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### “Impact” in 3D—Maximizing Impact Through Transactional Clinics

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# “IMPACT” IN 3D—MAXIMIZING IMPACT THROUGH TRANSACTIONAL CLINICS

PRAVEEN KOSURI\*

*In speaking about “impact” clinical legal education, it is almost always exclusively as litigation—innocence projects, representing Guantanamo detainees, human rights concerns, environmental issues. Though these clinical efforts target different societal ills, all try to use the legal system as a catalyst for change. Rarely do clinicians invoke the word “impact” in the same manner in discussing transactional legal work, much less transactional clinics. Yet, transactional clinics can, and do, perform impact work. This article describes the current landscape of transactional clinics, the distinct evolution of community economic development clinics as opposed to small business and organizations clinics and argues that both can expand their vision of impact and employ new strategies to affect change. The article discusses the importance of clinic design in assuring that impact work is not undertaken at the expense of students’ education. It argues that clinic design is comprised of three separate dimensions—service, skills development, and pedagogy—each of which influences and is influenced by the type of work that a clinic undertakes. The article suggests that clinicians should deliberately assess each dimension in determining its effect on an impact strategy. The article concludes by describing particular impact strategies the author employs in the clinic he directs, the strengths and weaknesses of these strategies, and encourages transactional clinicians to expand their conception of “impact” transactional work.*

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I. INTRODUCTION

When clinicians talk about “impact” clinical legal education it is almost exclusively in terms of litigation.<sup>1</sup> Law clinic listservs, blogs, and news stories are replete with success stories about: the exoneration of an innocent person on death row;<sup>2</sup> a habeas petition brought on behalf of someone unlawfully detained at Guantanamo;<sup>3</sup> a request

<sup>1</sup> Arthur Kinoy, *The Present Crisis in American Legal Education*, 24 RUT. L. REV. 1 (1969) (advocating that law school’s champion social issues by having students represent parties in “major cases”); George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162 (1973) (providing a history of early clinical legal education including a description of “law reform” clinics); Suzanne Valdez Carey, *An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice*, 51 KAN. L. REV. 509 (2003) (describing a history of litigation clinics including several “impact” clinics); Keith Findley, *The Pedagogy of Innocence Projects in Clinical Legal Education*, 13 CLIN. L. REV. 237 (2007) (describing the educational value of innocence projects).

<sup>2</sup> Email from Charles Press, Senior Supervising Attorney for Northern California Innocence Project, to Lawclinic Listserv (March 31, 2011, 11:47 EST) (on file with author).

<sup>3</sup> See Kaitlin Thomas, *Hamdan v. Rumsfeld: Neal Katyal ’95 Lead Students from*

for political asylum by someone fearing persecution in her home country;<sup>4</sup> or a successful civil rights action brought against an abusive police officer.<sup>5</sup> There are still more stories about class actions being waged to correct problems affecting groups of similarly situated people,<sup>6</sup> and still others about remedying environmental harms.<sup>7</sup> Though focusing on different areas of the law, these matters share the use of the legal system as a catalyst for change. Clinicians who engage in litigation emulate public interest and social justice lawyers from practice to design clinics that tackle similar issues. The goal, often referenced as “law reform,” is to perform work that transcends the representation of the individual clients served.<sup>8</sup> In many ways, this work is the natural continuation and outgrowth of social justice lawyers who founded the modern clinical movement.<sup>9</sup>

In contrast, when clinicians discuss “impact” transactional work—transformational work performed by transactional lawyers—the discussion is almost always relegated to one type of work—com-

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*Guantanamo to the Supreme Court*, 53 YALE L. REP. 37 (2006), <http://www.law.yale.edu/ylr/pdfs/v53-2/hamdan.pdf>; see also JOE MARGULIES, *GUANTANAMO AND THE ABUSE OF PRESIDENTIAL POWER* (2006).

<sup>4</sup> Email from Sarah Paoletti, Practice Associate Professor of Law at the University of Pennsylvania Law School, to Clinical Faculty at the University of Pennsylvania Law School (Feb. 24, 2011, 17:24 EST) (on file with author), regarding humanitarian asylum won on behalf of a client.

<sup>5</sup> Sabrina L. Miller, *Mandel Clinic Settles Suit on Behalf of Wrongfully Accused Man*, U. CHI. CHRONICLE (Oct. 19, 2006), <http://www.law.uchicago.edu/news/crapap101906>.

<sup>6</sup> Email from Gary Palm, Professor Emeritus of Law, University of Chicago Law School, forwarding message from John Amman, Clinic Director, St. Louis University Law School, to Gary Palm (July 12, 2010, 16:43 EST) (on file with author) regarding a \$30 mm class action judgment obtained by his clinic against the state of Missouri on behalf of blind people receiving a state pension.

<sup>7</sup> Email from Susan Rutberg, Director of Honors Lawyering and Externship Programs, Golden Gate University School of Law, to Lawclinic Listserv (Feb. 28, 2011, 14:16 EST) (on file with author), regarding victory of Golden Gate University School of Law’s Environmental Law and Justice Clinic to close a fossil fuel power plant in San Francisco.

<sup>8</sup> Grossman, *supra* note 1; Carey, *supra* note 1 (describing “law reform” as one of four models of clinics). See also Juliet Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLIN. L. REV. 333 (2009) (describing several impact clinics); Frank Askin, *A Law School Where Students Don’t Just Learn the Law; They Help Make the Law*, 51 RUTGERS L. REV. 855 (1998) (describing the “law reform” clinic that he supervised).

<sup>9</sup> Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks the Spot*, 17 CLIN. L. REV. 205, 206-07 (2010) (“[the founders of the modern clinical movement] were typically lawyers involved in the social and political movements of the 1960s and 1970s. They lived through and participated in an era of unprecedented political and social unrest—protests, riots, assassinations, political scandal. From that era of turmoil the modern clinical legal education movement was born”); see also Minna Kotkin & Dean Rivkin, *Clinical Legal Education at a Generational Crossroads: Reflections from Two Boomers*, 17 CLIN. L. REV. 197, 199 (2010) (“Most of us who formed the vanguard of clinical education in the 1970s and 1980s came to law school teaching from public interest/legal services/public defender backgrounds.”).

munity economic development (“CED”). The general public does not often think of transactional work as affecting social justice in the same manner as litigation. Transactional work rarely occurs in high profile venues that capture the attention and imagination of the general public as litigation does; there is no court proceeding, no oral argument, no fixed arena in which to challenge bad policy or rights violations. In addition, transactional lawyers often represent businesses and institutions that typically connote something different than public interest or public good. In conversations about poverty and social justice, words like “profit” and “business” are usually associated with institutions rather than people and with problems rather than remedies. Given these conceptions, it is no surprise that the litigators’ view of “impact” has not penetrated transactional lawyering. It is more difficult for lawyers and law students to see how transactional law can affect change in the same manner as litigation. Law schools certainly do not teach it. If there are any courses dealing with transactional lawyering they are almost always “deals” oriented or skills-based classes, but rarely do they promote transactional law as an impact strategy to affect change. Moreover, outside the CED world, transactional lawyers rarely come from social justice backgrounds.<sup>10</sup> This combination of conditions creates a climate where few lawyers look to employ transactional law practice as a vehicle for change.

This raises some interesting questions: (1) can transactional clinics achieve societal impact similar to impact litigation clinics through the work they perform; (2) how is transactional impact work currently conceived by the clinical community; and (3) is there a different way to think about transactional work that would encourage more transactional clinics to engage in impact work?

This article attempts to answer these questions by adopting the concept of “impact” used in the litigation clinic context and applying it to the transactional clinical setting. Ultimately, it challenges the transactional clinical community to take a broader view of impact and search for strategies to do more impactful work with its resources.

Part II of this article, describes transactional law and the current landscape of transactional clinical offerings in law schools today. It reveals that while there has been a proliferation of transactional clinics over the past ten years, the vast majority of those clinics have chosen to focus on transactional skills development. Those that engage in more systemic “impact” work do so as “traditional” CED clinics, but even those clinics have focused on a narrow slice of impact work. Part

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<sup>10</sup> Stephen F. Reed, *Clinical Legal Education at a Generational Crossroads: A Self-Focused Self Study of Self*, 17 CLIN. L. REV. 243 (2010) (describing his path from big firm, corporate lawyer to law school clinician).

III of this article deconstructs the prevailing notion of traditional CED and encourages CED clinics to expand the type of work they do to include more small business and entrepreneur counseling. It also encourages small business and organizations clinics to adopt more overt impact strategies in order to leverage their current work to create greater societal impact. In Part IV, the article introduces clinic design as an essential component of any impact strategy, arguing that impactful service should not come at the expense of students' educational experiences. Part IV describes a three-dimensional framework for clinic design that integrates service, skills training, and pedagogy to maximize clinical students' educational experience. Finally, in Parts V and VI, the article describes the Entrepreneurship Legal Clinic (the "ELC") at the University of Pennsylvania Law School as an example for how one might begin to expand the conception of "impact" transactional work and the strengths and challenges that conception presents.

## II. TRANSACTIONAL LAWYERING AND CLINICS

### A. *What Is Transactional Lawyering?*

"Transactional law" and "transactional clinic" are incredibly broad terms. Ronald Gilson famously classified transactional lawyers as "transaction cost engineers."<sup>11</sup> For some, anything that does not require advocating for a client through litigation qualifies as transactional.<sup>12</sup> Others think of transactional law as "doing deals" in the corporate and securities practice worlds of large law firms.<sup>13</sup> Transactional lawyering could also include land-use, regulatory, tax, bankruptcy or trusts and estates work.<sup>14</sup> Transactional work may also include counseling a client on: obtaining proper zoning, licensing and permitting necessary to operate a business; securing commercial leases; executing construction build-outs; compliance with labor and

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<sup>11</sup> Ronald Gilson, *Lawyers as Transaction Cost Engineers*, in 2 THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW 508 (Peter Newman ed., 1998).

<sup>12</sup> Dina Schlossberg, *An Examination of Transactional Law Clinics and Interdisciplinary Education*, 11 WASH. U. J. L. & POL'Y 195 n. 2 (2003) (defining transactional lawyering as "a practice that focuses on matters other than litigation or dispute resolution").

<sup>13</sup> Tina Stark, *Thinking Like a Deal Lawyer*, 54 J. LEGAL EDUC. 223 (2004) (describing transactional lawyers as deal lawyers); Thomas Disare, *A Lawyer's Education*, 7 MD. J. CONTEMP. LEGAL ISSUES 359 (1996) (describing his perspective on teaching law students as derived from his role as an associate in a corporate law department).

<sup>14</sup> Jonathan Todres, *Beyond the Case Method: Teaching Transactional Skills in the Classroom*, 37 J. L. MED. & ETHICS 375, 375 (2009) ("Transactional work encompasses everything from the securities and mergers & acquisitions deals done by large Wall Street law firms, to the small firm counseling a client opening a restaurant who needs legal advice on a lease agreement, contracts with suppliers, and other matters, to the solo practitioner who drafts wills for clients.").

employment laws; securing trademarks on names or logos; or drafting agreements with suppliers, vendors, or customers.<sup>15</sup> What constitutes transactional lawyering is often a broad subset of several practice areas. However, it is no broader than “litigation.” In fact, in its breadth, there is even greater opportunity to expand transactional clinics’ work and impact on society.

Unlike litigators, few law students understand what transactional lawyers do before entering law school.<sup>16</sup> They do not see dramatized versions of business lawyers counseling clients, either on television or in the movies. Even after students begin law school, there is very little exposure to transactional lawyering. Most contracts courses do not require students to read contracts, much less write them. The Langdellian method, so firmly rooted in the first year law curriculum, stresses reading appellate court opinions about past disputes, not business cases involving strategy or decision-making. The analytic paradigm that law students employ is backwards looking while transactional lawyering is forward looking. Not only do transactional lawyers try to avoid potential litigation, they look to execute upon mutual agreements to accomplish something—to transact deals.<sup>17</sup>

This provides a challenge to law school transactional clinics. Though often clinics are conceived as sites where students apply theory they have learned in substantive courses, in the transactional setting, students have likely not learned much theory to apply. This creates a scenario where transactional clinics may disproportionately focus on skills training.

The lack of orientation and grounding in transactional law not only manifests in a different setting—the dynamic world versus the rule-governed forum of a courtroom—it also requires different lawyering tools. The fundamentals of interviewing, counseling, problem-solving and communication are ever present for all lawyers.<sup>18</sup> How-

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<sup>15</sup> These matters are all commonly encountered in transactional clinics that represent both for-profit and nonprofit organizations. I include both for-profit and nonprofit enterprises when I use the terms “business” and “entrepreneur” for both types of ventures must operate by the same fundamental principles in order to survive.

<sup>16</sup> Robert Illig, *The Oregon Method: An Alternative Model for Teaching Transactional Law*, 59 J. LEG. ED. 221, 221 (2009) (“Few students enter law school with any real sense of what it means to engage in a transactional legal practice.”).

<sup>17</sup> Disare, *supra* note 13; Stark, *supra* note 13; *see also* Karl S. Okamoto, *Teaching Transactional Lawyering*, 1 DREXEL L. REV. 69 (2009) (describing a simulated “deals” course for how to better teach law students transactional lawyering skills).

