a constant dialogue among all participants.<sup>199</sup>

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196. Charles R. Calleros, *Training A Diverse Student Body for a Multicultural Society*, 8 LA RAZA L.J. 140, 142 (1995); see also Kimberly O'Leary, *Using Difference Analysis to teach Problem-Solving*, 4 CLINICAL L. REV. 65, 79 (1997) ("Both American Society and the legal profession are becoming more diverse. It will become incumbent upon lawyers to seek out and give voice to a range of viewpoints in stating legal problems and fashioning their solutions."); David Dominguez, *Beyond Zero-Sum Games: Multiculturalism as Enriched Law Training For All Students*, 44 J. LEGAL EDUC. 175, 177 (1994) ("[S]tudents understand the importance of being prepared for a problem-solving profession that is increasingly heterogeneous even within the white male community, and certainly among the growing numbers of professional colleagues, clients, and jurists who are women, people of color, people with disabilities, or people from other unfamiliar backgrounds.").

197. See Jacobs, *supra* note 47, *passim*.

198. See *id.* at 406-07 ("Unless we have the courage to look at the behaviors of our students and ourselves, our attempts to improve the lawyer-client relationship through client-centered counseling will remain less than satisfying."); see also O'Leary, *supra* note 196, at 66, *passim* (advocating "difference analysis" to teach students "to engage in routine examinations of a diverse range of viewpoints when assisting a client rather than focusing on options derived from the student's own world view."); Kim Earlene Baggett, *Cross-Cultural Legal Counselling*, 18 CREIGHTON L. REV. 145 (1985) (advocating increased legal education and training in cross-cultural counseling); cf. Isabelle R. Gunning, *Diversity Issues in Mediation: Controlling Negative Cultural Myths*, 1995 J. DISP. RESOL. 55, 86-87 (arguing that mediators need "cross-cultural mediation training" in order to "think about power imbalances that result from negative cultural myths and interpretive frameworks.").

199. Cf. Gunning, *supra* note 198, at 89 (arguing that use of diverse mediation teams may provide "symbolic and practical advantages to a mediation" and "has the advantage of conveying to the parties that there is at least an opportunity or possibility that one's circumstances and experiences can be understood."). See generally Jacobs, *supra* note 47, at n.279 (noting that cross-cultural legal counseling model "recognizes that there is no monolithic black or white indigent experience" and would be "instrumental" for lawyers and law students of any race dealing with dissimilar clients); Margaret E. Montoya, *Voicing Differences*, 4 CLIN. L. REV. 147, 152-57 (discussing the need to "re-map learning environments" to provide space for the voicing of both insider and outsider student perspectives in the teaching of difference and similarity).



Moreover, the MacCrate Report establishes a professional competency imperative to refrain from engaging in invidious discrimination in one's personal interactions with clients, witnesses, support staff, and other individuals.<sup>200</sup> This goal, by necessity, requires instruction in the many subtle and unsubtle ways in which invidious discrimination permeates our legal system.<sup>201</sup> Diversity of faculty, students and staff is also central to the goals of non-discrimination and non-discrimination instruction. Professor Charles Lawrence writes:

The diversity rationale is inseparable from the purpose of remedying our society's racism. . . . [W]e seek racial diversity in our student bodies and faculties because a central mission of the university must be the eradication of America's racism. We cannot pursue this mission without the collaboration of significant numbers of those who have experienced and continue to experience racial subordination.<sup>202</sup>

After documenting the pervasiveness of continuing racial discrimination,<sup>203</sup> Professor Lawrence reasoned that "[w]hile everyone is harmed by the damage racism does to our social fabric and our souls, the injury that racism does to racial minorities is concrete, immediate, personal and unceasing."<sup>204</sup> Lawrence further observed that while experiences of subordination "uniquely" qualify minorities to fight racism, "white students, faculty, lawyers, and judges" also bring "talents, skills, and values that are essential to the project of our common liberation."<sup>205</sup> He concludes that "[t]he fight against racism must, in the end, be an interracial collaboration."<sup>206</sup>

200. See MacCrate, *supra* note 5, and accompanying text.

201. See Aiken, *supra* note 48, *passim*.

202. Charles R. Lawrence, III, *Each Other's Harvest: Diversity's Deeper Meaning*, 31 U.S.F. L. REV. 757, 765 (1997).

203. See *id.* at 767-770 & n.47 (observing that the "recently formed Presidential Advisory Board on Race has called the problem 'virtually intractable,' and has noted that it continues to influence almost all aspects of American life including policies regulating the economy, education, health, even the environment."); see also Note, *An Evidentiary Framework for Diversity as a Compelling Interest in Higher Education*, 109 HARV. L. REV. 1357, 1366 (1996) [hereinafter *Diversity*] ("In American society, race powerfully influences an individual's life experiences. Career attainment, neighborhood composition, family structure, and personal associations vary across different races. '[A]t the level of experience, of everyday life, race is an almost indissoluble part of our identities.'").

