

# THE PROJECT MODEL OF CLINICAL EDUCATION: EIGHT PRINCIPLES TO MAXIMIZE STUDENT LEARNING AND SOCIAL JUSTICE IMPACT

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*In clinical legal education, there is growing interest in the development of project-based clinical work, which includes a broad range of activities, such as legislative and policy reform, community economic development and community legal education. In the project model, students use non-litigation advocacy strategies to solve challenging legal problems for clients and engage a broad range of multi-dimensional legal skills, including complex problem-solving, strategic planning, project management, and professional communication skills. Clinical scholarship on project-based learning has suggested that key pedagogical methods, particularly maximizing role assumption and student ownership of clinic work, must be compromised in projects due to the inherent complexity of the model. Because the project model holds such great potential for creating systemic change and serving communities, clinicians who develop projects often struggle to navigate the balance between social justice impact and pedagogical goals. In response to these and other challenges of projects in clinical education, this article argues that through intentional and goal-driven planning, clinicians can design project-based learning experiences that meet social justice goals while also maximizing student ownership and learning. To assist clinicians in developing projects that are successful from pedagogical and social justice perspectives, this article offers eight pedagogical principles, transferable across clinical contexts, for the design and supervision of this emerging model of clinical education.*

## INTRODUCTION

Law school clinical programs are increasingly looking beyond the

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realm of individual client representation and impact litigation to develop clinical education experiences that engage students in a wide range of non-litigation advocacy and transactional work—the “project model” of clinical education.<sup>1</sup> The growth of projects in clinical education is driven by the model’s pedagogical value as well as its potential for social justice impact. Project-based clinical experiences respond to the growing recognition that legal education, and clinical education in particular, ought to have the explicit goal of teaching complex problem-solving and other “multi-dimensional” lawyering

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<sup>1</sup> For a typology of clinical education models, categorized as the short-term matter, the long-term matter and the project, see *infra* Part I. For recent scholarly treatment of projects in clinical education, see Sameer Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355 (2008) (advocating clinic models that depart from the traditional “small case” model and engage in work that is responsive to the needs of community collectives); Margaret M. Barry, A. Rachel Camp, Margaret Ellen Johnson, Catherine F. Klein, & Lisa V. Martin, *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLIN. L. REV. 401 (2012) [hereinafter *Teaching Social Justice Lawyering*] (discussing the theoretical background and practical goals of community legal education, and describing the design and implementation of two community legal education projects); Susan Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLIN. L. REV. 195 (1997) (comparing the educational benefits of transactional clinics to those of more traditional clinics); Marcy L. Karin & Robin R. Runge, *Toward Integrated Law Clinics that Train Social Change Advocates*, 17 CLIN. L. REV. 563 (2011) (discussing the integrated approach to clinical education and describing two integrated clinics where students learn litigation skills through direct representation and broader skills through projects); Praveen Kosuri, “Impact” in 3D—Maximizing Impact Through Transactional Clinics, 18 CLIN. L. REV. 1 (2011) [hereinafter “Impact” in 3D] (“The number of transactional clinics in American law schools is increasing every year.”); Katherine R. Kruse, *Biting off What They Can Chew: Strategies for Involving Students in Problem-solving Beyond Individual Client Representation*, 8 CLIN. L. REV. 405 (2002) (describing student involvement in non-litigation advocacy projects in addition to individual client representation); Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem-solving in Clinical Legal Education*, 8 CLIN. L. REV. 445 (2002) (describing how community building projects develop students’ creative problem-solving skills and offering a model for teaching problem-solving in clinical education through collaborative community building activities); Dina Schlossberg, *An Examination of Transactional Law Clinics and Interdisciplinary Education*, 11 WASH. U. J.L. & POL’Y 195 (2003) (suggesting transactional law clinics might better serve their mission if integrated with other academic or professional programs); Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, 16 CLIN. L. REV. 451 (2010) (describing a combined clinic model where students handle cases and advocacy projects). See also Margaret Martin Barry, *A Question of Mission: Catholic Law School’s Domestic Violence Clinic*, 38 HOW. L.J. 135 (1994) [hereinafter *Question of Mission*] (arguing that clinics and poverty lawyers should work outside of the context of litigation to promote broader social change and that clinical education focused on litigation fails clients and students); Karen Tokarz, Nancy L. Cook, Susan Brooks, & Brenda Bratton Blom, *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359 (2008). But see April Land, “Lawyering Beyond” Without Leaving Individual Clients Behind, 18 CLIN. L. REV. 47 (2011) (urging that expansion of clinical teaching methods into new areas should not supplant the small-case model).

skills, which includes training students to develop creative strategies to solve their clients' legal problems.<sup>2</sup> Interest in teaching multi-dimensional lawyering skills is growing throughout legal education and appears to be driven by factors from within the legal education system and from without. These factors include concern about job opportunities for law school graduates, the need for expanded experiential learning opportunities, and not least of all, clients' needs and interests.

The project model of clinical education, like litigation-based models, need not be bound by subject matter. A clinic may take up a project in any area of substantive law, depending on client needs, the clinical supervisor's or students' interests, a school's teaching goals, a community's social justice priorities, or any number of other factors. Unlike litigation-based models, which teach lawyering skills in the context of direct representation and on-going litigation, projects are not necessarily bound by a particular advocacy strategy or method, legal tactic, or remedy. The project model offers nearly unlimited options in terms of the nature of the work students do, the legal problems they address, and the clients they serve. For example, projects can involve developing and implementing advocacy campaigns, drafting legislation, strategic planning for community groups, and much more.

As a matter of pedagogy, a key reason to engage students in learning through projects is to teach a broad range of lawyering skills that complement and build upon the essential litigation and advocacy skills traditionally taught in clinical education.<sup>3</sup> The multi-dimen-

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<sup>2</sup> See Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1, at 450 (defining "multi-dimensional lawyering" as "lawyering that includes a broad view of the opportunities and responsibilities of future lawyers, and one that allows students to serve a person or community according to that person's or community's needs."). See also Mark Neal Aaronson, *We Ask You to Consider: Learning About Practical Judgment in Lawyering*, 4 CLIN. L. REV. 247 (1998); Susan D. Bennett, *Embracing the Ill-Structured Problem in a Community Economic Development Clinic*, 9 CLIN. L. REV. 45 (2002); Alan M. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solvers*, 32 AKRON L. REV. 107 (1999); Carrie J. Menkel-Meadow, *When Winning Isn't Everything: The Lawyer as Problem Solver*, 28 HOFSTRA L. REV. 905 (2000) [hereinafter *Winning Isn't Everything*]; Linda Morton, *Teaching Creative Problem-Solving: A Paradigmatic Approach*, 34 CAL. W. L. REV. 375 (1998); Richard K. Neumann, Jr., *Donald Schön, the Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLIN. L. REV. 401 (2000); Janet Weinstein & Linda Morton, *Stuck in a Rut: The Role of Creative Thinking in Problem-Solving and Legal Education*, 9 CLIN. L. REV. 835 (2003).

<sup>3</sup> Some of the essential lawyering skills traditionally taught in clinical education include: fact-investigation, client counseling, interviewing, witness preparation, negotiation, trial skills, and legal writing. See generally DAVID A. BINDER, PAUL BRUCE BERGMAN, SUSAN C. PRICE & PAUL R. TREMBLAY, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (2d ed. 2004); STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., *ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION AND PERSUASIVE FACT*

sional lawyering skills students learn in projects include complex problem-solving, strategic planning, strategic communication, negotiation, collaboration, and project management skills, among others.<sup>4</sup> Through projects, students are challenged to find creative solutions to complex and ill-defined problems that have no clear litigation remedy, to understand how lawyers might have a role in solving such problems (including when lawyers need to collaborate with other professionals or lay experts), and to take into account the textured social and political aspects of complex problems.<sup>5</sup>

The development of projects is also driven by social justice goals. Clinics can use the project model to engage in law reform, systems change, and community development work in areas where litigation is not effective or appropriate.<sup>6</sup> In part, the continued development of projects can be attributed to an interest in alternative methods of dispute resolution and an increased focus on preventing litigation—trends that cut across many areas of legal practice, including public interest law, where the use of litigation as a tool for achieving reform and systemic change has waned.<sup>7</sup> Often, projects emerge from a prob-

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ANALYSIS (4th ed. 2011). See also Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C.J.L. & SOC. JUST. 247, 253 (2012); Srikantiah & Koh, *supra* note 1, at 451.

<sup>4</sup> See Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1, at 450. Praveen Kosuri uses the term “higher-level skills” to describe “creative problem-solving, project management or strategizing and planning.” Kosuri, “Impact” in 3D, *supra* note 1, at 7. As Weinstein and Morton state, “Problem-solving is the essence of what lawyers do.” Weinstein & Morton, *supra* note 2, at 835. See also Menkel-Meadow, *supra* note 2, at 914 (asserting that lawyers need to be able to “think out of the box” to solve complex problems); Kruse, *supra* note 1, at 432 (“[P]roblem-solving is the single intellectual skill on which all law practice is based.”). See generally Myron Moscovitz, *Beyond the Case Method: It’s Time To Teach with Problems*, 42 J. LEGAL EDUC. 241, 245 (1992); Bennett, *supra* note 2; Seielstad, *supra* note 1.