<sup>18</sup> DAVID A. BINDER, PAUL BERGMAN, SUSAN C. PRICE, & PAUL R. TREMBLAY, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (2nd ed. 2004) (describing methods for teaching fundamental lawyering skills such as interviewing, counseling, negotiation and communication); STEFAN KRIEGER & RICHARD K. NEUMANN, JR., *ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION AND PERSUASIVE FACT ANALYSIS* (4th ed. 2011) (showcasing interviewing, counseling, negotiation, and communi-

ever, transactional lawyers use words and documents to bring order to the dynamic, messy world of transactions.<sup>19</sup> Contract drafting and negotiation are key skills. These skills are different from legal writing taught in first year law programs that focus on drafting research memos and briefs. For example, transactional negotiation often occurs through the drafting process itself rather than through the arena of litigation settlement talks. In transactional lawyering, counseling takes the form of translating contract terms into business concepts and vice versa.<sup>20</sup> Litigation strategy gives way to business structuring and planning. Much of what transactional lawyers do is organize and coordinate multiple parties to work toward a common goal; requiring both project management skills and strong people management skills.<sup>21</sup> In short, being a transactional lawyer is different, and this difference often results in narrow views of transactional lawyering skills taught in law schools. Instead of focusing on the higher level skills of creative problem-solving, project management or strategizing and planning—skills that are indirectly associated with legal expertise—transactional clinics often concentrate on more direct legal skills like business entity formation, contract review, and drafting basic governance documents.<sup>22</sup> Clinics that narrowly focus on these direct transactional lawyering skills limit students' educational opportunities and the impact they could have on society.

### *B. What Is A Transactional Clinic?*

In all but a handful of situations, transactional legal clinics emerged well after the social justice explosion of Ford Foundation clinics that were created in the mid to late 1970s and early 1980s.<sup>23</sup>

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cation as fundamental lawyering skills).

<sup>19</sup> Black's Law Dictionary defines "transaction" as "the act or an instance of conducting business or other dealings. . . ." BLACK'S LAW DICTIONARY 1635 (9th ed. 2009).

<sup>20</sup> Stark, *supra* note 13 at 223-24.

<sup>21</sup> David E. Van Zandt, *Foundational Competencies: Innovations in Legal Education*, 61 RUTGERS L. REV. 1127, 1139 (2009); Disare, *supra* note 13 at 379 ("Lawyering is not about skills training or legal analysis or acquiring research and writing skills. Lawyering is about taking an individual who has these skills along with other personal skills and traits, putting her in a particular situation, and allowing her to use those skills to influence the people involved in a particular situation in a positive way.").

<sup>22</sup> Depending on the complexity of the facts, entity formation, contract review and governance document drafting can entail much more rigor than I imply. I do not intend to diminish their importance or the importance of fundamental skills like interviewing, counseling or negotiation. However, clinics have the opportunity to give students a competitive advantage over students without a clinical experience, and the true value of a clinic is not merely to expose students to basic skills that they would otherwise acquire within months of practice, but rather to teach them skills that will differentiate them from their "un-cliniced" peers and last them years into practice. My belief is that the competitive advantage comes from those "higher level skills."

<sup>23</sup> Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for This*



Most early transactional clinics were CED clinics focused on affordable housing transactions and were created to complement housing policy and litigation clinics.<sup>24</sup> Those early CED clinics expanded (and encouraged newer CED clinics) to focus on representing institutions and groups bringing community and economic development resources to neighborhoods.<sup>25</sup>

It is important to note the distinct history and evolution of CED clinics from the proliferation of transactional clinics that has occurred in the 21st century. Not only were CED clinics directly derived from the social justice litigation clinics of the 1970s, but their paradigm for lawyering was derived directly from the communities they served. CED lawyers are advocates. They are political lawyers who help community clients organize and build institutions that hopefully help to improve neighborhoods. Though CED lawyers often represent clients in transactions, they are not transactional lawyers—CED lawyers' focus is on communities and community desires. Transactional lawyers, on the other hand, are focused on deals. A deal may be as direct as buying or selling a business; creating a new entity; obtaining proper zoning for a business; or as amorphous and macro as increasing business activity along a commercial corridor or transforming a blighted piece of real estate into a community asset that provides education, economic opportunity and jobs to community residents. For the transactional lawyer, the main objective is to get the deal done. Though they advocate for their clients' interests, they are not practicing advocacy the same way that CED lawyers do. Where "mission" permeates the world of CED lawyers, business objectives and goals direct transactional lawyers. In fact, one could argue that "mission" gets in the way of getting the deal done. For transactional lawyers, every deal can get done, it is just a matter of market equilibrium. CED lawyers focus on social equilibrium instead.<sup>26</sup>

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*Millennium: The Third Wave*, 7 CLIN. L. REV. 1 (2000) (describing the modern era of clinical legal education as beginning in the 1960s with the infusion of Ford Foundation money to select law schools to begin clinical programs and continued into the 1970s with development of a clinical teaching methodology); Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 939-43 (1997) (describing the history of clinical legal education).

<sup>24</sup> Susan Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLIN. L. REV. 195, 204 n. 40 (1997) (citing interview with Michael Diamond: "In the early 1970s there were several early CED efforts in law school clinics. . . [these focused on] tenant organizing, housing representation efforts and larger anti-poverty strategy; they were not clearly definable as CED clinics and there is limited information about these early efforts in legal literature.").

<sup>25</sup> *Id.*

<sup>26</sup> The differences in approach between CED lawyers and transactional lawyers warrants a greater discussion than this article allows. In my view, the differences between the two sets of lawyers influences many of the choices in case selection, skills focus, and

The difference between CED and transactional lawyers carries over to CED and transactional clinics as well. Most transactional clinics were founded at the beginning of this century to meet law student demands for transactional skills training that reflected the reality of being a corporate lawyer.<sup>27</sup> Transactional clinics' primary focus is on grounding students in fundamental transactional skills. Some combination of for-profit and nonprofit ventures comprise the client base but without an overt impact strategy. I group these clinics—small business and nonprofit organizations clinics—as “general services clinics.”<sup>28</sup> The clinicians who run them are usually far removed from the social justice imperative that inspired modern clinical legal education in the 1970s and 1980s. This bifurcation of transactional clinics—CED clinics and general services clinics—complicates the discussion of impact strategies that transactional clinics can adopt. However, both CED and general services clinics have the capacity to engage in

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pedagogy made by the respective clinics.

<sup>27</sup> Two examples of this type of clinic are: *Small Business Opportunity Center*, NORTHWESTERN LAW, BLUHM LEGAL CLINIC, <http://www.law.northwestern.edu/legalclinic/sboc/about/students.html> (last visited Aug. 20, 2011) (“The Small Business Opportunity Center was established to provide second- and third-year students with hands-on business experience. Many of America’s leading law schools, including Northwestern, offer students an opportunity to gain practical experience through a variety of clinical programs, but almost all are in the areas of trial and appellate advocacy and other forms of litigation. The SBOC adds a business component to Northwestern’s already nationally-acclaimed clinical programs.”), and Western New England Law School’s Small Business Clinic: *Small Business Clinic*, WESTERN NEW ENGLAND UNIVERSITY, SCHOOL OF LAW, <http://www1.law.wnec.edu/academics/index.cfm?selection=doc.8104> (last visited Aug. 20, 2011) (“The goal of the clinic is to expose students to the methodology and mindset of business lawyering. Law students work with the entrepreneurs to identify the legal issues new businesses confront. They also develop important skills, including the ability to pinpoint key issues in an interview with a client. The clinic is part of a national trend to develop transactional educational opportunities to complement the traditional litigation-focused clinics that have long dominated clinical legal education.”); see also Van Zandt, *supra* note 21.

<sup>28</sup> Though many nonprofit organizations perform work that improves communities and lives, not all nonprofit clinics are engaged in impact work. Many nonprofit clinics deliver services to clients without an impact strategy. They do not target a neighborhood or identified need. Their focus is on the transactional needs of the client, not what the client’s mission or goals are. They are general services clinics just as much as clinics representing for-profit ventures without an impact strategy are. By example, the “*Business Law Transactions Clinic*” at NYU Law School only represents nonprofit organizations aiming to replicate the work of transactional associates in law firms: *One Semester Clinics*, NEW YORK UNIVERSITY LAW, <http://www.law.nyu.edu/academics/clinics/semester/index.htm> (last visited Aug. 30, 2011) (“The students’ work will include planning transactions and drafting contracts, memoranda of understanding, leases, promissory notes, employment agreements and other operating agreements; advising executives and boards on governance and disclosure practices; reviewing and preparing bylaws, conflict-of-interest, investment, social media and other board policies and materials, and employee manuals, committee charters; and developing analytical, planning, editorial and counseling skills in the context of client projects and reality-grounded class work; planning transactions; drafting contracts and other operating agreements; and preparing work plan and other project documents.”).

greater impact work without altering their core paradigms.

Transactional clinics are still in the early stages of development. There are approximately 80 live-client transactional clinics spread over 200 law schools in the U.S., with some of those schools housing more than one transactional clinic. In marketing terms, transactional clinics have barely penetrated 40% of law schools, nationwide. Even more striking is that even with the proliferation of transactional clinics over the past ten years<sup>29</sup> they still comprise only about 10% of all live-client clinical offerings.<sup>30</sup>

Over two-thirds of the approximately 80 transactional clinics are general services clinics representing some combination of for-profit and nonprofit ventures in general transactional matters. Most of these clinics impose financial and geographic constraints in selecting their clients but do not explicitly attempt to leverage their representations into broader community impact though they may possess the essential elements to do so. The other one-third of transactional clinics describe themselves as CED clinics,<sup>31</sup> however they vary in the type of work they undertake and the level of “impact” they create.<sup>32</sup> Very few of

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<sup>29</sup> Over the years there have been various attempts at taking a census for transactional clinics, however no definitive list exists. In the course of writing this article, I attempted to create as accurate a list as possible. By way of methodology, I started with the list of transactional experiential learning opportunities compiled by Anthony Luppino and listed on the Kauffman Foundation’s Entrepreneurship Law website: *Law School Entrepreneurship Clinics*, ENTREPRENEURSHIP, <http://www.entrepreneurship.org/en/entrepreneurship-law/law-school-entrepreneurship-clinics.aspx> (last visited July 31, 2011). Then, I visited the websites of the listed experiences to determine whether they were live-in-house clinics or some other experiential opportunity. I also submitted a survey to transactional clinicians at the 2010 Transactional Clinics Conference in Phoenix, Arizona. Additionally, my research assistant, Alexandra Casagrande, and I made phone calls to various schools to clarify information about various transactional clinics. At the time of this writing there are 80 in-house, transactional clinics operated at 200 accredited law schools. Of those, 55 are “general services clinics,” and 25 are “traditional CED” clinics. There are 9 intellectual property clinics that sometimes engage in transactional work and another 16 programs which are simulation based or externships.

<sup>30</sup> *Report on the 2007-2008 Survey*, [CSALE]: CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION <http://www.csale.org/results.html> (last visited July 29, 2011). CSALE reports 809 live-client clinics in 131 responding schools. Of those, only 28 identify themselves as transactional clinics, although another 20 identify as housing clinics and another 38 identify as CED clinics. I counted all of the above as “transactional” for purposes of the statistic. It is likely that the number is even lower with some Housing and CED clinics engaged in policy or litigation work as opposed to transactional work.

<sup>31</sup> In 1997, Susan Jones identified 18 CED clinics. Fourteen years later, I have identified only 25. By contrast, the number of “general services” transactional clinics (which include small business clinics) has jumped from “only a few” to 55. See Jones, *supra* note 24 at 205 (“Presently there are about 18 law school clinics engaged in varying degrees in CED work. There are, however, only a few that provide ongoing small business legal assistance.”).

<sup>32</sup> My assessment is made from a combination of survey results, telephone conversations and a review of program websites. I recognize that the information I obtained is

these clinics employ an overt “impact” strategy or speak about the work they do in those terms.

Despite different evolutions, all transactional clinics generally emphasize key skill development in interviewing, planning, drafting, negotiating, and counseling. Practice areas include intellectual property, tax, charitable organizations, real estate, corporate or start-up ventures. Many of these clinics even focus their efforts on the underserved. But a clinic that simply acts as a vehicle to teach practice skills—even if focused on underserved clients—without an impact strategy, is underutilizing its resources and not maximizing the educational experience for its students.<sup>33</sup> Transactional clinics have the opportunity to enhance the educational experience for students by adopting an “impact strategy” that can also transform communities and lives. Part V of this article discusses the impact strategies employed to achieve these goals at the University of Pennsylvania Law School. But, first it makes sense to understand why, in my view, the transactional clinical community has adopted CED as its primary vehicle for creating impact.

### III. COMMUNITY ECONOMIC DEVELOPMENT

#### A. *What Is CED?*

According to William Simon, community economic development consists of: (1) efforts to develop housing, jobs or business opportunities for low-income people; (2) in which a leading role is played by nonprofit, non-governmental organizations; (3) that are accountable to residentially defined communities.<sup>34</sup> Traditionally, CED’s focus has been on improving the conditions of a particular distressed area by creating organizations that will deliver needed services to inhabitants of that area.<sup>35</sup> Even though CED is comprised of many different

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dynamic and may change from semester to semester based upon the client mix, who answers the survey, or who controls the content of the website. However, I am confident that, over time, clinics stay relatively consistent in terms of strategy and focus. If there is a dramatic shift in program focus, it is momentous and worthy of comment on a website or through affinity groups and thus would likely be incorporated in my assessment. I acknowledge that my extrapolations are limited by the data. I undertake an analysis of what transactional clinics actually do, as opposed to what they publically say they do in a forthcoming article.

<sup>33</sup> I do not believe that all transactional clinics must be “impact” clinics. *See supra* note 22; *infra* notes 87, 90, 137, and 141.

<sup>34</sup> WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT* 3 (2001).

<sup>35</sup> Steven H. Hobbs, *Toward a Theory of Law and Entrepreneurship*, 26 *CAP. U. L. REV.* 241, 264 (1997) (“CED is resident driven strategy that uses advocacy and development to produce tangible results such as affordable housing, credit unions, loan funds, employment and business opportunities, revitalized commercial districts, quality child-care

cogs—education, health, safety, housing, business development<sup>36</sup>—it has long been heralded as a way for transactional lawyers to engage in transformative work by helping to create institutions that would then engage in or promote the many needed components necessary to drive economic development.<sup>37</sup> In fact, CED, at its heart, is an impact strategy. Thus, it is no surprise that transactional lawyers, and later clinics, would choose this as their primary vehicle to bring about societal change.