204. Lawrence, *supra* note 202, at 775-76. As one commentator observed:

The influence of race on experience is not confined to racial minorities—it extends to whites as well. Whites often underestimate the impact of their race and the race of others. 'To be born white is to be free from confronting race on a daily, personal, interaction-by-interaction basis.' The experiences of whites in America are qualitatively different from those of nonwhites. For example, whites and blacks generally view race relations in America in very different terms: whites point to the continuing decline in racial discrimination, whereas blacks continue to be dismayed by racial barriers. The positive value of whiteness to whites is demonstrated by statements of white students who maintained that they would have to be compensated \$1 million dollars a year to give up their racial identities and become African-Americans for fifty years.

*Diversity*, *supra* note 203, at 1367-68.

205. Lawrence, *supra* note 202, at 777.

206. *Id.*

In the clinical teaching context, faculty diversity is also important to serve the unique professional development needs of students who will likely confront invidious discrimination in the legal system.<sup>207</sup> Faculty that have confronted marginalization and dignitary assaults as lawyers can draw on these experiences to mentor and model lawyering against personal subordination to students.<sup>208</sup> For example, Professor Jacobs has described the multiple layers of marginalization experienced by clinicians of color. She writes:

We, as lawyers of color, are treated differently and must deal with the ways race impacts on our own ability to represent clients effectively in a legal system in which we, like our clients, are marginalized. Because of the existence of racism, the students under our supervision will have a different clinical experience than those students under the supervision of a white colleague. A student under my supervision will encounter acts of marginalization committed against me as her supervisor, and simultaneously, against her client (who looks like me).<sup>209</sup>

While Jacobs concludes that hierarchy in the clinical professor-clinical student relationship is required to maintain professorial legitimacy in the face of the legal system's inevitable, invidious microaggressions,<sup>210</sup> I believe that the assaulted clinician's efforts to combat those slights can provide particularly valuable teaching and learning opportunities for students who will be forced to confront similar assaults their entire careers.

Finally, Congress, the Courts, and the U.S. Civil Rights Commission have long recognized that diversity in public service employment often promotes pressing operational needs in communities of color. These operational needs include facilitating responsiveness and fair treatment by those service entities, as well as promoting respect for, and cooperation with, the service providers among community residents.<sup>211</sup> These con-

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207. See generally Suelyn Scarnecchia, *Gender and Race Bias Against Lawyers: A Classroom Response*, 23 U. MICH. J.L. REFORM 319 (1990).

208. Compare Enrique R. Carrasco, *Collective Recognition as A Communitarian Device: Or, Of Course We Want To Be Role Models!*, 9 LA RAZA L.J. 81 (1996) (arguing that law professors of color committed to diversity should assume a role modeling function for students of color based on a "complex and multidimensional" conception of role model that is "rooted in community and critical to reform.") with Richard Delgado, *Affirmative Action as A Majoritarian Device: Or Do you Really Want To Be A Role Model?*, 89 MICH. L. REV. 1222 (1991) (setting out arguments against role modelling by faculty of color including assertion that role models must be assimilationist, and deceive students into accepting the myth of liberalism's equal opportunity).

209. Michelle S. Jacobs, *Legitimacy and the Power Game*, 1 CLIN. L. REV. 187, 189 (1994).

210. See *id.* at *passim*.

211. See, e.g., U.S. CIVIL RIGHTS COMMISSION, *MEXICAN AMERICANS AND THE ADMINISTRATION OF JUSTICE IN THE SOUTHWEST* 83 (1970) ("Public officials and private citizens, including judges, lawyers, probation officers, all expressed the belief that the fear and distrust which many Mexican Americans feel toward law enforcement agencies could be significantly dispelled by increasing the number of Mexican American law enforcement officers at all levels of authority."). See also S. REP. 92-415, 92nd Cong., 1st Sess. 10 (1971) ("The exclusion of minorities from effective participation in the bureaucracy not only pro-

cerns extend to the provision of legal services in low-income communities of color. As two legal services managing attorneys have observed:

When clients believe that legal services advocates share a common understanding of their problems, they are more likely to look to legal services as a resource and to participate in and support advocacy strategies that empower them. Likewise when staff believe that the program is trying to meet their needs, they are more likely to support the program's goals and objectives. . . . The absence of significant numbers of staff, managers, and policy-makers who come from the same backgrounds as legal services clients inhibits a common perspective on clients's issues and prevents a greater understanding of clients' concerns.<sup>212</sup>

Consistent with the above concerns, the LSC has promulgated regulations requiring legal services offices to establish qualifications for attorney positions that include:

(1) [k]nowledge and understanding of the legal problems and needs of the poor; . . . [(2)] [p]rior working experience in the client community, or in other programs to aid the poor; . . . [(3) the] [a]bility to communicate with persons in the client community, including, in areas where significant numbers of eligible clients speak a language other than English as their principal language; . . . [(4)] [c]ultural similarity with the client community; [and (5) residence in the client community].<sup>213</sup>

DOE regulations also reflect consideration of diversity concerns in clinical programs receiving Title IX funds, since it evaluates and funds applicants in part based on "[t]he extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applicants from persons who are members of groups that have been traditionally underrepresented."<sup>214</sup>

For all of these reasons, the promotion of diversity with respect to faculty, students and staff has been an important consideration in the design of St. Mary's clinical programs. Five of the ten clinical faculty members are persons of color, and seven of ten are women. Although, like

motes ignorance of minority problems in the particular community but also creates mistrust, alienation and all too often hostility towards the entire process of government."'). The compelling operation need for greater representational employment in public safety area "is not simply that blacks communicate better with blacks" but:

Rather, it is that effective crime prevention and solution depend heavily on the public support and cooperation which result only from public respect and confidence in the police. In short, the focus is not on the superior performance of minority officers, but on the public's perception of law enforcement officials and institutions.

Detroit Police Officers' Ass'n v. Young, 608 F.2d 671, 696 (6th Cir. 1979), cert. denied, 452 U.S. 938 (1981) (noting also that this operational concern extends to diversity among higher level administrators since "[i]f minority groups are to feel that they are not policed entirely by a white police force, they must see that Negro or other minority officers participate in policy-making and other crucial decisions.").

212. Paul E. Lee & Mary M. Lee, *Reflections From the Bottom of the Well: Racial Bias in the Provision of Legal Services to the Poor*, 27 CLEARINGHOUSE REV. 311, 314 (1993).

213. 45 C.F.R. § 1616.3 (c)-(f); §§ 1616.5 & part 1616.7 (1997).

214. 34 C.F.R. § 639.31(b)(2)(iv) (1997).

many schools, St. Mary's clinicians have varying positions and statuses, all have long-term job security and governance rights under ABA Standard 405(c).<sup>215</sup> This has been accomplished either through positions on the traditional tenure track, or through long-term contracts and governance rights under a newly created Clinical Professor of Law track that omits an obligation to produce traditional scholarship. I am African-American, tenured and the Director or Coordinator of our overall Clinical Programs. The Associate Coordinator of Clinical Programs, who is also the Director of the Civil Justice Clinic, is a Mexican-American woman on the tenure track. The Director of the Criminal Justice Clinic is a tenured Mexican-American man. The Director of the Community Development Clinic is a Mexican-American woman with a long-term voting contract. The Directors of the Immigration and Human Rights Clinics are both white women with long-term voting contracts. One Clinical Supervisor is a tenure-track Mexican-American women, one is a white man on a long-term voting contract, and the remaining two are white women with long-term voting contracts. Permanent staff includes six people: five women, four of whom are Latinos; one white woman; and one Mexican-American man. Our student composition tends to mirror the composition of the student body as a whole that is 40% students of color (mostly Mexican-American) and about 50% women.

5. *The Longitudinal Law School: The Social Justice Role in Facilitating Alumni Community Service*

Finally, St. Mary's is part of a four-school consortium along with City University of New York School of Law at Queens, Northeastern University School of Law, and the University of Maryland School of Law, that has received a two-year grant from George Soros's Open Society Institute (OSI) to create Community Legal Resources Networks (CLRN) to help address unmet community legal needs.<sup>216</sup>

The CLRNs focus on meeting underserved communities' needs through networks of each school's alumni working in solo and small community based practices. The CLRN project is motivated by several factors: (1) the inability of substantially restricted government funded legal services to address the enormous unmet legal needs of the poor; (2) the scarcity of post graduate employment that permits alumni to pursue public interest careers or engage in *pro bono* work; and (3) the reality that most graduates obtain employment in small and solo practices in communities and that these firms lack the organizational capacities and support networks enjoyed by large firms and in-house counsel to function effi-

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215. St. Mary's Director of Public Interest and Pro Bono Programs, while technically an administrator and not a clinical faculty member, has commenced work part-time in the Community Development Clinic. She is a white woman.