<sup>5</sup> This is not to suggest that litigation-based clinics do not or cannot develop complex problem-solving skills or an appreciation for context, as litigation clinics certainly can and do. What distinguishes the project model is that it places a particular emphasis on this multi-dimensional approach to solving legal problems and offers unique opportunities for students to develop and implement non-litigation strategies to address complex problems. See Barry, *Question of Mission*, *supra* note 1, at 160 (“This new vision of clinical practice and education does not preclude litigation, so long as it is but one facet of the reasoned application of legal expertise to solving the problems plaguing a community.”). For a discussion of “ill-defined” and “ill-structured” problems, see generally Bennett, *supra* note 2.

<sup>6</sup> See Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1; Karin & Runge, *supra* note 1; Kosuri, “Impact” in 3D, *supra* note 1; Kruse, *supra* note 1; Seielstad, *supra* note 1; Srikantiah & Koh, *supra* note 1. See also Martha Minow, *Lawyering for Human Dignity*, 11 AM. U. J. GENDER SOC. POL’Y & L. 143, 152 (2002) (“At best, litigation becomes a defensive tool against incursions on civil liberties and efforts to cut back on civil rights remedies, including the rights of criminal suspects and defendants.”).

<sup>7</sup> See e.g., Alizabeth Newman, *Bridging the Justice Gap: Building Community by Responding to Individual Need*, 17 CLIN. L. REV. 615, 668 (2011); Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027, 2037-2038 (2008) (describing the “growing conservatism of the country and the courts” as a factor in reducing the

lem or area of need identified through the course of a clinic's litigation or direct representation work.<sup>8</sup>

In recent years, clinical scholars have begun describing and theorizing the development of non-litigation advocacy and transactional projects in clinical education.<sup>9</sup> A growing trend in the clinical literature suggests that core principles and methods of clinical pedagogy, particularly the commitment to maximizing student ownership of clinic work, must be set aside or sacrificed entirely in the context of projects given the inherent complexity of the model.<sup>10</sup> In response, I argue that pedagogical goals can and must drive the selection and design of projects in clinical education and that through intentional and goal-driven planning, projects can meet pedagogical goals while producing products and outcomes that have meaningful impact.

The clinical literature suggests that clinicians interested in developing projects may find themselves asking: What pedagogical compromises must I make in order to supervise this complex project? I suggest that we can instead ask two questions: What are my pedagogical goals, and how do I design projects that will meet those goals? The imperative of designing and supervising project-based learning is to capitalize on the inherent complexity of projects to maximize student learning, while also meeting social justice goals.

My intent in this article is two-fold: 1) to argue that the social justice goals of project-based clinical work need not overshadow pedagogical goals and 2) to articulate an approach to project-based clinical work that maximizes student learning and development through ownership of the work and professional role assumption. To those ends, I

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role of litigation in public interest law. ) For critiques of "cause lawyering" and the use of litigation as a tool for social change, see generally Barry, *Question of Mission*, *supra* note 1; GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Michael McCann & Helena Silverstein, *Rethinking Law's "Allurements": A Relational Analysis of Social Movement Lawyers in the United States*, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 261 (Austin Sarat & Stuart Scheingold eds., 1998).

<sup>8</sup> See e.g., Karin & Runge, *supra* note 1, at 569. See generally Kruse, *supra* note 1.

<sup>9</sup> See sources cited in note 1 *supra*.

<sup>10</sup> This article builds on the work of Andrea Seielstad, *supra* note 1 (discussing how clinics can teach complex problem-solving through community building work); Katherine Kruse, *supra* note 1 (noting the value of the student ownership model, describing the challenges of implementing this model in projects and suggesting strategies to cope with these challenges); Karin & Runge, *supra* note 1, at 594 (arguing that the principle of student ownership must "necessarily" be modified in project work); Srikantiah & Koh, *supra* note 1, at 467 ("[M]any traditional clinical teaching methods—fostering reflection, examination of expected and actual outcomes, and participation in case rounds, among others—translate well into the advocacy project context. Other methods, namely maximizing student ownership and limiting instructor direction, do not work as well in the institutional project context."); Land, *supra* note 1, at 63 (noting that the reduced ownership model of advocacy projects is a barrier to students' understanding of their professional obligations to clients).

describe and define the project model, discuss issues related to pedagogy and social justice as they arise in the project context, and offer a set of principles to assist clinicians in implementing projects. Part I defines the project model by comparison to other clinical models and offers a typology of three clinical models: the short-term matter, the long-term matter, and the project. This typology sorts clinical work based on two distinct but related factors: the duration of the representation and the level of student ownership of substantive clinic work, including the extent to which students maintain primary relationships with clients. Parts II and III explore the benefits and challenges of the project model by reference to the twin goals of clinical education: social justice and student learning, respectively. Part IV suggests eight principles, transferable across clinical contexts, for the design and supervision of projects in clinical education.

### I. A TYPOLOGY OF CLINICAL EDUCATION

To contextualize a discussion of project-based clinical work, I offer a typology of clinical models sorted by two basic factors: student ownership and the duration of the clinic's work on a given case, issue, or matter. This results in three distilled categories, the short-term matter, the long-term matter, and the project.<sup>11</sup> Given that creating categories inevitably requires a good measure of simplification, this typology does not reflect the full complexity and nuance of clinical practice. With that said, the typology does provide a framework for describing and defining the project model by comparison to other types of clinical work.

The short-term matter is time-bound such that a student can see the work through from beginning to end and is characterized by a high level of student ownership of the work, including the relationship with the client. The long-term matter typically lasts longer than any one student's involvement in the clinic, such that each student will work only on one or more discrete pieces of a given matter. As a result, the long-term matter is characterized by a lower level of student ownership. Here, a student's role may look like that of an apprentice, or a

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<sup>11</sup> The factors of duration and ownership are related, but the nature of this relationship is largely controlled by the clinic supervisor. A short-term matter more easily and naturally facilitates student ownership, but it is easy to imagine a short-term matter where students have little ownership—the difference is the nature of the supervision and the choices the clinical supervisor makes. If a supervisor in a short-term matter merely gives assignments, the student will have little ownership. A long-term matter makes it much more difficult to achieve student ownership over the entire matter because the matter extends beyond the term of the student's enrollment in clinic. That said, supervisors can certainly make choices that increase ownership in long-term matters, but this is much more difficult to achieve.

junior associate in a firm, and the work may often include explicit assignments from the supervisor.

The project model is characterized by a level of student ownership akin to the short-term matter, where students serve as lead attorneys, see the case from beginning to end, and maintain the primary relationship with the client. However, unlike the short-term matter, the project typically involves work that *could* last longer than the term of the clinic, and thus requires a supervisor to create internal controls (or locate external controls) to limit the duration of the work such that each student can experience the beginning and end of a given project, or at least the beginning and end of a discrete aspect of a larger project.

The terms clinicians use to identify different models of clinical work is appropriately a contested issue within the field; the terms short-term and long-term are not those commonly used in the clinical literature. Scholars have used terms such as “small case” or “simple case” to describe short-term litigation, legal services or transactional matters. Understandably, some clinicians find the terms “small” and “simple” inaccurate (and potentially derisive) to the extent that they downplay the value and complexity of the legal and social justice work possible in such cases.<sup>12</sup> It is also common to see long-term litigation matters called “hard” or “complex” cases. There again, those clinicians who practice in short-term litigation, legal services, or transactional work may take issue with the potential value-judgment inherent in the terms “hard” or “complex.” Some have rightly argued that students handling a short-term case can face issues just as complex, if not more so, than a student working on a slice of a long-term impact litigation matter. Recognizing the validity of these critiques, I have chosen terms and employed categories that avoid value-judgment and are defined in pedagogical terms. I also use “matter” rather than “case” to reflect the variety and complexity of clinical practice given that the field includes not just litigation but also various types of transactional, community development, community education, legislative, and policy advocacy work.<sup>13</sup>

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<sup>12</sup> See e.g., James C. May, *Hard Cases from Easy Cases Grow: In Defense of the Fact- and Law-Intensive Administrative Law Case*, 32 J. MARSHALL L. REV. 87, 93 (1998).

<sup>13</sup> Describing transactional law practice, Dina Schlossberg notes, “Transactional law practice is not easy to define. Some practitioners use the term as a catch-all phrase for a practice that focuses on matters other than litigation or dispute resolution.” Schlossberg, *supra* note 1, at 195. See also Steven H. Hobbs, *Toward a Theory of Law and Entrepreneurship*, 26 CAP. U. L. REV. 241, 264 (1997); Robert C. Illig, *The Oregon Method: An Alternative Model for Teaching Transactional Law*, 59 J. LEGAL EDUC. 221, 221 (2009). Susan Jones describes community economic development (CED) as consisting of “various strategies for revitalizing poor communities” and facilitating “the economic growth of communities through business development, jobs, affordable housing, childcare.” Jones, *supra*

### A. *The Short-Term Matter*

The traditional model of clinical education is a time-limited and discrete legal matter, what I call the short-term matter.<sup>14</sup> The short-term matter is typically a direct-representation case with a single client, a limited scope of representation, fairly straightforward legal issues, and the expectation that the case will be completed within a limited period of time. In either a transactional or litigation setting, the short-term matter allows a student to see their clinic work through from beginning to end. The short-term matter is also characterized by a measure of predictability for the supervisor, particularly with regard to the substantive legal and procedural issues involved in the matter.