### B. *The Roots Of Modern CED*

Modern CED can trace its roots to Lyndon Johnson’s “War on Poverty.” The establishment of the Economic Opportunity Act of 1964 seeded Community Development Corporations (“CDCs”) that were situated in distressed urban communities.<sup>38</sup>

Beginning with Ronald Reagan and continuing through Bill Clinton, the U.S. government shifted to market-based approaches to CED.<sup>39</sup> Michael Porter explains this top-down approach in his article, *The Competitive Advantage of the Inner-City*,<sup>40</sup> where he describes inner cities as founts of underutilized and unexplored assets for businesses and investors. Porter describes the advantages of the inner city over more suburban venues—increased logistics, proximity to transportation, availability of human capital, and access to underutilized physical assets. Ultimately he argues for greater corporate investment in inner cities. Consistent with Porter’s recommendations, city legislatures began implementing empowerment zones and tax-credit programs to spur outside investment in inner cities.<sup>41</sup> The goal was to draw investment from outsiders with the hope that these investments

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and other human services in neighborhoods.”). See also Scott Cummings, *Global Local Linkages in the Community Development Field*, in *PROGRESSIVE LAWYERING, GLOBALIZATION AND MARKETS: RETHINKING IDEOLOGY AND STRATEGY 1* (Clare Dalton ed., 2007) “[CED] has been. . .described as a quintessentially local project, one in which communities reconstruct dysfunctional markets as a way of reconstructing social relations and building political strength. As social policy, CED emphasizes local participation in the design and implementation of affordable housing, job creation, and financing programs.”).

<sup>36</sup> BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR ADVOCATES, LAWYERS AND POLICYMAKERS 3 (Roger A. Clay, Jr. & Susan Jones eds., 2009) (“CED is broader than economic development because it includes community building and the improvement of community life beyond the purely economic.”).

<sup>37</sup> Scott Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 *STAN. L. REV.* 399, 414 (2001) [hereinafter Cummings, *Grassroots*].

<sup>38</sup> *Id.* at 415.

<sup>39</sup> *Id.* at 422-29.

<sup>40</sup> Michael Porter, *The Competitive Advantage of the Inner-City*, 73 *HARV. BUSINESS REV.* 55 (May-June 1995).

<sup>41</sup> Cummings, *Grassroots*, *supra* note 37 at 428.

would trickle down to residents; increasing availability of affordable goods and services and job creation.<sup>42</sup> However, where successful, the empowerment zone model resulted in capital being exported *out of* the inner city rather than inuring to the communities where the investment occurred.<sup>43</sup> This transfer of assets out of communities runs contrary to the goal of CED which encourages the retention and enhancement of capital by communities in all forms—human, financial, social, and physical.<sup>44</sup>

Economic development with this top-down approach often takes the form of large redevelopment projects involving the establishment of big box retailers, sports stadiums, convention centers or mixed use housing developments on “brownfields.”<sup>45</sup> If there is the opportunity to include “small business” it is more often in the form of Starbucks than “Lulu’s Café.”<sup>46</sup>

CED lawyers, in this top-down system, create or represent the institutional structures (the CDC, the Community Development Financial Institution (“CDFI”) or the Community Group) that attract such investment, not investors or business ventures.<sup>47</sup> As Simon points out, it is the community which is the agent for economic development, not individual residents.<sup>48</sup> Another scholar, Laurie Hauber, agrees, “although touted as being locally controlled, these revitalization efforts are in reality controlled by the political and business leaders of a

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<sup>42</sup> Laurie Hauber, *Promoting Economic Justice Through Transactional Community-Centered Lawyering*, 27 ST. LOUIS U. PUB. L. REV. 3, 10 (2007) (referring to this concept as “capital investment driven by capitalistic elites”).

<sup>43</sup> See Michael H. Schill, *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 N.Y.U. REV. L. & SOC. CHANGE 753, 761-65 (1997) (describing the failure of enterprise zones to create opportunities for community residents). See also Hauber, *supra* note 42 at 10 (“These strategies place the focus on capital investment driven by ‘capitalistic elites,’ such as large business owners and investors, rather than low-income residents.”).

<sup>44</sup> Susan Bennett, Professor of Law, Director of the Community & Economic Development Law Clinic at American University Washington College of Law, at the Clinical Theory Workshop, New York Law School (Apr. 8, 2011) (unpublished manuscript) (forthcoming) in presenting a draft of her textbook on Community Development Law.

<sup>45</sup> A brownfield is typically a former industrial or commercial parcel of land the redevelopment of which may be complicated by environmental issues. See 42 U.S.C. §9601 (39) (2006) for CERCLA’s definition of “brownfield.”

<sup>46</sup> MAUREEN KENNEDY & PAUL LEONARD, BROOKINGS INSTITUTION, *DEALING WITH NEIGHBORHOOD CHANGE: A PRIMER ON GENTRIFICATION AND POLICY CHOICES* 21 (2001). See also Randy Shaw, *Redevelopment and Starbucks, It’s No Accident*, BEYOND CHRON, (June 6, 2005), <http://www.beyondchron.org/news/index.php?itemid=2298> (“...Redevelopment Agencies across California view the billion dollar corporate coffee chain [Starbucks] as central to their strategy for “urban renewal.”).

<sup>47</sup> Susan Bennett, *Embracing the Ill-Structured Problem in a Community Economic Development Clinic*, 9 CLIN. L. REV. 45 (2002); Hauber, *supra* note 42.

<sup>48</sup> Simon, *supra* note 34 at 4.

community rather than the residents.”<sup>49</sup>

In contrast to Porter’s “top-down” approach, some scholars have recently championed a more “bottom-up” approach.<sup>50</sup> Though the bottom up approach focuses on residents’ lives, it may not champion the residents themselves. Instead, the goal is to empower community residents to bring about change in their neighborhoods that they would like to see.<sup>51</sup> Community investment does not often take the form of capital, but rather the deployment of services needed to establish the base upon which development can take place. Often this means the creation of nonprofit organizations whose mission is to provide educational, health, and housing services to residents of distressed communities. Unlike Porter’s approach, these organizations are community based, or at least have strong relationships with the communities they assist, and desire to create or retain capital for those communities.<sup>52</sup> However, these efforts are still directed at groups and institutions, not individual residents of these communities.

### C. *The Role Of Transactional Lawyers In CED*

Transactional lawyers have often been involved in CED work by helping to create institutions that assist entrepreneurs and residents of communities. In fact, Ann Southworth in her article *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice* was the first person to refer to this type of work as “impact” work.<sup>53</sup>

Numerous CED scholars, practitioners and clinicians have described the role of lawyers in CED. Michael Diamond argues that lawyers engaged in CED work should focus on marshaling local community resources to garner power for those communities;<sup>54</sup> he asserts that lawyers should help create institutions that will help communities organize and mobilize resources.<sup>55</sup> Similarly, Alicia Alvarez writes

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<sup>49</sup> Hauber, *supra* note 42 at 8.

<sup>50</sup> Cummings, *Grassroots*, *supra* note 37; Hauber, *supra* note 42; Daniel Shah, *Lawyer for Empowerment: Community Development and Social Change*, 6 CLIN. L. REV. 217, 221 (1999) (advocating for the representation of community groups and coalitions to bring about economic development).

<sup>51</sup> Paraphrased from Mohandas K. Gandhi (“Be the change you wish to see.”).

<sup>52</sup> See Hauber, *supra* note 42 at 14-15; Cummings, *Grassroots*, *supra* note 37 at 444.

<sup>53</sup> Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 WIS. L. REV. 1122, 1126 (1996) (“...lawyers who provide counseling and transactional services to community organizations and small businesses are performing a type of ‘impact’ work that is conceptually different from litigation. . .”).

<sup>54</sup> Michael Diamond, *Community Economic Development: A Reflection of Community, Power and the Law*, 8 J. SMALL & EMERGING BUS. L. 151 (2004).

<sup>55</sup> He also argues that a lawyer should have a “defensible set of community goals” and allows for a lawyer to choose whom she represents and how she practices. See *id.* at 170.

that lawyers interested in CED seek greater collaboration with community groups to enable them “to gain control of the forces which affect their lives.”<sup>56</sup> Susan Bennett describes the prototypical CED clinic client as a neighborhood group convened by a city planning department to secure a grant to support small businesses, not the small businesses themselves.<sup>57</sup> Scott Cummings advocates that transactional lawyers should use legal advocacy to support community organizing around economic justice issues in order to refocus assistance on issues that will provide political leverage through a broader, “spatially decentered” approach;<sup>58</sup> stating that the goal is to “deploy transactional lawyering in a way that builds organized low-income constituencies that can challenge the distribution of political power.”<sup>59</sup> Cummings suggests that transactional lawyers should “draft living wage ordinances, structure worker-owned businesses, exact community benefits from subsidized redevelopment, enforce statutory job creation requirements, and establish targeted job training programs.”<sup>60</sup>

These conceptions of CED lawyering—focused on the representation of community groups, institutions, and policies—are what I refer to as “traditional” CED. They play an important role in the broad realm of CED and reach beyond the litigation-based legal services model of clinics that typically focuses on individual client representation. In fact, traditional CED focuses on macro level poverty alleviation rather than the representation of individual community residents. However, the macro focus creates a need for individual legal services that have the potential to solidify and deepen community impact.

What Diamond, Alvarez, Bennett and Cummings describe is, in fact, where transactional lawyers have focused their efforts in the CED realm. According to Ann Southworth’s empirical examination of the type of work transactional lawyers actually do in the CED setting, almost all of them represent nonprofit organizations designed to deliver programming and services to distressed communities.<sup>61</sup> This narrow conception of CED work limits the type of impact these clinics can achieve.

Often CED programs implemented to achieve business development are geared to provisioning capital or business education rather

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<sup>56</sup> Alicia Alvarez, *Community Development Clinics: What does Poverty Have to Do With Them?*, 34 *FORDHAM L.J.* 1269, 1274-75 (2007).

<sup>57</sup> Bennett, *supra* note 47 at 46.

<sup>58</sup> Cummings, *Grassroots*, *supra* note 37 at 455-56.

<sup>59</sup> Cummings, *Grassroots*, *supra* note 37 at 459.

<sup>60</sup> Cummings, *Grassroots*, *supra* note 37 at 464.

<sup>61</sup> Southworth, *supra* note 53 at 1135-47 (indicating that only one attorney out of 69 surveyed even mentioned doing work for microenterprises).



than individualized attention to entrepreneurs. For example, a CDC or Small Business Development Center might provide a business planning course that community entrepreneurs attend. The entrepreneur<sup>62</sup> may even successfully complete a business plan highlighting the importance of location for her business. But when she goes to execute it, she has no support. One of the first items may be to secure retail space for her store. But because she has never negotiated a commercial lease before, she does not know how much leverage she has or what clauses are most important. She may execute a lease that costs her more money or forces her into a sub-optimal location or limits her use. Each of these factors contributes to the likelihood of success or failure of a business.

In addition to technical expertise, lawyers, and students acting as lawyers, can provide substantial “non-legal” assistance to entrepreneurs trying to start businesses. Here, both CED clinics and general services clinics can expand the work they already do. Chris Rabb coined the term “invisible capital” to refer to the intangible resources that make one’s likelihood of success in starting a business greater than it would be otherwise.<sup>63</sup> Included in his list of resources that entrepreneurs bring with them to a venture are experience, knowledge, and relationships. Many inner city entrepreneurs lack these resources. Transactional lawyers and clinics can provide this capital by acting as counselors to entrepreneurs. Lawyers are facilitators. They have the ability to connect people to each other and to other resources. They bring with them knowledge from previous clients and situations—experience that individual entrepreneurs may have trouble replicating. A transactional clinic that represents entrepreneurs and business-owners who are not well-resourced can play an influential role in the potential success of the business by offering broader advice and facilitating resources rather than merely executing tasks at the client’s direction. However, the traditional CED focus on institutions and groups overlooks the delivery of legal services to individuals and the impact it could produce on communities and society.<sup>64</sup> By the same token, general services clinics can similarly enhance the effects of their individual client representations by including a more expansive set of lawyering tools.

CED scholars acknowledge the importance of small business development as an important component of neighborhood revitaliza-

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<sup>62</sup> *Supra* note 15.

<sup>63</sup> CHRIS RABB, *INVISIBLE CAPITAL: HOW UNSEEN FORCES SHAPE ENTREPRENEURIAL OPPORTUNITY* 6 (2010) (defining “invisible capital” as “the toolkit of our skills, knowledge, language, networks, and experiences, along with the set of assets we were born with. . .”).

<sup>64</sup> Hauber, *supra* note 42 at 15.

tion.<sup>65</sup> It is often seen as a vehicle for wealth creation and job creation for residents of distressed communities.<sup>66</sup> Susan Jones has identified a role for transactional clinics in rendering services to these microenterprises.<sup>67</sup> But even Jones, points out that very few clinics provide this type of service,<sup>68</sup> and even those that do rarely do so with a mechanism to achieve neighborhood revitalization. Because clinics have limited capacity, it is vital that they leverage that capacity in order to achieve maximum impact. General services clinics that deploy their services across a wide geographic area—even if targeting inner city entrepreneurs with limited resources—are diluting the effect their services and clients can have in revitalizing neighborhoods.

Pursuing CED through microenterprise development is like a pointillist painting. The canvas is some portion of an urban area. Each small business representation is a dot on the canvas. If a clinic represents 10 businesses in 10 different neighborhoods, the canvas will show ten dots. However, if those same ten dots are concentrated in the same block, you begin to see a form. With a few more dots, you begin to see a line; with a few more, the semblance of a shape; eventually, a picture emerges. In my view, this concentration of resources is essential for small business development to be a true CED strategy as described by Jones and others.

For CED clinics, expanding service from institutions and groups that already focus on community impact to individual residents of communities can deepen the impact these clinics make. For general services clinics—small business and organizations clinics—adopting an impact strategy that focuses resources on representation of entrepreneurial clients and broadening the service provided can transform much of the work they already do into impact work. Part V discusses, in more depth, the role that all transactional clinics can play in focusing on individual entrepreneurs as an impact strategy rather than primarily a way to teach skills.