216. OSI awarded St. Mary's \$500,000 to create its CLRN entitled the People's Legal Assistance Network ("Plan").

ciently in the public good.<sup>217</sup>

The Consortium partners' proposals call for linking their respective graduates who are interested in and committed to performing *pro bono* or reduced fee public interest work and helping develop their practice settings "which are financially, professionally, and spiritually viable."<sup>218</sup> The Open Society Institute believes that this program has similar potential to the Ford Foundation's CLEPR program to transform legal education by altering and extending the relationship of law schools to their communities and alumni.<sup>219</sup> St. Mary's CLRN calls for employing modern technology, including the internet and a telephone hotline, to link geographically diverse and isolated practitioners in underserved South Texas communities "in ways which replicate the benefits and support found in large institutional practices."<sup>220</sup> As described in the proposal:

Participants will have access to computer assisted research, research provided by law students, faculty expertise, model briefs, pleadings and other forms and a variety of continuing legal education programs delivered by interactive computer technology. Through PLAN participation, community based lawyers can learn new areas of practice, communicate with peers, receive mentoring from faculty members, and share support for their common mission. As with other Consortium projects, the proposed plan provides a piece that was missing at St. Mary's—help for graduates to put their training into successful and effective solo and small practices to address the

217. See CLRN, *supra* note 112, at 1-2; see also Uphoff, et al., *supra* note 36, at 409 (noting that the majority of new graduates go into solo or small firm practices with little training or direct supervision and without a qualified mentor or the time, resources or expertise to engage in the independent study of lawyering).

218. See *id.* at 2.

219. Motivated by similar concerns, the University of Chicago has recently commenced a program to assist and encourage students to plan for the performance of pro bono work through their first five years of practice by requiring students participating in the public interest seminar to prepare a Major Anti-Poverty Pro Bono Project Plan (MAPPPP). See Gary Palm & Sandra Krider, *A MAPPPP to Ease the Transition Between Law School and a Satisfying Legal Career*, Clinical Legal Education Newsletter, Vol. VI., No. 4, 33 (May 1998). As described by Professors Gary Palm and Sandra Krider:

First, developing a MAPPPP helps a student establish goals by identifying legal needs and matching them with her interests. As part of her MAPPPP, the student must think about what pro bono should mean, identify legal needs in the community where she will practice, and look t examples of what is being done elsewhere. A MAPPPP also helps the student determine what she will be able to accomplish. The MAPPPP assignment requires the student to determine what she is competent to do, who will help her with her plan, what her employer will allow, and what she can afford in terms of both time and money. Finally, a MAPPPP helps the student identify the techniques, such as community advocacy, lobbying, and media work which are best suited to accomplishing her goals.

*Id.*

Approximately fifty law schools, including Yale, Harvard, Columbia and N.Y.U., promote and support their graduates' work through generous loan forgiveness or loan repayment assistance programs that reduce the educational debt burdens of graduates pursuing less remunerative public interest careers. See generally Richard C.E. Beck, *Loan Repayment Assistance Programs for Public Interest Lawyers: Why Does Everyone Think They Are Taxable?* 40 N.Y. L. SCH. L. REV. 251 (1996).

220. Palm & Skrider, *supra* note 219, at 26.

unmet needs of underserved communities.<sup>221</sup>

It is anticipated that St. Mary's clinical alumni, who bring clinical experience in lawyering in underserved communities to this endeavor, will be the pioneering CLRN participants, and that clinical faculty will be the primary mentors.

## VI. CONCLUSION

As a widening gulf emerges between rich and poor in American society and access to legal services becomes further removed from subordinated communities, the importance of clinical legal education's historic commitment to social justice becomes manifest. The need for law schools and universities to share their considerable resources in the struggle for justice and human dignity has scarcely been greater. The St. Mary's Center for Legal and Social Justice has been designed to join this struggle in the deeply underserved communities of South Texas and parts beyond. It endeavors to foster social justice through holistic representation and service, community empowerment, advocacy across international boundaries, and through the direct support, mentoring, and encouragement of alumni to create a self-perpetrating culture of lawyering in the public interest. It is bolstered in this mission by the rich benefits of a diverse student body, clinical faculty and staff, and through the pedagogical harmonization of community service and professional competency instruction imperatives. As with all "works in progress," the center's approach to social justice-oriented clinical education is fluid and organic. It is my hope that this article will produce discussion of our approaches and attendant suggestions, criticisms, and ideas for change or improvement in an evolving model.

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221. *Id.* at 26-27.