In a litigation setting, the short-term matter might teach traditional litigation skills, including interviewing, counseling, fact-investigation, negotiation, oral advocacy, legal reasoning, and, sometimes, brief-writing.<sup>15</sup> In addition, students can learn problem-solving, collaboration, and strategic thinking skills. The student, or a pair of students working as a team, learn lawyering skills and habits of mind by taking full responsibility for a single case on behalf of a single client.<sup>16</sup> The student (or student team) is the client's only lawyer and handles the matter from the initial client contact to the close of the case. Students, under the supervision of a clinician, have full responsibility for strategic and tactical decisions and all case-related events, such as a

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note 1, at 199-200. She notes that “[s]trategies for CED include revitalization of decaying neighborhoods . . . encouraging economic independence and self-sufficiency through entrepreneurship . . . encouraging private sector joint ventures with local institutions; and heightening participation by low-income people in areas such as political, civil and social rights movements.” *Id.* at 199-200 (citations omitted) (discussing the growth of small business and community economic development clinics as a component of clinical legal education).

<sup>14</sup> For a discussion of short-term cases in clinical education, see generally Juliet Brodie, *Little Cases on the Middle Ground; Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLIN. L. REV. 333 (2009) (suggesting that neighborhood-based community lawyering clinics offer a pedagogical advantage over other clinic environments because they provide enough material for a student to test her assumptions, but not so much that she is overwhelmed by the experience); Ian Weinstein, *Teaching Reflective Lawyering in a Small Case Litigation Clinic: A Love Letter to My Clinic*, 13 CLIN. L. REV. 573 (2006) (arguing that the small case clinical model provides students with cases that are complex enough to offer a valuable learning opportunity, but simple enough that students are able to develop useful cognitive models over the course of the semester). See also, Kruse, *supra* note 1, at 408.

<sup>15</sup> See generally KRIEGER & NEUMANN, *supra* note 3; Srikantiah & Koh, *supra* note 1, at 451.

<sup>16</sup> “[O]ne of the strengths of experiential education is that it gives students opportunities to practice solving problems and to receive feedback on the quality of their efforts . . . students must acquire the habit of mind needed for competent law practice . . .” Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLIN. L. REV. 807, 816 (2007).



hearing or witness interview.<sup>17</sup> The supervisor's role is to guide the student through the case by helping her think through the many choices she must make in the course of representing her client. Short-term litigation matters may involve a range of substantive legal issues, such as Social Security disability, criminal, asylum, civil protection order, or eviction-defense cases.<sup>18</sup>

The short-term matter also includes transactional or community development work.<sup>19</sup> In short-term transactional matters, a student or student team might represent a single client, such as an entrepreneur, a community group, or a business. The scope of the representation is limited, the work will be completed while the student is enrolled in clinic, and the student takes full responsibility for the matter, from researching options and drafting documents to negotiating deals and advising the client. As in litigation, the scope of possible substantive work in small transactional matters is broad and might involve tax planning, incorporating a non-profit, negotiating a lease, or drafting contracts. In small transactional matters, students learn transactional skills such as interviewing, negotiating, drafting, business planning, and client counseling.<sup>20</sup>

The short-term matter reflects clinical education's theoretical grounding in adult-learning theory, with its emphasis on experiential learning and reflection. Many clinicians have embraced the short-term matter because it gives students the chance to fully assume the role of lawyer and take maximum ownership of their work and of their learning experience.<sup>21</sup> In this model, students and supervisors have time to engage in regular and deep reflection throughout the course of the representation.<sup>22</sup> Short-term matters also have the ben-

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<sup>17</sup> See generally Brodie, *supra* note 14; Weinstein, *supra* note 14.

<sup>18</sup> See, e.g., Harvard Law School Post-Foreclosure Eviction Defense Housing Clinic (<http://www.law.harvard.edu/academics/clinical/lsc/clinics/housing.htm>); Stanford Law School Social Security Disability Pro Bono Project (<http://www.law.stanford.edu/organizations/clinics/social-security-disability-pro-bono-project>); University of Connecticut School of Law Criminal Clinic (<http://www.law.uconn.edu/experiential-learning-opportunities/house-legal-clinics/criminal-clinic>); University of Cincinnati Domestic Violence and Civil Protection Order Clinic (<http://www.law.uc.edu/current-students/practical-experiences/domestic-violence-and-civil-protection-order-clinic>); Villanova Clinic for Asylum Refugee and Emigrant Services (<http://www.law.villanova.edu/academics/clinical%20programs/clinics/clinic%20for%20asylum%20refugee%20and%20emigrant%20services.aspx>).

<sup>19</sup> See generally Jones, *supra* note 1.

<sup>20</sup> See Kosuri, "Impact" in 3*D*, *supra* note 1, at 35.

<sup>21</sup> See Brodie, *supra* note 14; Kruse, *supra* note 1; Weinstein, *supra* note 14. See also Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 *VAND. L. REV.* 321, 353 (1982) (noting adult learning theory advises against giving students cases so simple as to be routine or so complex as to be overwhelming).

<sup>22</sup> See Katherine Mattes, *The Tulane Criminal Law Clinic: An Evolution Into a Combined Individual Client and Advocacy Clinic*, 18 *CLIN. L. REV.* 77, 97 (2011) ("A number of clinicians have written about the pedagogical advantages of ensuring that a student's task is

efit of a relative degree of predictability, which makes them manageable for a clinical supervisor. Here, clinicians can (reasonably) predict the length of a case; the universe of possible factual, legal, and ethical issues; and, often, the clients the clinic will serve. This makes it possible for the clinician to predict and plan in advance the student's learning experiences, to schedule seminars and training to coincide with key case-related events, to give basic training in substantive law and procedure, and to monitor a number of matters at one time while still leaving time for seminar planning and teaching.<sup>23</sup>

### B. *The Long-Term Matter*

The long-term matter is traditionally the realm of complex litigation<sup>24</sup> and impact litigation.<sup>25</sup> It also includes transactional work that lasts beyond a given student's enrollment in clinic.<sup>26</sup> Such matters tend to be relatively lengthy and unpredictable as compared to short-term matters. A clinic that handles long-term matters may handle just a few over the course of a number of years, such that successive groups of clinic students will work on various aspects of a single matter.

Clinics handling long-term matters may choose to work on a specific legal issue or on behalf of a particular set of clients who have a shared legal problem. In this model, a clinic typically makes a long-term commitment to a particular client, matter, or set of legal issues. Long-term matters may last for years and, occasionally, span decades.<sup>27</sup> Clinics take on long-term matters for a variety of reasons, such as desire to create change in a particular area of the law, to ex-

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sufficiently small and discrete to allow for greater student ownership by requiring the student to bear the primary responsibility for that task.”); Srikantiah & Koh, *supra* note 1, at 474-80.

<sup>23</sup> The short-term model, as defined it here, does not include most legislative and policy advocacy work. This work instead falls into the project category discussed in greater detail below. Legislative and policy advocacy work can be highly unpredictable and may last for many months or years, depending on the nature of a clinic's involvement and commitment. However, it is possible to do legislative and policy advocacy work that allows a student to have greater ownership of the work and see a given project from start to finish.

<sup>24</sup> I use “complex litigation” given that it is a term commonly understood to refer to cases that may involve multiple legal issues, multiple parties, a lengthy discovery process, and a large factual record.

<sup>25</sup> See, e.g., Frank Askin, *A Law School Where Students Don't Just Learn the Law; They Help Make the Law*, 51 RUTGERS L. REV. 855, 856 (1999); Nancy M. Maurer, *Handling Big Cases in Law School Clinics, or Lessons from My Clinic Sabbatical*, 9 CLIN. L. REV. 879 (2003) (discussing the costs and benefits of handling long-term cases in clinical education); Paul D. Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLIN. L. REV. 545, 571 (1996).

<sup>26</sup> For more on long-term transactional work, see generally Kosuri, “Impact” in 3D, *supra* note 1.

<sup>27</sup> See generally sources cited in note 25 *supra*.

pose students to the challenges of long-term litigation,<sup>28</sup> to raise the profile of the clinic or the school in the community, or to hone the litigation skills of clinical faculty.<sup>29</sup>

In a litigation setting, long-term matters typically involve impact litigation, class actions, or other forms of complex litigation. In a transactional clinic, these matters may include multi-party deals, long-term community economic development, and other transactional matters not easily limited by time and requiring extensive supervisor direction. The supervisor is likely to be seen by clients and students as the lead attorney on the case and it may be explicit that the supervisor is the expert on the matter and in the particular area of law in which the clinic is practicing.<sup>30</sup> Students may not have the opportunity to develop a relationship with a client. Major case-related events, such as briefings and hearings, may take place over the summer months, engaging the time of clinical faculty to a greater degree than the students. Describing the challenge of maximizing student ownership in long-term matters, Paul Reingold states:

No matter how much responsibility we push onto the students, [impact litigation] cases can take on the look of the dreaded “mentor” model. Students have less ownership of the case because they come into the middle of it and they are responsible for only a part of it. . . students can realistically assess that their word carries less weight than the teachers’ in the weekly group meetings. No matter how much we downplay our own expertise and insist that the students work as full partners, their desire to make us mentors comes closer to fruition in the “hard” cases, our vigilance notwithstanding.<sup>31</sup>

In the early years of clinical education, many clinicians came to the conclusion, sometimes through trial and error, that complex litigation cases carried too high a pedagogical cost in terms of decreased student ownership and involvement in case development.<sup>32</sup> Clinicians

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<sup>28</sup> Compare Weinstein, *supra* note 15, at 586 (arguing “[s]tudents can gain tremendous insights from working on complex cases”) with Kruse, *supra* note 1, at 413 (asserting simple cases provide matters the students are “capable of handling on their own”).