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<sup>65</sup> Hauber, *supra* note 42, Jones, *supra* note 24; *See also* Martha Minow, *Lawyering for Human Dignity*, 11 AM. U. J. GENDER SOC. POL'Y & LAW 145, 162 (2003) (acknowledging the importance of small business representation as a component of economic development).

<sup>66</sup> Paul Watanabe, *The Rebirth of Fields Corner: Vietnamese Immigrant Entrepreneurs and the Revitalization of a Boston Neighborhood*, 31 W. NEW ENG. L. REV. 781, 793 (2009) (explaining the desire of immigrant business owners to pass their businesses to their children as part of their legacy); Robert E. Suggs, *Bringing Small Business Development to Urban Neighborhoods*, 30 HARV. C.R.-C.L. L. REV. 487 (1995) (describing business ownership as a means to accumulating wealth).

<sup>67</sup> Jones, *supra* note 24; *see also* Hauber, *supra* note 42.

<sup>68</sup> Jones, *supra* note 24 at 205.

## IV. INCORPORATING CLINIC DESIGN

A criticism of impact work is that it often requires clinical supervisors to be the primary lawyers on matters. Because impact work is usually more sophisticated and spans multiple terms, students may be in subordinate roles to the professor and do less of the “interesting” work. Relatedly, because the faculty member is doing more of the lawyering, the risk is that he will have less time to focus on teaching students. While these are legitimate concerns, they are manageable if clinicians think consciously about them. I contend that impact work unlocks the potential for enhanced skills development and deeper learning. Clinic design provides the mechanism for clinicians to manage these three dimensions—service, skills development, and pedagogy—and ensure that students’ educational experiences are also maximized.

Scholars have often characterized clinic design as balancing service to clients against pedagogical goals of student learning.<sup>69</sup> While valid, the balance is more nuanced than simply service versus pedagogy. Service encompasses the spectrum from individual client representation to issue driven, policy influencing engagement, often termed “law reform.”<sup>70</sup> As experiential learning opportunities expand to include simulation-based courses, the spectrum should include “no service” as a valid metric on the scale.<sup>71</sup>

The term “clinical pedagogy” has often conflated the philosophical underpinnings about what it is to be a lawyer with “skills training” components of a clinical experience, simplifying each unfairly. The term “skills training”<sup>72</sup> encompasses the everyday arsenal of tools that students acquire to enable them to be competent, functioning lawyers—drafting, research, interviewing, counseling, negotiation. Pedagogy, on the other hand, comprises theorizing and reflection about lawyering including issues such as socio-economic influences on

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<sup>69</sup> Blaze, *supra* note 23 at 950 (“The proper balance between meeting educational objectives and serving clients has been discussed since the earliest days of clinical education.”); Carey, *supra* note 1; Mark Spiegel, *Theory and Practice in Legal Education, An Essay on Clinical Education*, 34 UCLA L. REV. 577 (1987) (describing the evolution of clinical legal education from practical skills training to a teaching methodology).

<sup>70</sup> Grossman, *supra* note 1; Carey, *supra* note 1; Brodie, *supra* note 8; Askin, *supra* note 8.

<sup>71</sup> In fact, Gary Bellow described “clinical legal education” as any law related activity in which students engage outside the classroom as well as activities such as legal research, moot court and appellate case analysis. See Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 374, 375 (1973).

<sup>72</sup> I use the term “skills” because it is the dominant term in the literature, however it belies the importance and complexity of this dimension. I much prefer the term “competencies” and encourage its use by other scholars.

available solutions to problems, ethical and moral dilemmas, and service delivery. Pedagogy also entails encouraging students to be reflective and introspective about what they are doing, why they are doing it, and what they are learning.

It is these three distinct dimensions—service, skills training, and pedagogy—that comprise the essence of clinic design.<sup>73</sup> Each dimension ranges from the less impactful to the more impactful. The choices clinics make regarding design influences students' experiences. Every legal clinic has capacity and resource constraints, even if these constraints vary from school to school. Consequently, one important issue is how to utilize clinic assets to maximize return along each dimension—service, skills, and pedagogy. When we discuss “impact” it is almost exclusively in terms of service. I contend that the higher one is on the service dimension, the higher he can be on the other two dimensions as well. In other words, high impact service unlocks the higher impact potential of skills training and pedagogy.

#### A. *What Is “Impact?”*

The term “impact litigation” arose in the 1970s and related to the work of Cesar Chavez’s California Rural Legal Assistance.<sup>74</sup> Yet, work fitting that definition began long before that.<sup>75</sup> With its primary characteristic being catalyzing macro-level change through the courts, typical “impact litigation” includes: individuals with claims that if proven successful would benefit many others in their same circumstances; class actions to directly remedy a wrong suffered by many individuals; championing an issue as “client” by challenging the legiti-

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<sup>73</sup> Brodie, *supra* note 8; Binder et al., *supra* note 18 at 194 (stating the goal of clinic is (1) skills training and (2) to “imbue in students the desire to devote their professional lives to legal and social reform.”); Krieger & Neumann, *supra* note 18.

<sup>74</sup> Searching for the term “impact litigation” through scholarly databases reveals that the earliest mentions are between 1970 and 1972, all involving the California Rural Legal Assistance started in 1966 by Cesar Chavez. A national organization, sent from the Office of Economic Opportunity, evaluated the CRLA to see if it deserved funding—Governor Ronald Reagan wanted to withhold \$1.8 million in funding. The report stated that “while not perfect, the CRLA is an exemplary legal services program, providing a balanced approach between legal service and highly successful impact litigation.” In a later article, this quote, and the term “impact litigation,” is attributed to former U.S. Supreme Court Justice Tom Clark. “Impact litigation” may have been a phrase used by the CRLA in their promotional literature or how they described themselves, it is unclear. However, after this report the subsequent media stories and legal periodicals used the phrase “impact litigation” in connection with the CRLA between 1970 and 1973. See *Angry CRLA Asks Override of Fund Veto*, THE MODESTO BEE AND NEWS-HERALD (Dec. 28, 1970), at 2, available at <http://news.google.com/newspapers?id=QhAxAAAAIIBAJ&sjid=3uAFAAAAIIBAJ&pg=973,7538351&dq=impact+litigation+history&hl=en>.

<sup>75</sup> J.P. Ogilvy, *Celebrating CLEPR’s 40th Anniversary: The Early Development of Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools*, 16 CLIN. L. REV. 1, 4 (2009) (describing the early work of law school clinics).

macy of a law or statute. There are many forms of impact litigation but their unifying trait is an effort to bring about some sort of social change.<sup>76</sup>

Law students have received practical litigation training since the pre-Langdellian era of legal education began in the 1870s.<sup>77</sup> The first in-house clinic is attributed to Duke University's law school in 1931.<sup>78</sup> But the proliferation of law school clinics did not occur until the 1960s with assistance from the Ford Foundation.<sup>79</sup> By the late 1960s and early 1970s, supervising faculty members of early clinics started shifting the focus away from general legal services toward the most pressing problems of the era—racial and economic inequality, gender discrimination, freedom of speech, police abuses.<sup>80</sup>

One such program, the Rutgers-Newark Constitutional Law Clinic, was started in 1970 by Arthur Kinoy.<sup>81</sup> The Center initially focused on assisting civil rights activists in Mississippi by litigating select test cases. Law students were deployed to assist Kinoy and Frank Askin who were primary counsel in representations the Clinic undertook.<sup>82</sup> At Columbia University Law School, Professor Michael Meltsner tracked the Rutgers-Newark model closely using students to litigate complex criminal matters and select civil matters with broad societal impact.<sup>83</sup> Neither clinic called itself an “impact” clinic but

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<sup>76</sup> Michael Meltsner, *Clinical Education at Columbia: The Columbia Legal Assistance Resource*, 24 J. LEGAL EDUC. 237 (1971) (describing the impact made by clinic work at Columbia Law School).

<sup>77</sup> Mark Warren Bailey, *Early Legal Education in the United States: Natural Law Theory and Law as a Moral Science*, 48 J. LEG. ED. 311 (1998) (describing that the apprentice system for training lawyers persisted until the late 1800s).

<sup>78</sup> Blaze, *supra* note 23 at 940.

<sup>79</sup> Barry et al., *supra* note 23.

<sup>80</sup> Barry et al., *supra* note 23. See also PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION (1998) (“[c]linical education was born in the social ferment of the 1960s”); Spiegel, *supra* note 69 at 592 (describing that a focus in legal education during the 1960s and 1970s was professional responsibility, and the clinic became the primary vehicle to instill such values); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access To Justice*, 73 FORDHAM L. REV. 997, 998 (2004) (noting that early clinicians “observed the lack of practical involvement of the law schools in the rights revolution sweeping the courts and communities of America.”); Stephen Wizner & Robert Solomon, *Essay On the Political Dimension of Clinics, Law As Politics, A Response to Adam Babich*, 11 CLIN. L. REV. 473, 473 (2005) (referring to clinical education in the 1960s, “we believed that we were making a political decision – that lawyering on behalf of poor people meant representing the oppressed against entrenched interests, including the state.”).

<sup>81</sup> *Clinics: History*, RUTGERS SCHOOL OF LAW-NEWARK, <http://law.newark.rutgers.edu/clinics/history> (last visited Aug. 20, 2011); Frank Askin, *A Law School Where Students Don't Just Learn the Law; They Help Make the Law*, 51 RUTGERS L. REV. 855 (1998) (recounting the work of the Constitutional Law Clinic and Urban Legal Clinic at Rutgers Law School).

<sup>82</sup> Grossman, *supra* note 1.

<sup>83</sup> Meltsner, *supra* note 76.

each did work that transcended individual client representation.

Today there are many examples of impact litigation clinics that target particular issues.<sup>84</sup> However, they differ from each other in structure and strategy for achieving their impact. For some, the clinic exists to affect change on an issue it has identified.<sup>85</sup> For others, representing individual clients with a common set of problems gives rise to a derivative set of macro-level problems to solve.<sup>86</sup> However, all design their clinics focusing on service impact.

In my view, transactional clinics should take a page from these clinics and adopt a broader vision of “impact.”<sup>87</sup> The variety of projects and strategies that law reform clinics have employed to target social ills should serve as a model to transactional clinicians to expand their view of “impact” work. At the same time, transactional clinicians can avoid some of the pitfalls of impact work that litigation clinics have encountered. By recognizing that, in addition to service, skills training and pedagogy are essential elements to enhancing the learning experience of their students, transactional clinicians can intentionally design their clinics to ensure that these dimensions receive equal consideration.<sup>88</sup> In the clinical setting it is this triple impact—service, skills, and pedagogy—that maximizes the experience for clients, students, teachers, and society.

### *B. The Service Dimension*

Putting aside simulations, every experiential learning opportunity requires clients. Service is almost always framed as service to clients. Scholars have often discussed the service aspect of clinic design.<sup>89</sup> However, like most other aspects of clinic design, the type of service a clinic offers is a choice.

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<sup>84</sup> Carey *supra* note 1; Brodie, *supra* note 8; *see also* Kinoy, *supra* note 1; Grossman, *supra* note 1; Findley, *supra* note 1.

<sup>85</sup> Carey *supra* note 1 at 521.

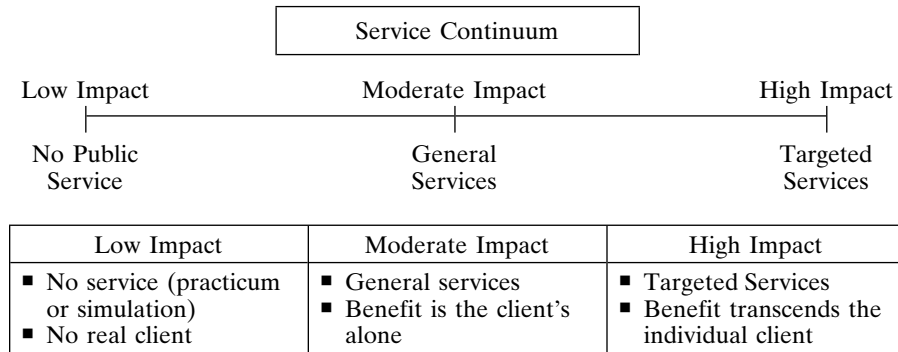
<sup>86</sup> For example, the Center on Wrongful Convictions at Northwestern School of Law began by representing clients sitting on Illinois’ death row. Through the representation of those clients, a host of issues requiring reform emerged. The Clinic now advocates for changes in policy and law in addition to representing the wrongfully accused. Interview with Larry Marshall, co-founder and former director of Center on Wrongful Convictions at Northwestern School of Law (Feb. 23, 2010) (notes on file with author).

<sup>87</sup> I am not arguing that all transactional clinics should employ this approach, nor is it an indictment of any clinic that chooses a less “impactful” model. Impact does not necessarily equal importance. Rather, if one is looking for a way to engage in “impact” work through transactional lawyering, this article provides some thoughts on how to achieve that end.

<sup>88</sup> *See* Bellow, *supra* note 71.

<sup>89</sup> Sameer Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355 (2008) (describing the “canon” of clinical legal education as client-centered lawyering featuring “small cases” focused on skills development and urging a departure from it); Brodie, *supra* note 8; Grossman, *supra* note 1; Carey *supra* note 1; Spiegel, *supra* note 69.

The service spectrum ranges from no service to high impact service. No service includes simulation-based experiential learning. General services clinics that take on a high volume of relatively simple cases spread across a diverse set of poverty law issues are situated in the middle of the spectrum. There is no question that services provided to individual clients are valuable, but the impact inures to the individual client and his family as opposed to the community or society at large.<sup>90</sup> On the high end of the spectrum are law reform clinics that choose matters based on their potential to change policy, law, or society.<sup>91</sup> The goal is to accomplish change for a group of people or a community through representation of individuals, organizations or issues. The distinguishing feature here is that law reform clinics help more than those whom the clinic represents.<sup>92</sup>



### C. The Skills Dimension

Every real-life experience imparts some knowledge to students whether passive or active.<sup>93</sup> Clinical legal education developed as a means to teach law students about the practice of law. Where once there existed an apprentice system that gave way to the Langdellian

<sup>90</sup> I recognize that the term “impact” may be contentious if not inaccurate. Securing benefits for someone who is disabled or helping a parent retain custody of his child is clearly life-altering for those individuals and “impactful” to them. But in this paper I adopt the meaning of “impact” ascribed by the litigation world and am adapting it to the transactional world; *see also supra* note 87 (“Impact does not necessarily equal importance.”).

<sup>91</sup> Grossman, *supra* note 1; *see also* Brodie, *supra* note 8 at 336-37 (for examples of impact litigation clinics).

<sup>92</sup> *See* Ashar, *supra* note 92 at 368 (describing a canon of clinical legal education as a service mission which is secondary to pedagogical goals).

<sup>93</sup> *See generally* Frank Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 331 (1982) (describing adult learning theory as it relates to law students and, specifically, clinical programs; drawing from the work of Malcolm Knowles, Bloch posits “the more active the learner’s role in the process, the more he is probably learning.”).

method of Socratic dialogue, law schools have returned to the desire to meld theory with practice.<sup>94</sup> Clinics can be viewed as forums for applied law. They disrupt the purely academic exercise of case reading by introducing real clients operating in the real world with real consequences and the opportunity to have real impact.

Mark Spiegel writes that “practice. . . is associated with the idea of repetition; therefore practice sometimes is equated with the gaining of skills by repetition.”<sup>95</sup> Many clinics are designed with this principal in mind. They attempt to structure a clinical experience that stresses high volume, discrete tasks that students can perform numerous times until mastered. The theory being that by focusing on a particular type of work and doing it multiple times, students will become proficient, and this “skill” will prove useful in practice. In these clinics, core practice skills such as interviewing, counseling, and planning are emphasized over learning substantive law.<sup>96</sup> These are important and essential skills that are the foundation for more sophisticated skills. Yet many clinics focus only on these fundamental skills at the expense of higher level skills which arguably will have a more significant impact on students and their careers.

Practicing lawyers and law students learn the law as it arises in their client representations. In fact, teaching students to learn how to learn is one of the fundamental goals for many clinics.<sup>97</sup> Within the traditional skills spectrum, the best lawyers employ sophisticated skills that are grounded in the lawyer’s role as problem-solver.<sup>98</sup> Often this role takes students outside the discipline of the law and requires them to use all of their education and experience, not merely their legal education and experience—arguably the highest level skill on the spectrum.<sup>99</sup> Engaging in and excelling in these higher level skills gives students leadership experience which is yet another higher level skill that will serve them well into practice.

A type of clinic focusing on Spiegel’s “practice skills” would be one offering unbundled legal services. Unbundled legal service in-

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<sup>94</sup> See Spiegel, *supra* note 69 at 580-89 (describing the history of legal education from before Langdell through the Ford Foundation creation of modern clinics); see also Barry et al., *supra* note 23.

<sup>95</sup> Spiegel, *supra* note 69.

<sup>96</sup> Binder et al., *supra* note 18; Krieger & Neumann, *supra* note 18.

<sup>97</sup> Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLIN. L. REV. 807, 821 (2006) (citing comments from Anthony G. Amsterdam at Deans’ Workshop, ABA Section of Legal Education and Admissions to the Bar (Jan. 23, 1982) (unpublished) that “the most significant contribution of the clinical method to legal education” is giving students an opportunity to learn how to learn from experience”).

<sup>98</sup> See *id.* at 810; see also Okamoto, *supra* note 17.

<sup>99</sup> See Rabb, *supra* note 63.



volves deconstructing client representations into small discrete tasks which can be handled in a far less holistic manner than a full blown lawyer-client relationship, albeit in far greater volume. Examples include hotlines, web pages, standardized pro se forms, courthouse kiosks, community education programs, and help desks.<sup>100</sup>

Mary Helen McNeal points out that clinics that practice this type of work offer little opportunity for students to develop a full range of lawyering skills. Even among the basic skills, students develop only limited interviewing skills because their interaction with clients is usually short in duration with a very limited focus. Relatedly, development of client counseling skills is constrained because the student has only superficial knowledge of the client or her goals. Most significantly, the student is not involved in client decision-making or plan implementation. This type of representation stifles creativity, a higher level skill. In an unbundled clinic, students' opportunities for oral and written advocacy are also limited. There is no opportunity to organize and manage legal work, also a higher level skill.

On the other hand, Frank Askin describes an impact clinic where students acted as assistants to the law faculty who were the primary lawyers.<sup>101</sup> With a subordinate role in the representation, these students were not on the highest end of the skills spectrum even though they were engaged in high impact service. Again, this, highlights the need for intentional and thoughtful design and implementation of an impact strategy to ensure that the experience enhances a student's experience rather than limits it.

Skills Continuum		
Low Impact	Moderate Impact	High Impact
Basic Skills	Intermediate Skills	High-Level Skills
Low Impact <sup>102</sup>	Moderate Impact	High Impact
<ul style="list-style-type: none"> <li>■ Document preparation</li> <li>■ Document review</li> <li>■ Following directions</li> <li>■ Shadowing practicing lawyers</li> </ul>	<ul style="list-style-type: none"> <li>■ Document drafting</li> <li>■ Negotiating</li> <li>■ Client communications                             <ul style="list-style-type: none"> <li>◦ Written</li> <li>◦ Oral</li> </ul> </li> <li>■ Teamwork and Collaboration</li> </ul>	<ul style="list-style-type: none"> <li>■ People Management (Client, Peer, Supervisor)</li> <li>■ Project management</li> <li>■ Decision-making</li> <li>■ Strategizing</li> <li>■ Problem-solving</li> <li>■ Leadership</li> </ul>

<sup>100</sup> Mary Helen McNeal, *Unbundling and Law School Clinics: Where's the Pedagogy?*, 7 CLIN. L. REV. 341, 350 (2001).

<sup>101</sup> Askin, *supra* note 81.

<sup>102</sup> The skills featured in the table are generalizable across practice areas, however there

#### D. *The Pedagogy Dimension*

Where service is oriented primarily toward clients, pedagogy focuses on students. Drawing from service and skills development that students perform, pedagogy encourages students to theorize and reflect upon that work. It is the critical dimension in the three-dimensional framework because it provides depth and context to the clinical experience.

Modern clinical pedagogy developed in the late 1970s and early 1980s.<sup>103</sup> Gary Bellow outlined a clinical teaching methodology built upon law students' roles as actual representatives of clients.<sup>104</sup> Supervising faculty members foster students' client-centered experiences that, in turn, serve as the focal point for further learning. Pedagogy focuses on examining the context and role of both students and clients. It evaluates interpersonal, procedural and mechanistic elements of lawyering.<sup>105</sup> At its highest levels, pedagogy forces "a study of judgment and a critical assessment of values and institutions."<sup>106</sup> It is not the same as skills which are the tasks that lawyers perform and the tactics lawyers use to assist clients. Pedagogy is teaching and learning about service and skills and makes the clinic experience unique from non-clinical work experience.<sup>107</sup>

Spiegel builds upon Gary Bellow's distinction between theory and practice by arguing that clinical legal education has chosen to focus more on practice and less on theory. For Spiegel, theory is an explanation that is abstracted enough to apply to more than a specific situation.<sup>108</sup> Practice, on the other hand, is the doing of something, also known as skills. Spiegel encourages the increased use of theory in clinical pedagogy. Drawing from Bellow's suggestion, in *On Teaching*

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are transactional skills that differ from litigation skills. I choose to focus on the more universal skills to (1) make the concept more accessible to all readers and (2) highlight that all clinics have the opportunity to design to maximize impact.

<sup>103</sup> Barry et al., *supra* note 23; Blaze, *supra* note 23; *see also*, William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View From the First Floor*, 28 AKRON L. REV. 463 (1995); Leah Wortham, Dean Hill Rivkin, Philip Schrag, Roger Wolf, Elliott Milstein & Kandis Scott, *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U. L. REV. 337, 341 (1987).

<sup>104</sup> Bellow, *supra* note 71.

<sup>105</sup> *Id.*; Carrie Menkel-Meadow, *The Legacy of Clinical Legal Education: Theories about Lawyering*, 29 CLEV. ST. L. REV. 555 (1980) (examining the sociological aspects of being a lawyer); *see also* Spiegel, *supra* note 69.

<sup>106</sup> Spiegel, *supra* note 69 at 600.

<sup>107</sup> *See* Michael Meltsner, *Writing, Reflecting and Professionalism*, 5 CLIN. L. REV. 455, 455-56 (1999) (describing early clinicians as lawyers adept at navigating legal procedures and wielding tactics who also knew how to supervise the legal work of students, but who did not have any experience or plan about teaching students in a clinic).

<sup>108</sup> Spiegel, *supra* note 108 at 580.

*the Teachers*,<sup>109</sup> to use the client experience as a starting point for further inquiry, Spiegel argues for the exploration of decision-making and critical analysis of students' lawyering experiences by connecting them with the political, social and psychological dimensions of lawyering. Spiegel also encourages delving into ethical dilemmas implicit in lawyers' work.<sup>110</sup> Spiegel refers to all of this as "theory." In my framework, Spiegel's "theory" is what I deem clinical pedagogy.<sup>111</sup>

Not all clinics employ this model however. The spectrum ranges from simulation courses which try to recreate real world settings to externships which place students in real world settings but without the formal supervision of full-time law faculty<sup>112</sup> to in-house-live-client clinics which may or may not utilize the experience of students as a starting point for further examination. All of these approaches have their place among experiential learning opportunities. The point is to recognize that they are all different approaches along the same continuum and each delivers different experiences for students and clients. Though a type of clinical experience may correlate to a point along the pedagogy spectrum, it is only a point of departure for further examination. The live-client experience may present a deeper pool of pedagogical issues, however if a teacher chooses not to engage them, he may be on the low end of the pedagogy scale. By the same token, an externship or simulation course could be higher on the scale depending on the instructor's focus.<sup>113</sup> Impact work provides a deep pool from which to pull rich issues that students can address. However, clinicians must be intentional about the pedagogical lessons they wish to bring to students. Determining, in advance, one's location on the pedagogy spectrum allows the clinician to analyze the issues that

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<sup>109</sup> Id. at 591; Bellow, *supra* note 71.

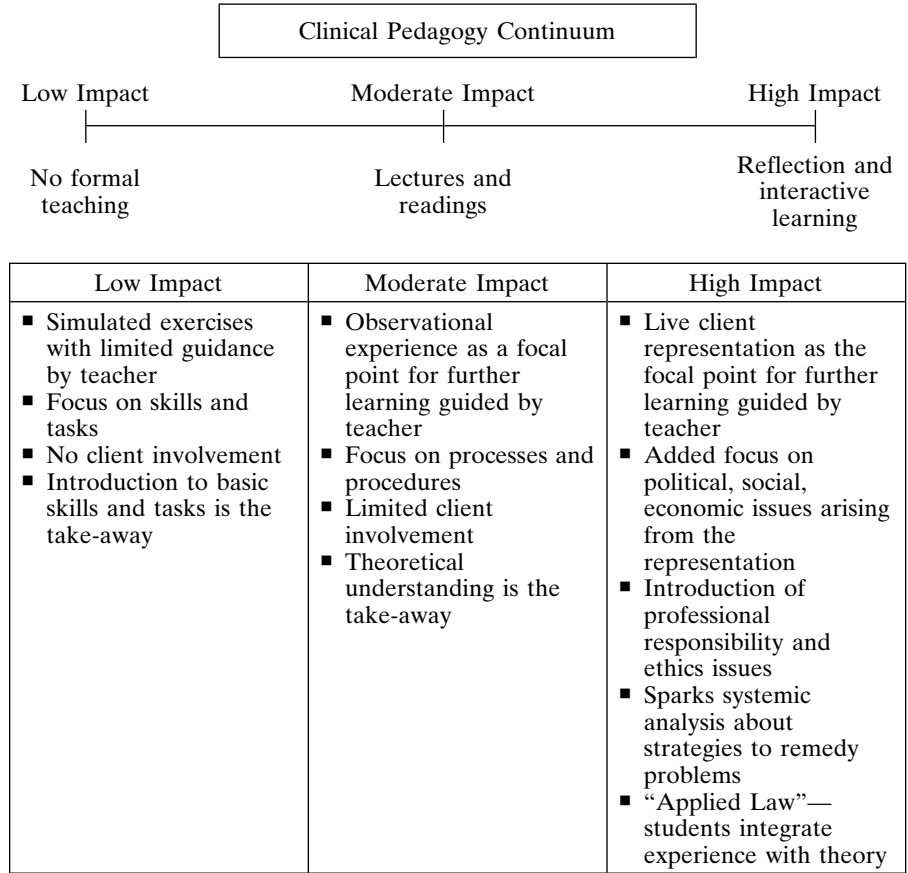
<sup>110</sup> See also Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327, 331 (2001) ("As clinical teachers we should engage with our students on a deeper level than simply teaching them the craft of practicing law. Our teaching must go beyond skills training.")

<sup>111</sup> Clinical scholarship is replete with explanations that conflate skills training with pedagogy—which I view as distinct. See Blaze, *supra* note 23 at 947-48 (describing John Bradway's five objectives to the clinical method of which only the "human element" and "professionalism" would be included in my conception of pedagogy); WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, AND LEE S. SHULMAN, EDUCATING LAWYERS 126-44 (2007) (referring to "three apprenticeships of professional education" of which the third apprenticeship addressing professional identity would be encompassed by my notion of pedagogy); see also Brodie, *supra* note 8 at 335 (referring to the concept of "lawyering values" as distinct from "lawyering skills").

<sup>112</sup> See Cynthia Baker & Robert Lancaster, *Under Pressure: Rethinking Externships in a Bleak Economy*, 17 CLIN. L. REV. 1 (2010) and Nancy M. Maurer & Robert F. Seibel, *Addressing Problems of Power and Supervision in Field Placements*, 17 CLIN. L. REV. 145 (2010) (describing the range of externship experiences and highlighting the design and implementation challenges present in delivering pedagogical value to students).