<sup>29</sup> Reingold, *supra* note 25, at 570.

<sup>30</sup> These cases . . . stretch over multiple academic years and involve a succession of student teams. Students work on discrete parts of cases depending on the stage in litigation. Less emphasis is placed on the skills associated with the development of the lawyer-client relationship (interviewing and counseling and theory of the case) and more on acquisition of the differing substantive and procedural knowledge necessary in each phase of litigation.

Ashar, *supra* note 1, at 374 (describing the pedagogical model of impact litigation clinics).

<sup>31</sup> Reingold, *supra* note 25, at 546.

<sup>32</sup> “The [complex] litigation clinic taught us the importance of direct student responsibility for clients and cases . . . the difficulties of teaching clinically when students were exposed to but a slice of a legal process. . .” Michael Meltsner & Philip G. Schrag, *Report*

who choose the complex-case model tend to acknowledge pedagogical drawbacks,<sup>33</sup> but argue that other benefits of this model, such as the opportunity for students to be exposed to high-level litigation, are important learning opportunities that outweigh potential downsides.<sup>34</sup>

Some clinicians assert that such cases have no place in clinical education because students cannot take full ownership of their work given the complexity and protracted nature of complex litigation.<sup>35</sup> Other clinicians state that long-term matters offer unique benefits for students and for clinical programs, benefits that can only come from involvement in the most sophisticated complex litigation practice. Notably, Reingold has argued that clinics should take on long-term matters to inject intellectual energy, challenge, and variety into clinical programs, stating that this serves to stimulate clinical faculty and ensures that faculty lawyering skills and passion for the work do not grow “stale.”<sup>36</sup>

### C. *The Project*

A third model of clinical education is learning through projects.<sup>37</sup> A basic definition is that a project involves students solving legal problems through the use of strategies and tactics other than litigation. Projects may share many characteristics with short-term matters, including limited duration and a high level of student ownership. However, they may also resemble long-term matters because they typically involve work that is not inherently time-limited. Instead, the supervisor typically makes choices about the length or nature of the clinic’s involvement in a given project in order to ensure that students can see the work through from beginning to end.

Despite the breadth of possibilities within the project model, there are some unifying characteristics. Projects typically have the explicit goal of teaching complex problem-solving;<sup>38</sup> take an expansive

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from *A CLEPR Colony*, 76 COLUM. L. REV. 581, 584 (1976) (recounting their search for the “clinical pinnacle” and determining that the pedagogical compromises inherent in complex impact litigation made it an undesirable clinical model).

<sup>33</sup> See generally Askin, *supra* note 25; Maurer, *supra* note 25.

<sup>34</sup> Reingold, *supra* note 25, at 555-57.

<sup>35</sup> See, e.g., Meltsner & Schrag, *supra* note 32, at 592.

<sup>36</sup> Reingold, *supra* note 25, at 570. *But see* May, *supra* note 12, at 87 (arguing for the potential of “apparently routine service matters not only to constitute suitable teaching material but also to rise to the level of difficult cases”).

<sup>37</sup> The use of the term “project” is intentionally broad; it does not suggest a particular substantive focus or advocacy tactic.

<sup>38</sup> See generally Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1; Karin & Runge, *supra* note 1; Kosuri, “*Impact*” in *3D*, *supra* note 1; Kruse, *supra* note 1; Srikantiah & Koh, *supra* note 1.

view of lawyering skills;<sup>39</sup> tackle ill-structured,<sup>40</sup> complex or multifaceted problems;<sup>41</sup> require a significant amount of interaction and collaboration with community members and professionals from other fields, whether as clients, partners, or advisors;<sup>42</sup> and explicitly seek to have an impact or create change beyond an individual client.<sup>43</sup>

Project-based clinical work may be the entirety of a given clinic's workload, or only part of it. Clinics that engage in project-based work may identify as community lawyering,<sup>44</sup> community economic development,<sup>45</sup> transactional,<sup>46</sup> legislative advocacy,<sup>47</sup> or integrated<sup>48</sup> clinics, to name a few. The scope of the work may be limited to a single city block or have global reach. The categories of legal work that fall within this model include legislative or policy reform, community economic development, community legal education,<sup>49</sup> or discrete problem-solving on behalf of an organizational client, to name a few. Projects may have a social justice impact through policy advocacy work, such as a campaign to pass a piece of legislation, through capacity-building for a small-non-profit organization, or by providing transactional legal services to a community group. The skills and tactics utilized in projects may include community organizing, legislative drafting and advocacy, strategic planning, policy research and analysis,

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<sup>39</sup> See generally Karin & Runge, *supra* note 1; Kruse, *supra* note 1; Srikantiah & Koh, *supra* note 1.

<sup>40</sup> Bennett, *supra* note 2.

<sup>41</sup> This could also be called an ill-defined or ill-structured problem. See, e.g., Bennett, *id.*

<sup>42</sup> 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. Kosuri, "Impact" in 3*D*, *supra* note 1, at 38. See also Tokarz et al., *supra* note 1, at 399.

<sup>43</sup> A project could involve the representation of a single client, for example, drafting a clemency petition on behalf of an incarcerated person, while also developing and implementing an advocacy campaign to support the petition. For discussions of the systemic change goals, see Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1; Karin & Runge, *supra* note 1; Kruse, *supra* note 1; Srikantiah & Koh, *supra* note 1.

<sup>44</sup> For a discussion of community lawyering practice and the challenges of teaching in community lawyering clinics, see Tokarz et al., *supra* note 1, at 361. For a model of community lawyering practice emphasizing the role of lawyer as organizer and collaborator, see Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000).

<sup>45</sup> Kosuri, "Impact" in 3*D*, *supra* note 1, at 46.

<sup>46</sup> See Laurie Hauber, *Commentary: Complex Projects in a Transactional Law Clinic*, 18 J. AFFORDABLE HOUSING 247 (2009); Kosuri, "Impact" in 3*D*, *supra* note 1, at 46.

<sup>47</sup> See Karin & Runge, *supra* note 1.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 591-593; Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1, at 406-07 (describing the benefits and forms of community education and describing the place of community legal education within the clinical legal education mission).

media relations, or a combination. A clinic could engage in projects related to a wide range of legal issues irrespective of subject matter. Alternatively, a clinic may choose to engage in projects that advance a particular social justice goal, pursue a specific area of law reform, or serve a particular unmet legal need.

Project-based clinics are not a new phenomenon but the number of such clinics is growing, which is reflected in a body of clinical scholarship dedicated to exploring the substantive work and pedagogical approaches of the model.<sup>50</sup> A number of scholars, notably those whose clinics handle both cases and projects, have articulated how projects can enhance the teaching of key lawyering skills and values.<sup>51</sup> Over the past few years, clinical scholars have begun to develop theories of project supervision and design by reflecting on their experiences and suggesting possible pedagogical approaches in view of the unique challenges of this clinic model. The prevailing theme in this literature is that clinics must modify pedagogical goals and methods, particularly the goal of maximizing student ownership, in project supervision.<sup>52</sup> But in fact, clinics can engage in projects that have a meaningful social justice impact while still meeting the pedagogical objectives of student ownership and role assumption.

The emergence of projects in clinical education is likely due to growing recognition of the pedagogical and social justice benefits of the model.<sup>53</sup> In projects, students learn through experience how lawyers operate outside of the litigation context to solve complex problems for clients. They learn broader strategic thinking and problem-solving skills. From a social justice perspective, projects provide a service and fill unmet legal needs, they engage in law reform, and they help students see lawyers' roles in advancing or inhibiting justice. A key challenge of teaching through projects is how to do this complex work while still meeting the pedagogical goals of clinical education.

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<sup>50</sup> See *e.g.*, sources cited in notes 1 and 2 *supra*.

<sup>51</sup> See Karin & Runge, *supra* note 1; Kruse, *supra* note 1; Srikantiah & Koh, *supra* note 1.

<sup>52</sup> [M]any traditional clinical teaching methods—fostering reflection, examination of expected and actual outcomes, and participation in case rounds, among others—translate well into the advocacy project context. Other methods, namely maximizing student ownership and limiting instructor direction, do not work as well in the institutional project context.

Kruse, *supra* note 1, at 432.

<sup>53</sup> Discussing potential considerations when integrating non-litigation advocacy work into an existing direct service clinic, Karin and Runge note that clinicians may consider “. . . the pedagogical goals of the clinic, the gaps in legal services identified by a community to be served, the interests of the students, and/or the skills and interests of the professors teaching in the law clinic.” Karin & Runge, *supra* note 1, at 569.

## II. BENEFITS AND CHALLENGES OF THE PROJECT MODEL: SOCIAL JUSTICE

My goal in this article is to argue that clinicians who put pedagogical goals first in designing project-based learning can still meet social justice goals and engage in meaningful and transformative work—the kind of work that deeply affects our students, as well as the communities we serve. The eight principles for project design and supervision, developed in greater detail later in this article, offer a potential path for clinicians to follow to achieve these ends. The approach presented here contains one possible response to common questions about tensions between social justice and student learning, a response that puts pedagogical considerations at the forefront of clinic design. In the sections that follow, I re-visit some of the core debates in clinical education regarding the role of social justice and its relationship to pedagogy as well as some key issues related to selecting a pedagogical approach. This discussion is intended to offer a theoretical and practical framework for thinking about the benefits and challenges of the project model and to contextualize the eight principles for project design and supervision offered here.