<sup>113</sup> Maurer & Seibel, *supra* note 112.

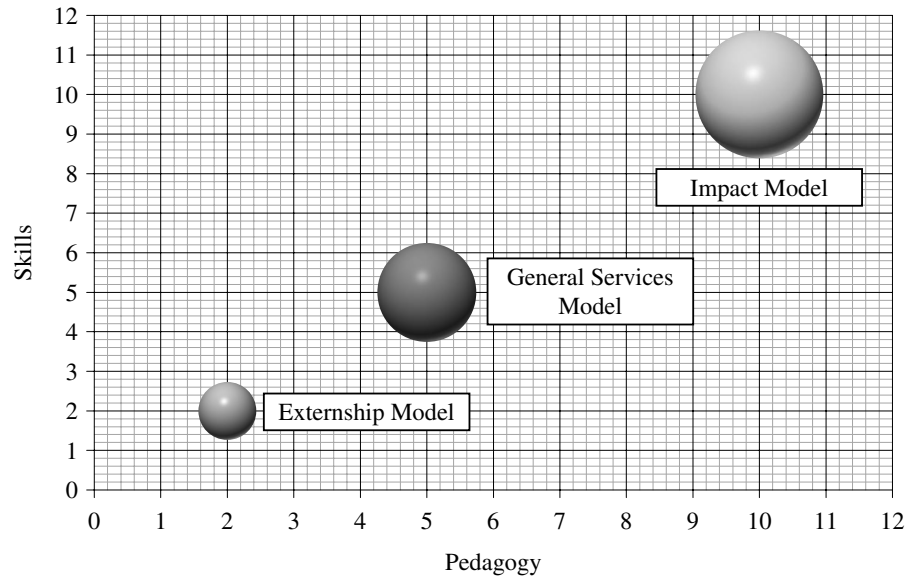
arise during the course of a representation from that perspective.



*E. The Clinical Synthesis*

The three dimensions—service, skills development, and pedagogy—provide the framework for the clinical experience. One way to illustrate the various dimensions and how one could organize a clinic differently along all three is by example. For purposes of discussion, I have constructed three hypothetical clinics. They are simplified to drive home the concept of placement along all three dimensions. In reality, each can be as nuanced and complex as to warrant placement anywhere on the map.

*Externship Model:* The first is an externship. In this hypothetical learning experience, students are sent to the general counsel’s office of a local business organization outside the law school. There, they accompany a practicing attorney who is not a teacher but who has agreed to supervise them. The students do not usually represent cli-



\* **Clinical Synthesis Map** – The size of a globe represents the **Service** component of a clinic.

ents themselves and are mostly there to observe. They listen in on telephone calls and attend meetings with the supervising attorney. They may draft internal memos or review agreements. There is no classroom component and cursory oversight by a full-time faculty member. This is a relatively low impact experience along all three dimensions.

*General Services Model:* The second clinic is a live-client, in-house legal clinic supervised by full-time faculty. It is a general services clinic taking any transactional matter that walks in the door as long as it meets basic requirements (e.g. that the client has limited financial means and the client work is transactional in nature). The focus is on matters that students can accomplish within a semester's time with minimal strategic or analytical thought. The faculty member acts as primary counsel in matters and gives directed tasks to the students in the course of servicing the client. Tasks include basic entity formation and governance issues. The clients do not share any connection to each other. This type of clinic is moderate in its pedagogical approach; students do in fact have real-life matters that may serve as the starting point for further learning and it allows students to learn skills by requiring them to deliver assignments at the direction of the faculty member. As a general services clinic, the focus is on individual client representation without an integrative strategy that ties the aggregate clinic work together to achieve a macro-level impact. This clinic has moderate impact along all three dimensions.

*Impact Model:* The third clinic is high impact along all three dimensions. It is a live-client, in-house clinic directed by a full-time faculty member who supervises law students who have primary responsibility for representing clients. Here, work includes business structuring and planning as well as strategizing. Matters may be more sophisticated and longer in duration. Clients are connected by a commonality that gives rise to network effects and a broader benefit to the community than any individual client representation. Students' ability to serve their clients is enhanced by their ability to work together. Through the aggregate work of the clinic, students achieve a macro-level impact on the community.<sup>114</sup> Classroom discussion addresses issues regarding strategy, ethics, psychology, economics and sociology. Students are encouraged to reflect on their experience with regularity and prodded to explore certain reflections further.

The three prototypical clinics simplify the discussion of how to achieve the highest impact, however one can imagine clinics that maximize one or more dimensions without maximizing all three. For example, the Externship Model could enhance its pedagogical dimension by increasing the involvement of the supervising faculty member who could highlight issues that warrant further exploration. For discussion purposes, assume that with this modification pedagogy now warranted an 8 on the spectrum. If nothing else changed, that would move the Externship Model significantly to the right on the synthesis map. By the same token, one can imagine an Impact Model where the students did not have primary responsibility for the representation and were relegated to less sophisticated tasks at the direction of a supervising attorney who was the lead lawyer. Assume that this modification knocked the skills dimension down to a five. If nothing else changed, this would move the Impact Model down the vertical axis on the synthesis map. Now, there would be less difference between the Externship Model and the Impact Model. There are a large number of combinations that could disperse clinics across our grid. Where one chooses to locate her clinic's offerings should be a strategic decision rather than the happenstance of random case selection. It also highlights that to employ a successful impact strategy one must intentionally manipulate the three relevant dimensions in clinic design.

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<sup>114</sup> I refer to "community" broadly in this context. Community could be defined geographically or could feature an issue (e.g. education, bringing innovations to market, foreclosures, access to capital). My primary framework for this article is a geographically bounded space.

## V. AN ALTERNATE PARADIGM FOR TRANSACTIONAL IMPACT

I direct the Entrepreneurship Legal Clinic (the “ELC”)—a transactional clinic at the University of Pennsylvania Law School.<sup>115</sup> The ELC is located in the middle of Philadelphia, Pennsylvania which is an American city full of paradoxes. In the midst of 48 colleges and universities,<sup>116</sup> nearly 30% of Philadelphia’s population has not graduated from high school.<sup>117</sup> Though the birthplace of American liberty, it is home to one of the most obstructionist regulatory regimes in the nation with regard to business and entrepreneurship.<sup>118</sup> Though it touts a renewed Center City vitality and increased population growth, nearly a quarter of its citizens live in poverty.<sup>119</sup> Though boasting a vibrant public interest community and public interest bar, its economic development actors are factionalized and territorial. Philadelphia consistently ranks near the bottom for entrepreneurial activity in major metropolitan areas.<sup>120</sup>

Against this backdrop, a traditional CED clinic—targeting institutions and groups that provide needed educational and organizational services to distressed communities—would likely flourish. At the ELC, however, impact takes additional forms.<sup>121</sup> The ELC chooses clients that fit into one of three “buckets.” Each bucket represents a different impact strategy but all are tied together by the end

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<sup>115</sup> The ELC is a one-semester clinic with 16 students per semester offered for 6 graded credits. The students are supervised by me and another full-time faculty member. Students meet for class twice a week for 80 minutes each session. They work approximately 18 hours a week to earn their credits. At any given time, the ELC serves about 25 clients. Some of these clients continue with the ELC for multiple terms, working with multiple students during the representation. The ELC teams students in pairs but typically assigns each an individual client and the team a joint client (so three clients per team).

<sup>116</sup> U.S. Department of Education, *College Navigator*, NATIONAL CENTER FOR EDUCATION STATISTICS, <http://nces.ed.gov/collegenavigator> (last visited Aug. 29, 2011) (data accessed by searching for Philadelphia zip code 19106 and setting the parameters at either 5 or 10 miles). Depending on how narrowly or broadly one defines the Philadelphia area, the number of institutions ranges from 31 to 48. I chose the most expansive parameter.

<sup>117</sup> U.S. Census Bureau, *Philadelphia (city), Pennsylvania*, STATE AND COUNTY QUICKFACTS (2008), <http://quickfacts.census.gov/qfd/states/42/4260000.html> (last visited Aug. 31, 2011).

<sup>118</sup> ROBERT MCNAMARA, INSTITUTE FOR JUSTICE, *NO BROTHERLY LOVE FOR ENTREPRENEURS: IT’S NEVER SUNNY FOR PHILADELPHIA’S SMALL BUSINESSES* (2010).

<sup>119</sup> American Community Survey, American FactFinder, *2005-2009 American Community Survey 5-Year Estimates: Data Profile Highlights*, U.S. CENSUS BUREAU, [http://www.census.gov/acs/www/data\\_documentation/geography/](http://www.census.gov/acs/www/data_documentation/geography/) (last visited Aug. 31, 2011) (data accessed by searching for Philadelphia in the Data by Geography field).

<sup>120</sup> Robert Fairlie, *Kauffman Index of Entrepreneurial Activity 1996-2009*, KAUFFMAN (2010), [http://www.kauffman.org/uploadedfiles/kiea\\_2010\\_report.pdf](http://www.kauffman.org/uploadedfiles/kiea_2010_report.pdf). Philadelphia ranks second to last in the 15 largest metropolitan areas in the United States.

<sup>121</sup> I have been fortunate to have worked with colleagues in running the ELC – first, Rebecca Clayton and now, Melanie McMenamin. Their involvement has been integral to ELC’s achievements and hence the references to “we” and “our.”

goal of directly bettering society through the work we do.<sup>122</sup>

The first bucket is comprised of low to moderate income entrepreneurs from economically distressed communities. Clients may be the “Mom and Pop” grocery store wishing to expand by opening a second location, the sole-proprietor plumber who wants to formalize his business and add new employees, a day care center in a working class neighborhood, or a take-out restaurant trying to navigate city regulations. This bucket could include service oriented businesses as well—tailors, caterers, shoe repair, web designers, and accountants. These types of clients are typical in most small-business transactional clinics. However, there is no explicit impact strategy underlying the clinic which will result in societal impact. In the ELC, we attempt to tether clients in this bucket by selecting them from the same geographic area or areas of Philadelphia. We have theorized, that by clustering clients, we can achieve network effects which transcend the individual client and extend to the community at large.<sup>123</sup> By targeting individuals rather than institutions, we are making a conscious decision to champion resident-entrepreneurs who will act as role models to their neighbors and customers. Though the individual businesses will receive legal services and realize their specific goals, the aggregate clinic work performed for multiple businesses in the cluster will benefit the entire community.

The second bucket is comprised of bigger project work. With these clients, the ELC looks for client representations that will have a substantial multiplier effect on impact simply if the entrepreneurs, who are engaged in community revitalizing efforts themselves, are successful in their endeavors. This category may include traditional CED work but is usually more grounded in direct representation of clients who are engaged in projects that will create jobs and opportunities for people rather than creating the apparatus to attract such projects. For example, projects may include transforming blighted, under-utilized, real estate assets in communities into facilities that anchor the entire community and benefit its residents. Another project could be the collective representation of several restaurants along a commercial corridor in an underdeveloped part of the city to help them achieve the common goal of sidewalk seating and the benefit of

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<sup>122</sup> At any given time the ELC has about 25 clients. This factors into the strategies that we have employed in order to maximize the impact we may have with such a limited portfolio of clients.

<sup>123</sup> This strategy resembles a “case aggregation” strategy espoused by Marc Feldman and Gary Bellow for use by legal services organizations. See Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEO. L. J. 1529 (1995) and Gary Bellow & Jeanne Charn, *Paths Not Yet Taken: Some Comments on Feldman’s Critique of Legal Services Practice*, 83 GEO. L. J. 1634 (1995).



improved safety and commerce.<sup>124</sup> This category could also include the creation or conversion of traditionally structured businesses into worker cooperatives; creating a path to ownership and potential wealth creation for employees.

The third bucket is comprised of double bottom-line businesses, those not focused solely on profit, but also on societal benefit. Often these businesses are better-resourced and more sophisticated than the businesses in buckets one or two. Their impact is often national or global. An example of this type of business is a venture to develop a portable and affordable water purification method. The business plans to make money and to donate its product to rural communities around the world where it is too expensive to provide more systemic water purification. Other examples include ventures developing clean energy or sustainable building materials or a web portal to facilitate fundraising for social entrepreneurs.

Each of these buckets provides examples of how transactional clinics can deploy an impact strategy. I describe each bucket in greater detail, below, and explain how each translates into higher impact service, skills training, and pedagogy. These examples are not meant to be exhaustive. Indeed, they are just a starting point. My hope is that they serve as a catalyst for others to think creatively and expansively about other impact strategies that one can employ in transactional clinics.

#### A. *Bucket One – Small Business Development As CED*

Even with CED's focus on service providers, business development is widely recognized as an important component of CED.<sup>125</sup> The theory is that new businesses owned by neighborhood residents not only provide valuable goods and services to others in the community but also create wealth for owners and provide jobs to other residents.<sup>126</sup> Community residents garner a vested stake in the community which is thought to lead to more sustainable and lasting positive effects for neighborhood revitalization.<sup>127</sup>

In fact, over the past 15 years small businesses have represented 99.7% of all private employers and accounted for 65% of net new jobs.<sup>128</sup> Approximately 650,000 businesses start in the U.S. each

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<sup>124</sup> CENTER CITY DISTRICT, CENTER CITY REPORTS: SIDEWALK CAFÉS (2010), *available at* [http://www.centercityphila.org/docs/CCR2010\\_SidewalkCafes.pdf](http://www.centercityphila.org/docs/CCR2010_SidewalkCafes.pdf).

<sup>125</sup> Hauber, *supra* note 42; Jones, *supra* note 24; Suggs, *supra* note 66.

<sup>126</sup> Diamond, *supra* note 54 at 167; Hauber, *supra* note 42 at 13.

<sup>127</sup> Hauber, *supra* note 42 at 14; Cummings, *Grassroots*, *supra* note 37.

<sup>128</sup> *FAQs: Frequently Asked Questions: Advocacy Small Business Statistics and Research*, U.S. SMALL BUSINESS ADMINISTRATION, <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (last visited Aug. 20, 2011).

year.<sup>129</sup> Included in these, however, are microenterprises (businesses employing fewer than 5 people and requiring less than \$35,000 in start-up capital).<sup>130</sup> It is these microenterprises that are often the key component to grassroots CED. However micro entrepreneurs could benefit greatly from individualized counseling and service. Micro entrepreneurs are generally less educated than their larger counterparts, less likely to be home owners (thought to be a key component to starting a business), and overwhelmingly without formal business structures.<sup>131</sup>

Many complex legal issues touch small businesses—entity choice and structuring, financing, real estate, land-use, trademarks, trade secret, employment, tax, regulation, contracts, negotiable instruments. The institutions created by Cummings’ lawyers—lawyers focused on organizing political coalitions to better leverage community power—are not focused on helping entrepreneurs navigate the maze of rules, regulations, and decisions necessary to create successful businesses. If they are, it is through some form of community education. Entrepreneurs, however, need individualized counseling in addition to education in order to succeed. This counseling includes analysis and advice on not only the matters identified above, but also includes connecting entrepreneurs with others who provide specialized services—business planning, accounting, marketing, financing.<sup>132</sup> As Laurie Hauber states, “legal services in a vacuum often accomplish very little unless the business support also exists.”<sup>133</sup>

In fact, small businesses have been neglected as potential resources for community revitalization.<sup>134</sup> Focusing on business owners could lead to the type of political power that Cummings advocates. It could create a larger tax base where one did not exist before. Business associations could form or grow, leading to a greater, more organized involvement with city planners and governors. There could be a larger contingent of constituents to demand city services. The collective needs and desires of the business community could create leverage that could enhance a community’s political status and power.<sup>135</sup>

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<sup>129</sup> Cummings, *Grassroots*, *supra* note 37; Hauber *supra* note 42; Shah, *supra* note 50.

<sup>130</sup> See ASSOCIATION FOR ENTERPRISE OPPORTUNITY, <http://microenterpriseworks.org/> (last visited Aug. 4, 2011); CFED, <http://cfed.org> (last visited Aug. 4, 2011).

<sup>131</sup> JULES H. LICHTENSTEIN, U.S. SMALL BUSINESS ADMINISTRATION, *SAVING FOR RETIREMENT: A LOOK AT SMALL BUSINESS OWNERS* (2010).

<sup>132</sup> Hauber, *supra* note 42 at 17. See also Rabb, *supra* note 132.

<sup>133</sup> Hauber, *supra* note 42 at 17.

<sup>134</sup> Susan Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POLICY 249, 252 (2004).

<sup>135</sup> Watanabe, *supra* note 66.

Additionally, a large segment of microenterprise is situated in the “gray-economy” of the inner city. Entrepreneurs engaged in catering, building maintenance, cleaning, or car repair are active contributors to the economy though they are not counted in most statistics because they are not “official” and operate under the regulatory radar. The conventional approach to business development ignores these gray economy businesses.<sup>136</sup> Arguably, these businesses need legal counsel to an even greater extent than traditional start-up ventures; most likely, they have not complied with local, state, and federal laws and regulations. Yet in order for these businesses to continue to grow and become assets of the community, they must comply with laws.

Transactional clinics can fill this void by representing resident entrepreneurs who engage in or start businesses that will anchor communities. This is what the ELC tries to do with its first bucket of clients. The strengths of this model are numerous. First, it meets traditional clinical legal education norms by serving the underserved or unserved and addressing issues of poverty and economic disparity. It also teaches fundamental lawyering skills to law students using client-centered lawyering and individual client representation as the predominant model. If modern clinical pedagogy is used, it drives home the lessons learned through non-directive supervision buttressed by student reflection. All three impact dimensions are in play. If client service is the threshold feature that determines the richness of both pedagogy and skills development, then small-business development clinics that geographically cluster client representations start from an enhanced position.

### *1. Enhanced Service*

Strategically, the ELC has identified a small number of commercial corridors to cluster small business representation. We think that by representing more than one business along the same corridor, we can create network effects which will compound the individual client representation and result in greater community benefit. If part of our goal is to help revitalize our clients’ neighborhoods, then we should find a way to leverage our resources. Clustering does that. If we represented the same clients, but they were dispersed throughout the region, it would dilute the impact our clinic could achieve through the exact same utilization of resources. It is the enhanced concentration of clients in a discrete area that allows the clinic to make an impact.

Though we are seeking to revitalize neighborhoods through clus-

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<sup>136</sup> SUDHIR VENKATESH, *OFF THE BOOKS: THE UNDERGROUND ECONOMY OF THE URBAN POOR* (2006).

tering, there are many different ways to implement this type of impact strategy. The starting point is to identify a focus for the clinic's resources. The clinic could target education, green energy, affordable housing, access to capital, or any number of other themes that can generate societal change. By marshaling a clinic's resources to represent more than a smattering of clients in any of these categories, the clinic can achieve the same network effects and enhanced service.

## 2. *Enhanced Skill Development*

Small-business clinics engaged in this type of representation help students master fundamental lawyering skills such as interviewing, counseling, and negotiation, and perform fundamental transactional tasks such as evaluating entity structures, drafting corporate governance documents, and reviewing and drafting various contracts. But in addition, students gain higher level skills like navigating regulation, developing strategies, and managing processes. Student representatives must learn to solve problems in order to further their client's interests. For example, students may negotiate with local politicians to garner political support to further a client's interest or help organize business owners into more formal business associations to better create the network effects hypothesized by the clustering model. Again, the goal is to help individual business owners achieve some end. But in order to be successful, students may have to engage in more complex strategies involving many different lawyering skills. Clearly these matters involve more than choosing the best entity and creating governance documents.<sup>137</sup>

## 3. *Enhanced Pedagogy*

Engaging the added element of community in working with small business clients creates a richer pedagogical experience. In this model, educating students about communities is as important as educating them about clients. Concentrating on distressed, inner city neighborhoods will inevitably trigger discussions about race, privilege, socio-economic status, education, representation, and access to resources. Helping students reflect on how these issues affect their clients or how to level the playing field to better represent their clients' interests is a key factor in enhancing the pedagogical experience. Ad-

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<sup>137</sup> There is clearly value in entity selection and formation and corporate governance, however, a clinical experience is an opportunity for clinics to impart more than what a student could learn in the first few months of practice. Clinics should strive to do more. I acknowledge that the desire to create a higher level experience may be at odds with law school administrators' desires to provide more students with a clinical experience. In my view, breadth and depth are not interchangeable.

ditionally, as students are the front line representatives in ELC engagements, they confront many types of people and personalities. Individual client representation is a fundamental tenet of clinical legal education. Clinics do not need to abandon individual client representation in order to perform impact work. How students earn the trust of their clients, ferret out their true goals, create and implement a plan of attack, and ultimately help their clients realize their vision is all part of the enhanced pedagogical experience.

### B. *Bucket Two – Big Projects Mean Big Impact*

Big projects are often viewed with trepidation by law school clinicians.<sup>138</sup> There are legitimate concerns regarding competence, duration, and management. However, through big projects (like the law reform efforts of impact litigation clinics), transactional clinics can engage in impactful work.

Big projects can take many forms.<sup>139</sup> Much of the traditional CED work described earlier in this article may qualify as big project work. Clearly, helping to create institutions such as CDCs or community housing development organizations that marshal needed resources for distressed communities is impactful work. Many affordable housing deals are impactful big projects. Cummings' example of drafting wage ordinances would qualify as big project work as would other policy work. Representing community groups toward a common end or transforming a discrete organization into something larger in order to expand its services or create new opportunities for more people is big project work as well. My hope, however, is that clinics extend the work beyond the mere creation of institutions that facilitate change and include handling some of the transactions that emanate from these organizations. For example creating a community land trust ("CLT") is potentially big project, impact work, but doing the legal work for the CLT transactions or deals would be a deeper impact strategy.<sup>140</sup> Ultimately, big project work allows clinics to realize community impact more directly.

The West Philadelphia based Center for Culinary Enterprises (the "CCE") is an example of big project work in the ELC. The CCE

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<sup>138</sup> Hauber, *supra* note 42.

<sup>139</sup> See Laurie Hauber, *Commentary: Complex Projects in a Transactional Law Clinic*, 18 J. AFFORDABLE HOUSING 247 (2009) (providing examples of big project work).

<sup>140</sup> See *Mandel Clinic's Housing Initiative Helps Complete First Phase of Chicago's West Humboldt Park Homes*, THE UNIVERSITY OF CHICAGO, THE LAW SCHOOL: LAW SCHOOL OFFICE OF COMMUNICATIONS (Apr. 6, 2011), <http://www.law.uchicago.edu/news/mandel-clinics-housing-initiative-helps-complete-first-phase-chicagos-west-humboldt-park-homes> (describing real estate closings being performed by law students originating from a community land trust the transactional clinic helped to create).

is the venture of a nonprofit called The Enterprise Center. It has been active in the West Philadelphia area for over 25 years focusing on cultivating new businesses and entrepreneurs.

In 2007, The Enterprise Center identified a dormant parcel of real estate that it wanted to acquire and transform into an incubator for food entrepreneurs—the CCE. The CCE has three components. The first component will house an educational restaurant which will not only employ local youth but teach them the inner-workings of a restaurant business. The restaurant will be open to the public but will educate and foster young individuals desiring to start their own ventures or secure higher level food service jobs. The CCE also explored partnering with area advanced education institutions to provide credit and admission to associate's or bachelor's degree programs for restaurant employees. Though ultimately, the restaurant will be self-sustaining, through its operating income, its initial funding would come from foundations, grants, and The Enterprise Center.

The CCE's second component will be a fully licensed and functioning commercial kitchen that provides hourly access to bakers, food truck operators, and caterers. Catering is a significant gray-economy business in many inner city areas. Often these entrepreneurs cook in their homes or other unregulated, unlicensed kitchens. Though these unlicensed arrangements may work for informal family and friends or community events, it is difficult for these owners to grow their businesses or compete for institutional contracts (like those at the University of Pennsylvania). A commercial kitchen would allow food entrepreneurs to legitimately grow their businesses without having to sign long-term or expensive leases or build-out expensive commercial kitchen space themselves. The kitchen would also partner with local job training and workforce development organizations to employ kitchen assistants, cleaning staff, and security personnel. The CCE's aim is that the commercial kitchen will foster food entrepreneurs who will eventually be successful enough to be able to support retail establishments with their businesses.

The third component of the CCE is commercial retail space that will be leased to area food entrepreneurs. Though less ambitious than the other two components, the CCE's goal is that this component will showcase established food entrepreneurs and provide a steady stream of revenue to the CCE while providing a model for the incubating food entrepreneurs.

### *1. How This Translates Into Service Impact*

The societal impact of a project like the CCE is self-evident. Inherent in its strategy and structure is a desire to directly empower

community residents. Additionally, the CCE aims to transform an under-utilized community asset into a neighborhood anchor. In the most fundamental sense, the CCE could be a hub of activity drawing people to the area and creating a vitality for existing businesses and residents. It will employ people as well as give them a means to develop higher paying jobs.

More significantly, the CCE has a built-in multiplier effect. In assisting The Enterprise Center with this project, the ELC is helping every food entrepreneur that utilizes the CCE's services. In fact, we hope that we can represent many of the food businesses that use the CCE to start their ventures. This multiplier effect is one of the key elements that we seek in determining whether to take a big project.

### *2. How This Imparts Higher Level Skills To Students*

At the ELC, we place our students in the primary role of client representative in matters. The legal work required in The Enterprise Center/ CCE representation gives rise to concrete transactional skill development. Each task necessary to move the project forward is the type of work that students could be doing after graduation. Additionally, there is often a political element to representing a project like the CCE. Learning and strategizing about the best way to navigate the political process is a useful transactional skill transferable to many other disciplines as well. With the relative complexity and size of a project like the CCE, we need outside support. So we partner with an area law firm to provide support in legal matters outside of our practice area and when we have no students. One of the most positive features of this relationship is that ELC students manage the law firm's lawyers—similar to a general counsel. The law firm mostly acts as a consultant to the ELC. We determine when we need assistance and what type of assistance would be most appropriate. We are the primary contact with the firm and review any work that it produces for the client. Figuring out how to manage a team of people internally, as well as how to manage a set of third-party actors in order to achieve a client's goals is one of the highest level skills students can develop in our clinic. This feature of the representation also heightens students' preparation and attention to detail because they are interacting with practicing lawyers—potential peers and employers—in a professional capacity.

### *3. How This Translates Into Better Pedagogy*

One can imagine the number of issues that present themselves in an engagement like the CCE. To date, ELC students have assisted in developing a negotiation strategy to acquire the parcel of real estate

from an owner who had kept it dormant for more than four years; closed the real estate transaction; secured a real estate tax exemption; reviewed financing documents; dealt with environmental issues; reviewed and revised contracts with architects; researched child labor laws; developed a business structure; obtained zoning through a zoning board appeal; and reviewed and revised general contractor agreements and requests for proposals.

Each of these legal tasks comes with a host of issues that are ripe for dissection and reflection. The representation has spanned seven semesters. Each semester a new team of students must get to know the client and learn what has transpired in the representation. As you can imagine, there are many actors in a project of this size and ambition. The students must know the actors and the role each plays in the project. Sometimes, the learning that takes place in this arena alone is enough to take up an entire semester. In the ELC, we explore what motivates different actors participating in this project. What do they care about? How can we get them to do what the client wants or needs them to do? Is there a way they that we can leverage different actors in order to get still other actors to do what we need?

In addition to personal power dynamics, we explore the potential impact of a project like this on the lives of its target users. What must the CCE provide to truly cultivate new food entrepreneurs? Is there anything that the ELC can do to influence that? What is our role in furthering the mission of the project when we have been retained solely as lawyers? Will there be conflicts if we want to represent any of the food entrepreneurs who use the facilities of the CCE?