The two core challenges of the project model are those that face clinical education more broadly, namely, the challenge of selecting and implementing a pedagogical method that maximizes student learning and the challenge of navigating the relationship between pedagogical and social justice goals. In response to these challenges, the theory and practice of clinical legal education has been shaped by an ongoing conversation about goals and methods, particularly in terms of navigating the sometimes complementary, sometimes competing, goals of achieving social justice impact and maximizing pedagogical value.<sup>54</sup> In the clinical literature and in practice; clinicians continue to

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<sup>54</sup> See Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLIN. L. REV. 1, 12-13 (2000) (describing the evolution of clinical education in the 1960s and '70s to assist indigent clients with a variety of legal issues); Susan Bryant & Elliott S. Milstein, *Reflections upon the 25th Anniversary of The Lawyering Process: An Introduction to the Symposium*, 10 CLIN. L. REV. 1, 20 (2003) (discussing the lack of consensus around the goals of clinical education, the authors argue that “[c]linicians sometimes squabble over what is of greatest importance: developing practice skills . . . or developing the critical perspective and insight on the work of lawyers within legal institutions that is a unique strength of externship programs or grappling with the value conflicts and ethical dilemmas inherent in representing real clients in in-house clinics.”); David F. Chavkin, *Spinning Straw into Gold: Exploring the Legacy of Bellow and Moulton*, 10 CLIN. L. REV. 245, 253 (2003) (noting a comment made to the author by another clinician that “after thirty years of clinical legal education, we still seem to be asking the same questions.”); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 471 (1995) (discussing the mission and goals of clinical education); Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577

raise the question (sometimes explicitly, often implicitly) of whether the primary goal of clinical education is teaching and training future lawyers in the skills and knowledge they will need in practice, or promoting social justice, or some combination of the two.<sup>55</sup> The complexity of this question turns on what clinicians identify as their ideal teaching goals and methods, as well as how clinicians define social justice.

The relationship between social justice and student learning is at the core of the challenges inherent in project supervision. In addition to the potential for meaningful social justice impact, projects bring a clear set of pedagogical benefits for students. Through projects, clinics engage students in complex problem-solving, strategic thinking, negotiation, project management and communication skills, while also asking students to question injustice and to see the power of lawyers as reformers and social justice advocates. The lessons and skills taught through projects, as in the rest of clinical education, are not typically taught anywhere else in the law school, and particularly not in an experiential way. While the rise of projects in clinical education is due in part to these pedagogical benefits, the clinical literature suggests that clinicians often choose projects based primarily on social justice commitments, rather than pedagogical value. This method of project selection does not always create pedagogical challenges, but it does increase the risk that a clinic will take on a project that has social justice objectives but requires substantial pedagogical compromises.

For example, some projects may have inherent qualities that require the clinical supervisor to become the “lead” attorney, thereby undermining student ownership, a key pedagogical goal of clinical education.<sup>56</sup> Or a project might involve a client group that is unwilling or unable to work with a team of students, thereby requiring the supervisor to mediate the attorney/client relationship. The fundamental problem is that when supervisors take the lead on projects, students may lose ownership of their work, may not fully experience lawyering in-role, and may thus be deprived of the experiential learning and

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(1987); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FORDHAM L. REV.* 1929, 1933-34 (2002) [hereinafter *Law School Clinic*]. See also Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 *CLIN. L. REV.* 1, 3 (1997) [hereinafter *Striving*]; Jerold S. Auerbach, *What Has the Teaching of Law to do with Justice?*, 53 *N.Y.U. L. REV.* 457 (1978); Sharon L. Beckman & Paul R. Tremblay, *Foreword: The Way to Carnegie*, 32 *B.C. J.L. & SOC. JUST.* 215, 218 (2012); George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 *J. LEGAL EDUC.* 162 (1974); Kosuri, “*Impact*” in 3*D*, *supra* note 1, at 1.

<sup>55</sup> See Aiken, *Striving*, *supra* note 54; Kosuri, “*Impact*” in 3*D*, *supra* note 1; Wizner, *Law School Clinic*, *supra* note 54.

<sup>56</sup> For a discussion of student ownership and role assumption as fundamental goals of clinical education, see *infra* Part III.



deep reflection that are the hallmarks of a quality clinical experience.<sup>57</sup> With this said, it is entirely possible for clinicians to do project-based clinical work that meets any number of social justice goals, while also ensuring students have a complex and challenging lawyering experience. Indeed, as many clinicians have observed, the social justice mission of clinical education serves to enhance and add value for our students, as well as the communities they serve.

### A. *Defining “Social Justice”: Service, Reform and Values*

Throughout legal scholarship, with clinical scholarship as no exception, “social justice” is a term that is commonly employed but not often clearly defined.<sup>58</sup> Social justice is typically associated with a “progressive” political and law reform agenda.<sup>59</sup> Traditionally, clinical education’s social justice agenda seeks to promote substantive equality and equality of opportunity, and to overcome the fact of legal, social, and political oppression, as well as the impact of oppression.<sup>60</sup> This agenda also promotes fundamental fairness, both as a substantive and procedural matter.<sup>61</sup> Finally, social justice in clinical education is often deeply connected to the values of democratic participation.<sup>62</sup>

There is a strong consensus among clinical scholars that a social justice mission is at the core of clinical legal education.<sup>63</sup> The clinical

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<sup>57</sup> “Our supervisory questions should be directed to fostering reflection rather than eliciting information.” Jane H. Aiken, *Provocateurs for Justice*, 7 *CLIN. L. REV.* 287, 298 (2001) [hereinafter *Provocateurs*].

<sup>58</sup> See Scott L. Cummings, *What Good Are Lawyers?* in *PARADOX OF PROFESSIONALISM: LAWYERS AND THE POSSIBILITY OF JUSTICE* 14–15 (Scott L. Cummings ed., 2011) [hereinafter *What Good Are Lawyers?*] (offering a definition of social justice and noting the varied possible meanings of the term).

<sup>59</sup> *Id.* at 13.

<sup>60</sup> *Id.* at 1. See also John O. Calmore, “*Chasing the Wind*”: *Pursuing Social Justice, Overcoming Legal Mis-Education, and Engaging in Professional Re-Socialization*, 37 *LOY. L.A. L. REV.* 1167, 1175-76 (2004) (“[S]ocial justice work must primarily alter the opportunity-denying circumstances, systems, and structures of oppression and inequality. Thus redress will go beyond justice in general or basic rights claims . . . It is important to think of ‘social justice’ as ‘simultaneously distributional and relational.’”); Scott L. Cummings, *The Politics of Pro Bono*, 52 *UCLA L. REV.* 1, 7 (2004) (describing functionalist sociology as holding that social justice obliges lawyers to “advance the public interest over narrow client desires.”); Stephen Wizner, *Is Social Justice Still Relevant?*, 32 *B.C. J.L. & SOC. JUST.* 345 (2012) [hereinafter *Still Relevant?*]; Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work’s Empowerment Approach*, 13 *CLIN. L. REV.* 459, 503 (2006) (discussing different definitions of social justice that can be taught in clinics).

<sup>61</sup> See John O. Calmore, *supra* note 60, at 1175.

<sup>62</sup> See Wizner, *Still Relevant?* *supra* note 60, at 353 (noting that clinical education should instill in students a sense of “responsibility to democratize the legal system, and to pursue justice”).

<sup>63</sup> See Askin, *supra* note 25, at 856 (asserting that one of the most important contributions of clinics is to help students see law as an instrument of social justice); Frank S. Bloch

literature is filled with calls for “advancing social justice,” but even if we accept the expansive definition of social justice outlined above, there is still a frustrating lack of precision and definition regarding precisely *how* social justice it is to be advanced.<sup>64</sup> Some clinicians talk about advancing social justice through the substantive work of the clinic, whether that work involves basic civil and criminal legal services, impact litigation or legislative advocacy. Others speak of advancing social justice by training future poverty lawyers. Still others speak of advancing social justice through both the substantive work of the clinic and commitments the clinic develops in students. The tendency of this discussion to conflate different aspects of clinical education’s social justice mission creates a lack of clarity about both goals and methods. In response, I suggest three defining aspects of clinical education’s work to advance social justice: service, reform, and values.

The first aspect of the social justice mission of clinical education is service, or the good that the clinic provides directly to individuals, communities, or collectives.<sup>65</sup> Service is where clinicians engage in the

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& M.R.K. Prasad, *Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-National Currents from India and the United States*, 13 CLIN. L. REV. 165, 166 (2006); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 S.M.U. L. REV. 1461, 1462 (1998) (arguing that social justice should be the central mission of clinical education); Rand, *supra* note 65, at 503; Karin & Runge, *supra* note 1, at 565 (arguing that the role of clinics is to “train the next generation of social change advocates.”). But as Susan Bryant and Elliott Milstein noted in 2003, “At one time it might have been possible to imagine that clinicians were producing lawyers for the under-represented. . .” given that in the late 1970s, “. . . the Legal Services Corporation was expanding and it seemed as if there would be thousands of jobs available . . . Yet, as was true even at that time and is certainly true now, only a relatively small number of the students we teach in clinics are likely to become full-time lawyers for the poor.” Bryant & Milstein, *supra* note 54, at 21. Jane Aiken has argued:

It is time we recognize that our success as social justice educators is not determined by how many Thurgood Marshalls or Marion Wright Edelmans we produce. We would be far better off if our students learned how to reflect on their experience, place it in a social justice context, glimpse the strong relationship between knowledge, culture and power, and recognize the role they play in either unearthing hierarchical and oppressive systems of power or challenging such structures. . . . If we can move our students toward ‘justice readiness’ through their clinical experience, then we should count that as success. It is then up to them what choices they make about the kind of lawyers they want to be. We have pulled back the curtain and dethroned neutrality.

Aiken, *Provocateurs*, *supra* note 57, at 289.

<sup>64</sup> It is beyond the scope of this article to engage in a thorough discussion of the varied political values, ideological commitments and substantive goals that have been articulated by clinical scholars and practitioners. My starting point is a baseline assumption that the social justice agenda of clinical education may be broadly described as having the substantive goals of promoting equality and fairness and overcoming oppression.

<sup>65</sup> Karin & Runge, *supra* note 1, at 572 (describing a clinic that engaged in outreach efforts to find sectors of the community with unmet legal needs); Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLIN. L. REV. 307, 316-17 (2001) (“The pursuit of social justice in-

day-to-day work of increasing access to justice and providing legal services to poor and underrepresented clients, non-profit organizations, or community groups.<sup>66</sup>

A second aspect is reform. This is where clinics engage in efforts to create structural or systemic change, typically through impact litigation and more recently through advocacy projects, including community lawyering, community economic development, policy advocacy, and other lawyering strategies, thus advancing social justice on a broader scale than is possible in individual representation.<sup>67</sup>

The third aspect, values, involves the role of clinics in developing a commitment to social justice in our students, with the hope that they will develop the ability to see injustice, understand their potential role in remedying or challenging injustice, and, ideally, take action to effect change throughout their careers.<sup>68</sup> This includes a commitment to advancing social justice values in the profession as a whole.<sup>69</sup> The impact of a clinical experience on an individual student's values exists on a spectrum, and any individual lawyer may operate at different points on the spectrum throughout his or her career. A clinical experience may instill in a student a commitment to pro bono service or it may produce an attorney who spends a lifetime working in poverty law.

Of the three aspects of clinical education's social justice mission, reform and values are those most often raised in the current clinical literature.<sup>70</sup> Thirty years ago, clinical education focused on service and reform.<sup>71</sup> Today, the actual work of most clinics involves two or

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volves working to provide access to justice and understanding and addressing inequities in our justice system. In a clinical setting, providing access to justice means designing a program to address needs for legal service in our communities.”); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 *FORDHAM L. REV.* 997 (2004) (“Clinical legal education has been focusing on legal services for the underserved and on the justice mission of law schools for years.”).

<sup>66</sup> See generally Wizner & Aiken, *supra* note 65.

<sup>67</sup> See Suzanne Valdez Carey, *An Essay on the Evolution of Clinical Legal Education and its Impact on Student Trial Practice*, 51 *U. KAN. L. REV.* 509, 530-40 (2003) (surveying the history of impact litigation by clinics, with emphasis on innocence projects and environmental litigation); Scott L. Cummings & Deborah L. Rhode, *Public Interest Litigation: Insights from Theory and Practice*, 36 *FORDHAM URB. L.J.* 603, 625-628 (2009) (detailing the importance of impact litigation for clinical programs and the impediments to pursuing such litigation).

<sup>68</sup> See generally Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 *B.C. J.L. & SOC. JUST.* 231 (2012) [hereinafter *Justice Readiness*].

<sup>69</sup> See Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 *CLIN. L. REV.* 37, 38 (1995) (“This article . . . advocat[es] that a complete legal education and, in particular, a complete clinical education experience, should include lessons of social justice.”).

<sup>70</sup> See e.g., Barry, *Question of Mission*, *supra* note 1, at 148-54.

<sup>71</sup> At one point, the debate over the purpose of clinics was whether to provide teaching or service. Educators, however, struck a balance between the two, and the debate switched to contemplating what to teach: skills or justice. This shift indicates the

more of these aspects of social justice.

### B. *Social Justice in the Project Model*

Clinicians may choose to teach through projects, as opposed to or in addition to cases, for a range of reasons, one of which is certainly the unique pedagogical benefits of the model, but clinicians also choose to do projects to meet social justice goals.<sup>72</sup> Projects offer clear social justice benefits in the three dimensions of values, law reform, and service. In fact, through projects, clinics work toward systemic change and law reform and fill a need for legal services that is currently not filled through any other means. At the same time, projects address the values dimension of social justice by helping students see the role that lawyers can play in supporting systemic change and advancing justice through service.<sup>73</sup>

Increasingly, the progressive public interest sector has turned to non-litigation advocacy strategies<sup>74</sup> and some clinics have followed suit. By engaging in work outside of the courtroom and the bounds of litigation, clinics can address a wider range of community legal needs that complement and expand the work of traditional litigation-based models.<sup>75</sup> Any given litigation process will involve only a few, maybe just one, possible legal remedy or resolution for a problem that is inevitably more complex, contested, and contextual than the adversary system contemplates. In a civil suit under a tort or contract theory, a client may win damages or be forced to pay. In a domestic violence

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progress in the debate, as clinical faculty members have embraced their role as teachers.

Aiken, *Justice Readiness*, *supra* note 68, at 231.

<sup>72</sup> The factors that result in the combination of legal advocacy strategies integrated into a law clinic may include the pedagogical goals of the clinic, the gaps in legal services identified by a community to be served, the interests of the students, and/or the skills and interests of the professors teaching in the law clinic.

Karin & Runge, *supra* note 1, at 569.

<sup>73</sup> See Aiken, *Provocateurs*, *supra* note 57, at 288 (“A provocateur for justice actively imbues her students with a lifelong learning about justice, prompts them to name injustice, to recognize the role they may play in the perpetuation of injustice and to work toward a legal solution to that injustice.”); Kruse, *supra* note 1, at 443 (noting a difference between groups of students who had worked on systemic reform and those who had not, in terms of their appreciation of the “broader issues surrounding the need for legal services among the poor”).

<sup>74</sup> See sources cited in note 7 *supra* and accompanying text.

<sup>75</sup> Poor people are not served well by the kinds of advocacy currently taught and reinforced in most law clinics. The canonical approaches to clinical legal education, which focus nearly exclusively on individual client empowerment, the transfer of a limited number of professional skills, and lawyer-led impact litigation and law reform, are not sufficient to sustain effective public interest practice.

Ashar, *supra* note 1, at 355. See also Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1; Seielstad, *supra* note 1, at 478-79.

case or an environmental justice claim, a legal action may bring an injunction or protective order designed to end a potential harm. In a criminal case, a client may be found guilty, or not. The legal tools of the adversarial system, by their very design, cannot address a wide range of human needs, community interests, social and economic costs, or political realities.<sup>76</sup>

Projects allow clinics to respond to current community needs and interests using a range of advocacy tactics.<sup>77</sup> Projects can fill unmet needs for legal services by offering capacity building for non-profit organizations and community groups.<sup>78</sup> Taking on projects that are generated by community members and by community-based organizations and advocacy groups connects students and clinical faculty, and by extension, the law school as a whole, to the community. In this way, projects allow clinics to become community partners, engaging in what is often called community lawyering or collaborative law practice.<sup>79</sup> This model of lawyering ideally places the power of decision-

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<sup>76</sup> For an exploration of problem-solving as a concept distinct from winning, see generally Menkel-Meadow, *Winning Isn't Everything*, *supra* note 2. She writes:

The law all too often deals in binary on/off positions. There is contract or no contract, negligence or no negligence, and guilt or innocence with very few “mediated” substantive choices—comparative negligence in torts, material breach, promissory estoppel . . . Yet, on/off decisions these days seldom reflect the complex reality of post-modern life and lawsuits with multiple parties and issues, complex causation chains and liability and responsibility, and situations where two “rights” or claims for justice may stand in equipoise on opposite sides of a case (for example, free speech and regulation against hate speech and child custody cases).

*Id.* at 908.

<sup>77</sup> In 1977, Gary Bellow critiqued the legal services model of individual client representation for its de-politicization of the systemic problems facing low-income communities. Gary Bellow, *Turning Solutions Into Problems: The Legal Aid Experience*, 34 *NLADA BRIEFCASE* 106, 108 (1977). As Sameer Ashar notes in the context of his more recent critique of clinical education’s focus on individual client representation, Bellow’s words are still applicable today:

A further dimension of these narrow definitions of client grievances is that they are always dealt with individually. No efforts are made to enable clients with related problems to meet and talk with each other, or to explore the possibilities of concerted challenges to an institutional practice. Nor do the lawyers systematically review cases to expose patterns of problems, to deepen their knowledge of the bureaucracies with which they deal, or to express concerns as individuals or as an office about what they have uncovered.

Ashar, *supra* note 1, at 356. See also Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1, at 450 (“[M]ulti-dimensional lawyering’ [is] lawyering that includes a broad view of the opportunities and responsibilities of future lawyers, and one that allows students to serve a person or community according to that person’s or community’s needs.”).

<sup>78</sup> See Seielstad, *supra* note 1, at 449 (“The concept of community can have a multitude of meanings, depending on the context in which it is expressed. It may refer to a group of people united by a common geography, for instance, or a group joined by common interest, cause, or sharing another common background such as class, gender, ethnicity or culture, and/or race.”).