In addition to projects like the CCE, other types of big projects in this bucket could include other types of urban redevelopment, affordable housing deals, technological innovation, group representation to achieve a common goal, and joint ventures to affect community benefit. Clinics can plan how they want to utilize their resources and seek out big projects that further that goal. Not only can big projects create impact in communities, but they can also maximize the educational experience for students.

### *C. Bucket Three – Social Ventures Break The Paradigm*

The ELC's third bucket of clients is comprised of ventures that may have greater access to resources or who may have an explicit high growth, profit-making strategy. We accept these ventures because they are also trying to elicit positive social change. Where small business clients from bucket one are located in our identified communities, clients from this bucket are interested in improving a larger segment of society. Often these clients are national or global in their



focus and reach. By helping them achieve their goals, the ELC aims to have a major societal impact. We can help provide clean water to innumerable people across the globe. We can jump start hundreds of new ventures through assisting a microfinance provider. We can improve lives of those suffering from a particular health issue by helping bring new medical devices to market. If thinking about the impact that transactional lawyers can help bring about, this bucket may be the most far reaching. Yet, these types of clients are least likely found in law school transactional clinics.<sup>141</sup>

For the ELC, clients in this bucket often come from Penn's business school, Wharton. We comb its entrepreneurial programs looking for business ventures that have a socially beneficial end. These ventures include clean water technologies, microfinance platforms, health science ventures, and clean energy companies.

In evaluating these clients, our students discuss whether they are appropriate clients for a clinic. What motivates them? What is the role of a clinic? Who draws its constraints? Are those constraints "right?" We also talk about the social impact of the businesses themselves. Since these clients tend to be double bottom line businesses, we analyze how that dual purpose affects clients' decision making. Which is most important, profit or social benefit? How does one make that determination? What is our role in those decisions? Is our advice embedded with a tacit bias? Is it possible to avoid that bias?

These clients are often more sophisticated than the clients in bucket one and are usually for profit ventures as opposed to the clients in bucket two that are typically large nonprofits. The work students perform in these matters resembles the work they will likely do in practice if they work for private law firms. Issues include trade secret, copyright and licensing. We do not do any patent work but will sometimes analyze whether a patent might be useful to a client. Clients in this bucket may seek early stage financing. Consequently, students may gain exposure to venture and mezzanine financing deals. Often the counterparties in a transaction are represented by private lawyers, duplicating the dynamic in the CCE project where students interact with practicing lawyers.

This bucket challenges traditional clinical norms. The representations do not directly champion indigent clients or challenge harmful policies or practices. The clients may have more resources or access to resources than the average clinic client. These are considerations that every clinician, clinic, or program must weigh in determining their

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<sup>141</sup> One reason transactional clinics may not accept clients like these is because they exceed the financial constraints imposed by funders, law schools, or student practice rules. Where those constraints do not exist, I encourage clinics to consider these types of clients.

goals and how to balance such clients against their own or traditional clinical norms. However, when we think about “impact” on society, the subject matter of the business ventures in this bucket themselves often exceed any that one would find in more traditional clinic clients. If we are thinking about maximizing impact with a clinic’s resources, clients in this bucket provide a tremendous opportunity.

## VI. STRENGTHS AND CHALLENGES TO IMPLEMENTING AN IMPACT STRATEGY

### A. *Strengths Of The Impact Model Generally*

Any impact strategy adds a layer of complexity to the student experience because of the multidisciplinary effort needed to achieve transformational goals. Though each student is representing her client to the best of her ability, the aggregate work of the students is tethered by the connections of clients and the shared goal of community revitalization. Students must build relationships with not only clients but many other key actors and partners. However, these connections are not merely between specific students, organizations and individuals, rather they are institutional. Every student in the clinic will benefit from the relationships that each student cultivates for her clients.

Some clinics may think an impact strategy adds too much complexity into the mix, but the fact is, the real world is messy. Rarely are lawyers confronted with textbook scenarios for which they can follow a template. Besides, textbook scenarios are best suited for simulation courses. But the live-client clinic is meant to do more. The added complexity of any impact model delivers that something more. Students walk away from the experience with higher level skills and with a richer and more complex understanding of how the world works. To add to this complexity, they will have to address ethical issues such as who is their client and what to do when there are conflicting interests between cooperating parties. The clinic can be an important forum to apply what is arguably the most important subject law students will learn in law school—professional responsibility.

A clinic with a high impact strategy also produces visibility. This may be anathema to raise with many clinicians. However, law school deans are likely to view it favorably. However much law schools and law faculty purport to dislike the rankings game, law schools play it. And increased positive visibility of any program helps law schools’ reputations in the world, which in turn increases applications and resources. Clinics that can enhance the pedagogical and skills experience for students while also performing valuable and impactful client

service will necessarily garner positive attention.<sup>142</sup>

Classes of law school students are transient with little in common. Extracurricular activities such as journals, moot court, and clinics can create bonds and continuity between generations of students. An impact clinic, however, solidifies even stronger bonds between generations of students by creating a common vested interest in the ongoing goal of neighborhood revitalization or creating national or global change. A clinic is unlikely to achieve its impact goals in one semester or even an academic year. Common causes that span multiple terms will tie generations of students and alums together giving a unique continuity and sustainability to a clinic employing an impact strategy.

In fact, this model can foster greater pro bono involvement by practicing lawyers. Likely, clinic students will be interested in following the progress of their clients, but they will also export their experience and the opportunity of continued work to their respective workplaces. The opportunity for greater pro bono assistance is enhanced. For transactional lawyers, pro bono opportunities that allow them to use their skills are coveted. This is even more so with mandatory pro bono requirements in many states.<sup>143</sup>

In sum, the richness and depth of the enhanced service, skills training, and pedagogical opportunities that are presented in a clinic with an impact strategy are major considerations in whether to adopt that model. These strengths and opportunities, however, do not come without challenges.

### *B. Challenges Of Implementing An Impact Strategy*

Impact work in any context—litigation or transactional—presents challenges. At the most basic level, impact work usually takes more time than representing a typical clinic client.<sup>144</sup> Since most impact clients are continuing from previous terms, it takes time to get up to speed on what *has* been done and what needs *to be* done. Since the work is usually more complex, it requires that the students learn a lot very quickly. This requires a significant amount of knowledge transfer from student to student. It also requires a certain amount of patience

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<sup>142</sup> W. Warren H. Binford, *Reconstructing a Clinic*, 15 CLIN. L. REV. 283, 326 (2009) (“news releases regarding clinic successes are sent out regularly by the university’s public relations team, two of which have led to front-page stories with local media in the past year alone”).

<sup>143</sup> Scott Cummings & Deborah Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORD. L. REV. 2357, 2369 (2010) (discussing the mandatory pro bono requirements of several states).

<sup>144</sup> Paul D. Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLIN. L. REV. 545, 548-49 (1996) (discussing the notion of clinic students following a case from start to finish during their clinic experience versus the nonconforming length of “hard cases”).

and understanding from clients who are continually readjusting to new law student counselors. Over time, the credibility banked by students will help subsequent students become integrated into matters more smoothly. Though students are the frontline personnel in managing this knowledge transfer, in the form of transition memos and letters to the client, a disproportionate amount of knowledge transfer rests on the supervisors' shoulders. One tactic is to break the client work into manageable segments for each set of students taking on a representation. How far can this student push the ball forward during this term? That planning needs to take place at the beginning of each semester to ensure that students remain the primary actors in the representation.

There is no question that students who represent impact clients are challenged. This challenge requires more time by faculty supervisors as well. Often supervisors must learn along with students. The relationship is often collaborative as opposed to the hierarchical supervisor-student dichotomy where the clinician is often in the role of expert. That greater involvement must be balanced against other claims on supervisors' time—class preparation, scholarship, personal life. In some cases, law schools can accommodate this greater claim on time by providing additional staff or by limiting the number of students a clinician supervises. However, some schools may not support clinics with necessary resources or accommodations.

Additionally, impact clients rarely walk in the door. In addition to everything else that clinicians do, an impact strategy adds the onus of finding good projects for students to work on. This requires being opportunistic and networking with people who know about current or upcoming impactful projects and have the ability to introduce the clinic to decision makers for these projects.

Clinicians must also balance impact work against the need for a critical volume of work to keep all students busy over the course of a semester or a year. The ELC's "Bucket A" strategy has taken some time to develop. It takes some time to both identify viable clients and gain enough traction in the community to get them to come to the clinic for service. Success depends on the relationships and partners a clinic chooses. One way to mitigate this risk is to hedge by identifying multiple clustering zones at the early stages, allowing for one or more zones to be less active and others to take off. Since it is very difficult to predict the likelihood of success *ex ante*, having multiple seed programs and relying on different community partners is a good strategy. Over time this challenge is mitigated by the clinic's successful work. Clients beget clients and reputational effects come into play. The clinic will also be able to diversify its client base over time with a greater variety of clients and entrepreneurial ventures.

Often work that the ELC undertakes in Buckets B & C may exceed the capacity of the students involved. In those circumstances clinics may partner with a law firm. The challenge is in preserving the bulk of the substantive work for the clinic's students rather than sending it to the firm's lawyers. The ELC's experience is that this conversation is best had up front with a very clear articulation of how the clinic envisions an ideal relationship with the firm. As mentioned earlier, firms are starved for sophisticated pro bono transactional opportunities. If clinics can create a situation where they respect a firm's time and allow it to contribute to the project in a significant way, it is likely that the firm will be satisfied with taking a subordinate role in these types of representations.

And finally, impact work breeds complicated ethical and professional responsibility issues. What happens if two entrepreneurs would like to open corner stores in a clinic's impact zone? Who does the clinic choose? Can it represent both? What if a liquor store owner wants to open in the middle of the clinic's impact zone? What role does the clinic play in blocking that effort? Should it even think to block the effort? What if two clients are competing for the same grant application or assistance program? Who does the clinic help? Can it help both without violating confidence? If the clinic is representing a coalition or a group, who has ultimate decision-making authority for the client? How does the clinic manage long-standing relationships in these contexts which may pit the clinic opposite a partner organization or important political ally? These issues are thorny and admittedly messy. But that messiness only enhances the experience for students. It is real life. Rough edges are to be expected and embraced, not shied away from. It is often in these gray areas where students learn the most lasting lessons.

Additionally, impact strategies challenge the notion of client-centered lawyering championed by many clinicians. First, what qualifies as a worthy cause or community to champion is mostly within the control of a clinic or clinician. When clinicians speak about "social justice," the conversations are inherently infused with what that term means to individual clinicians. Clinics must guard against paternalistic notions of impact. Secondly, representing clients' best interests and goals may conflict with a clinic's desires and goals for a specific type of societal impact. Will a clinic sacrifice its desired outcome for the potentially conflicting goals of a client? In that circumstance, clinics may bring that discussion into the classroom, however what clinics choose to do is a real dilemma presenting difficult ethical and professional responsibility issues for clinicians as well as students.

Though there are challenges to pursuing an impact model, the

benefits can provide students with a richer educational experience and achieve significant impact that goes beyond individual client representations. While implementing a transactional impact strategy is relatively untrodden territory, it presents an opportunity for transactional lawyers, programs, and clinics to think creatively about the approach and additional unique strategies.

## VII. CONCLUSION

I have explored the role that transactional clinics can play in creating impact that transcends individual client representation. I hope that I have at least sparked thoughts about how one can blend high end skills training with higher impact service and pedagogy. To be sure, this is not for all transactional clinics. Just as in the litigation context, there is room for many models. But unlike litigation clinics, transactional clinics have a different history and evolution. Transactional clinicians should embrace that uniqueness and chart a new path forward. CED clinics, descended from the same social justice branch of clinical legal education as many litigation clinics, have the opportunity to deepen their impact work by focusing more on individual client representation and implementing new revitalization strategies. Though descended from a different branch of the clinical legal education tree, small business and organizations clinics also have the ability to participate in impact work and better society through their client work. By concentrating their efforts on particular areas (geographic or otherwise), they can create network effects that will compound the work that students perform.

All transactional clinics should take a more expansive view of “impact” and consider maximizing their resources to achieve the most they can. I discussed three ways that a transactional clinic might do that, but there are many other models. Clinics can cluster clients in order to target different modalities of impact—the arts, science, health, education, economic justice. In seeking alternatives to traditional financing, clinics could explore peer to peer lending alternatives and learn how to make this option more accessible to entrepreneurs. In trying to further the goals of a particular group, clinics could engage in joint ventures with another group, creating something larger than the sum of the parts.<sup>145</sup> As in some litigation clinics, client work in a transactional clinic may give rise to policy work done on behalf of an entire group.<sup>146</sup> Fighting against oppressive or protectionist regula-

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<sup>145</sup> Robin Golden, *Collaborative as Client: Lawyering for Effective Change*, 56 N.Y.L. SCH. L. REV. (forthcoming 2011-2012).

<sup>146</sup> Examples of this type of work might include advocacy work on behalf of low profit limited liability company (“L3C”) statutes or beneficial corporations (“B Corps”).

tory regimes, including zoning and access to capital, may be another. My hope is that this article encourages transactional clinicians, clinics, and clinical programs to think creatively about how they can make a greater difference in society.

All of these efforts, however, must be rooted in strong pedagogy and a commitment to better educating students. In that sense, clinic design is critical. I have outlined three models that embrace the fundamental clinic design element of individual client representation. There are many advantages to that structure. However, one can modify or alter the traditional clinical model if she is thoughtful about the interplay between the competing dimensions. Essential to any model, however, is the active engagement of clinicians in guiding students to see the richness of the impact experience in its totality rather than merely focusing on skill development. That guidance will provide students with an experience that last them years into practice rather than merely months.

The number of transactional clinics in American law schools is increasing every year. At the same time, existing transactional clinics are maturing. Yet, relative to all clinical opportunities in law schools, transactional clinics are still the new kid on the block. Though they perform their work in different arenas than law reform litigation clinics and may approach impact from a different perspective, transactional clinics have the ability to be just as impactful on society and to do so while enhancing the educational experience of students.