<sup>79</sup> See generally Ashar, *supra* note 1 (outlining a clinical education model that supports

making regarding social change goals in the hands of those who are affected by systemic injustices rather than in the hands of attorneys.<sup>80</sup> It moves away from the individualized model of representation, which focuses on discrete and limited legal problems and solutions, and expands the possibilities for reform and structural change.<sup>81</sup>

To generate responsive and timely projects, clinics can reach out to non-profit organizations, community groups, and community leaders to identify areas where the assistance of a dedicated team of law students would help achieve a community's social justice or reform goals. In every community, there are "dream" projects that groups have not had the resources to complete and high-priority legal and policy problems that would benefit from the support of lawyers. The work might involve, for example, representing a community group that has the goal of solving a particular local, legal problem. A solution might be achieved through legislation or policy reform, by the development of a strategic advocacy plan, or through identifying and securing funding for the community group. While most communities have legal-services organizations to provide at least a bare bones level of free civil legal services, there is no corollary service to provide professional legal assistance to non-profits and community groups in efforts to create systemic change.<sup>82</sup> Clinical projects fill a need that, in most communities, is not met by any other source.

On the values dimension of social justice, projects offer students the opportunity to understand power and privilege and to see systemic injustice in a way that is not often illuminated by individual client representation. A critique often leveled at clinics and at poverty law practice in general is that the traditional lawyer-client relationship obscures the textured realities of clients' lives, experiences, and social contexts.<sup>83</sup> Students who engage in project work will develop a broader picture of structural inequality and the power of legal and social forces to shape the lives of individuals. When working one on one with a client, students can and sometimes do discount the evi-

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collective mobilization); Tokarz et al., *supra* note 1 (discussing community lawyering practice).

<sup>80</sup> Ashar, *supra* note 1, at 390.

<sup>81</sup> See Cummings, *What Good are Lawyers?*, *supra* note 58, at 13 (discussing the lack of legal resources to advocate for the broad and long-term interests of marginalized groups).

<sup>82</sup> See generally William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation from the 1960's to the 1990's*, 17 ST. LOUIS U. PUB. L. REV. 241 (1998) ("In 1996 Congress gave in to long-time critics of the Legal Services Corporation and all but eliminated the ability of lawyers for poor people to use the law as an instrument for reform, legal work usually described as law reform.")

<sup>83</sup> For critique of the traditional lawyer/client relationship, specifically in the area of poverty law practice, see Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1078 (2007).

dence of systemic injustices that are visible in their client's life experiences. When faced with the complexity of a single individual's lived experience, it is possible to explain away the evidence of systemic injustice as idiosyncratic. Taken out of context, the peculiarities of an individual client's life can obscure the ways in which larger social forces have shaped that person's life and opportunities. It is a phenomenon that every clinical teacher, and every poverty lawyer, has witnessed as it plays out in practice. Through project work, students can confront and grapple with the structural forces that support inequality and injustice.

The depth and breadth of the social change work possible through projects is vast. Students can take on the role of strategic consultants, advising community groups on matters of law and policy, helping to identify and refine goals and evaluate options, as well as developing and even implementing advocacy campaigns. Students can meet transactional legal needs of community collectives with the goal of enhancing economic development in low-income communities. Students can assist community leaders in the development and implementation of campaigns for legislative change. Through projects, clinic students can work in partnership with community groups to seek reform in areas that are identified by the community. Because projects need not be limited to a particular area of law in the way that litigation-based matters often are, clinics can be nimble and responsive to a range of community needs.<sup>84</sup>

### III. BENEFITS AND CHALLENGES OF THE PROJECT MODEL: PEDAGOGY

The role of clinical programs within legal education, broadly stated, is to prepare students for the practice of law through experiential learning. In clinical education, students learn how to be lawyers by doing real-world legal work, typically on behalf of clients. For clinicians engaged in projects or any other type of clinical work, the challenge is the same: choosing and implementing effective pedagogical methods. Clinical education has developed a distinct set of methods to support student learning, including maximizing student ownership of clinic work and ensuring that students fully assume the lawyer role.<sup>85</sup> These two methods are those most often cited as challenges in

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<sup>84</sup> See Diamond, *supra* note 44, at 75-76 (discussing the devotion to legalistic solutions to community problems and calling for lawyers to recognize "the non-legal aspects of social or economic problems" and to engage in "multi-dimensional problem-solving").

<sup>85</sup> See Harriet N. Katz, *Reconsidering Collaboration and Modeling: Enriching Clinical Pedagogy*, 41 GONZ. L. REV. 315, 316 (2006); Kruse, *supra* note 1, at 407-08 (discussing ownership and role assumption as core methods of clinical teaching); Wallace J. Mlyniec,

the context of project-based clinical teaching.

A potential risk in project-based clinical experiences is the possibility that the choice of a particular project will ultimately shape or control pedagogical methods, rather than ensuring pedagogical goals inform the selection and design of projects at the outset. A consistent theme in the clinical literature holds that the principle of student ownership must be set aside or modified in the project context, particularly as compared to the short-term matter.<sup>86</sup> The argument is that projects involve issues and client relationships that are so complex as to prevent students from realistically taking ownership of their project work in the way that they would take ownership of a short-term matter.<sup>87</sup> Indeed, projects are, to use a colloquial term, “messy” in ways that short-term matters are not because they present students (and supervisors) with the challenge of managing the chaos of a complex or ill-structured problem.<sup>88</sup> Perhaps the most important unifying feature of projects across different clinical contexts is that projects are intellectually, emotionally, legally, and ideologically messy from the perspective of students and supervisors, as well as clients and community

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*Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 505, 536 (2012) (discussing the clinical methods of role assumption and ownership).

<sup>86</sup> See Karin & Runge, *supra* note 1, at 610; Kruse, *supra* note 1, at 410-11; Srikantiah & Koh, *supra* note 1, at 451 (“While the traditional student-ownership model of supervision generally facilitates student learning in the individual small-case context, that model is a poor fit for student work on larger advocacy projects.”). See also Keith A. Findley, *The Pedagogy of Innocence: Reflections on the Role of Innocence Projects in Clinical Legal Education*, 13 CLIN. L. REV. 231, 235 (2006) (“[T]he size, complexity and unpredictability of innocence project cases pose challenges to clinical teaching methodology.”); Jocelyn Getgen Kestenbaum et al., *Catalysts for Change: A Proposed Framework for Human Rights Clinical Teaching and Advocacy*, 18 CLIN. L. REV. 459, 468-69 (2012) (“One of the main challenges for clinicians involves balancing goals and managing the various complications that arise from a multi-factor project-selection process.”).

<sup>87</sup> See e.g., Kruse, *supra* note 1, at 440-41 (suggesting a set of strategies —such as compartmentalization, collaboration, continuity and connection — to increase ownership, but noting that “while the use of [the four strategies] can help to maximize student ownership in bigger service projects, the student ownership over the problem-solving process was never ultimate ownership, and it may be a stretch to describe it even as primary ownership.”); See also Philip G. Schrag, *Constructing a Clinic*, 3 CLIN. L. REV. 175, 180, 192 (1996) (suggesting that teaching students to “accept and assume responsibility for matters of great importance to real clients” might be an important goal of a clinical program and, if so, “smaller cases seem better suited to the goal.”).

<sup>88</sup> See generally Bennett, *supra* note 2. Mark Neal Aaronson offers the following characteristics of an ill-structured problem, characteristics that translate to the project model:

- (1) The place to begin to define the problem is usually not clear;
- (2) there often are many contingencies to take into account;
- (3) how to weigh and assess the various interdependent variables is uncertain;
- (4) one has to continuously reframe and reconsider what one is doing in light of new information and shifting calculations; and
- (5) the goals to be sought are frequently subject to debate and refinement and are not usually susceptible to clear measurement.

Aaronson, *supra* note 2, at 257.



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Scholars have suggested that projects require the supervisor and student to work in collaboration,<sup>90</sup> that projects require the clinician to be quite directive in her supervision,<sup>91</sup> or that projects necessarily involve the clinician serving as the “expert.”<sup>92</sup> The need for adaptation to the student ownership model is particularly pressing where a project does not have a client, where the work continues beyond the time students are enrolled in the clinic, or where the supervisor has the primary relationship with the client or takes the “lead” on the project.

The collaboration solution and the increased directiveness solution may create dynamics that tend to place students in a receptive assignment mode. The latter option, increased directiveness, might more accurately be called “clinician-as-client” or “clinician-as-expert.”<sup>93</sup> Scholars who have written about their experiences of supervision using a clinician-expert or clinician-client model note that where the clinician is the expert or client, it “continually threaten[s] giving students primary and ultimate control over the problem-solving process.”<sup>94</sup> Thus, instead of taking full ownership and assuming the lawyer role, students receive and complete discrete assignments given by the supervisor.<sup>95</sup>

The collaboration model, although intended to create a relationship in which students and supervisors are equal partners in project work, is likely to fail to achieve actual equality of contribution and shared power in the collaboration. As clinicians we have immense power in our relationships with students given our overlapping profes-

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<sup>89</sup> See Seielstad, *supra* note 1, at 494 (2002) (“Identifying and managing effective community projects and collaborations can be complicated and time-consuming, and even more so when that work must be balanced with different clinical activities.”); Srikantiah & Koh, *supra* note 1, at 463-64 (2010) (“[T]he advocacy component of the clinic typically involves work with institutional clients . . . students learn more complex problem-solving skills and must exercise judgment by weighing various considerations that are typically not present in the individual small-case context.”).

<sup>90</sup> Kruse, *supra* note 1; Srikantiah & Koh, *supra* note 1.

<sup>91</sup> Karin & Runge, *supra* note 1; Kruse, *supra* note 1.

<sup>92</sup> For a discussion of the non-directiveness model, see Katz, *supra* note 85, at 319 (noting that non-directive supervision is not “without criticism from both theoretical and practical perspectives.”).

<sup>93</sup> See Kruse *supra* note 1, at 441 (“I continually played the role of client-proxy at different stages of problem-solving . . .”).

<sup>94</sup> *Id.*

<sup>95</sup> See Margaret Moore Jackson & Daniel M. Schaffzin, *Preaching to the Trier: Why Judicial Understanding of Law School Clinics Is Essential to Continued Progress in Legal Education*, 17 CLIN. L. REV. 515, 550 (2011) (“If filing deadlines or briefing schedules exclude student involvement, compromise the quality of the oversight provided to the student, or require a non-student (usually the clinician) to essentially direct or even take over a project, the case does not meet its potential as a vehicle for student learning.”).

sional and educational roles; clinicians are lawyers, teachers, supervisors, evaluators and graders. When clinicians step into the role of client or expert on a project, students may defer to the supervisor and risk losing the experience of full role assumption.

Where the supervisor serves as client, expert, or collaborator, a risk is that students lose the full benefit of experiential learning through ownership and role assumption. To expect our students to be able to collaborate with a clinical supervisor (particularly at the outset of a clinical experience) may be to deprive them of the experiences that make the project model valuable: the opportunity to manage chaos, to bear the primary responsibility of being strategic thinkers and planners on a complex project, and to experience, in role, a model of lawyering they may have never seen before. The risk of the clinician as expert, as client, or as collaborator is that the clinic experience will start to look more like an externship or internship and less like an opportunity to fully assume the professional role of lawyer, thus defeating a fundamental purpose of clinical education, which is learning through experience and reflection. Where clinicians shift to a model that places the teacher in the role of expert or client, it is probably because the project was selected to achieve non-pedagogical goals.

A clinic is the one place in the law school where students actually engage in the practice of law and feel, for the first time, the substance, weight, and contours of the lawyer's professional role. The extent to which students assume full ownership of their work is the direct result of choices made by the clinic supervisor in the design of the clinic and in his or her supervision interventions with the student. Student ownership is affected by structural factors, such as whether or not the project can be completed within the time frame of the student's enrollment in clinic, whether the project requires real-world activity, as opposed to just research and writing, and whether the project has a client. Student ownership is also affected by the nature of the relationship between the students and the supervisor and between the students and the client (if the project has a client). Some factors that determine the nature of this relationship include whether the supervisor gives students assignments, as opposed to asking students to generate their own work plan; whether the students or the supervisor are the primary contact with the client; and whether the supervisor communicates to the students from the first day of the clinical experience that they are the lead attorneys on the project.

#### *A. Why Student Ownership and Role Assumption Matters*

It is worth examining clinical education's focus on student ownership and role assumption and defining these ideas with clarity because

the principles for project design and supervision offered in this article are designed to maximize this aspect of a student's clinical experience. Student ownership and role assumption are often articulated as separate but related concepts in the clinical literature, but in practice, the terms "ownership" and "role assumption" essentially describe the same phenomenon. Role assumption is best achieved when students think and feel that they have responsibility and ownership of the work, whether it involves a case, project, or transactional matter.<sup>96</sup> At the same time, a student is more likely to assume complete ownership when that student understands that she is the principal lawyer on the case. The point is that the clinical experience should maximize the extent to which a student can think, feel, and behave as a lawyer would in practice. The pedagogical method of maximizing student ownership is most often cited as a serious challenge in the context of project-based learning.<sup>97</sup>

The pedagogical methods of student ownership and role assumption are based in adult learning theory, a theory that has shaped much of modern clinical pedagogy.<sup>98</sup> Adult learning theory is concerned with the ways adults gain and retain knowledge and understanding.<sup>99</sup> This theory holds that adults prefer to be self-directed learners and that they learn most effectively through experience combined with the opportunity to engage in active reflection about the experience.<sup>100</sup> This is in comparison to a pedagogical model where the teacher is the source of all knowledge and the student is a passive recipient of infor-

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<sup>96</sup> Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLIN. L. REV. 1, 8 (1999) ("Thus, clinicians have developed an increasingly sophisticated and comprehensive theory of clinical supervision, a theory that focuses on planning students' learning, on placing students 'in role' with primary responsibility for client representation, on helping students to develop elegant theories of practice, and on providing close didactic supervision.").

<sup>97</sup> See Karin & Runge, *supra* note 1; Kruse, *supra* note 1; Srikantiah & Koh, *supra* note 1.

<sup>98</sup> "The more active the learner's role in the process, the more he is probably learning." Frank S. Bloch, *The Andragogical Basis of Clinical Education*, 35 VAND. L. REV. 321, 331 (1982) (quoting MALCOLM KNOWLES, *THE MODERN PRACTICE OF ADULT EDUCATION* (1970)).

<sup>99</sup> See generally Bloch, *supra* note 98 (a seminal work applying adult learning theory to legal education). See also Anthony G. Amsterdam, *Clinical Legal Education – A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984); KNOWLES, *supra* note 98.

<sup>100</sup> See Bloch, *supra* note 98, at 328-29 ("The first assumption which Knowles makes is that adults see themselves as self-directing personalities, unlike children who expect the will of adults to be imposed on them. Adults' self-concept is such that they expect to make their own decisions, face the consequences of their decisions, and manage their own lives."). See also Stacy Caplow, *From Courtroom to Classroom: Creating an Academic Component to Enhance the Skills and Values Learned in A Student Judicial Clerkship Clinic*, 75 NEB. L. REV. 872, 890 (1996); Robert J. Condlin, *Learning from Colleagues: A Case Study in the Relationship Between "Academic" and "Ecological" Clinical Legal Education*, 3 CLIN. L. REV. 337 (1997).

mation.<sup>101</sup> Adult learning theory emphasizes that adults are less likely to retain knowledge and understanding when they are merely receiving and attempting to store away new information. Instead, adults want to learn by doing and are able to gain new understanding through experience and in context. In this way, adults are better able to retain new information and understanding, and transfer that learning to future experiences and events.

Adult learning theory also holds that adults are self-directed learners.<sup>102</sup> To support and capitalize on adult learners' preference for self-directed learning, as well as their preference for learning through experience, clinical education employs self-reflection, also known as reflective practice, as a key methodology.<sup>103</sup> In the reflective method, students engage in an activity and then reflect upon that activity, applying the lessons learned to future experiences.<sup>104</sup> Using this method, a typical clinic supervision session includes specific and tailored feedback on a student's performance (an oral argument, for example) as well as questions designed to guide the student through the process of self-reflection.<sup>105</sup>

While enrolled in clinic, students first engage in reflection with the guidance of a supervisor, but a key aspect of reflective practice is the development of the habit of self-reflection without external prompting. The hope is that students not only appreciate the value of reflective learning, but also develop the habit of engaging in the reflective process on their own, such that by the time they leave clinic, students are ready and willing to incorporate reflective practice in their work without direction from a supervisor.<sup>106</sup> The further hope is

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<sup>101</sup> Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year*, 12 CLIN. L. REV. 441, 459 (2006). Today, experiential and reflective learning are not only used in adult education, but also widely viewed as best practices in the education of children. See, e.g., HARVEY DANIELS & MARILYN BIZAR, *TEACHING THE BEST PRACTICE WAY: METHODS THAT MATTER*, K-12 (2004).

<sup>102</sup> Bloch, *supra* note 98, at 328-29.

<sup>103</sup> Especially relevant in light of clinical teaching method is adult learning theory's preference for experiential learning – learning through actual experience and participation – over passive absorption of concepts. A central tenet of adult learning theory is bolstering the learners' ability to be a self-directed learner in the future through opportunities for reflection on the lessons gained through experience. The parallels between adult learning theory and effective clinical law teaching begin with the shared reliance on experiential learning and opportunities for reflection.

Quigley, *Seizing the Disorienting Moment*, *supra* note 69, at 48-49.

<sup>104</sup> *Id.* at 50.

<sup>105</sup> As Minna Kotkin notes, "the student's performance 'in role' is the casebook for clinical instruction." Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 186 (1989).

<sup>106</sup> Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience through Properly Structured Clinical Supervision*, 40

that students will carry the reflective practice with them throughout their legal careers, using it as a tool to drive their own continued learning and growth as professionals. This is often called “learning to learn,” and is a goal of many clinical programs.<sup>107</sup>

Thus, the commitment to experiential learning and reflective practice is the source of the pedagogical goals of maximizing student ownership<sup>108</sup> and role assumption.<sup>109</sup> When a supervisor explicitly communicates to students that they have ownership of their work, and ensures that everything in the students’ clinical experience reinforces that ownership (implicitly communicating ownership), the students are able to take full responsibility for the relationship with the client and the legal, strategic and tactical development of the work. In this way, a student attorney learns the skills and habits of effective lawyering through practice.<sup>110</sup>

Given the importance of student ownership and role assumption in clinical pedagogy, an ongoing question raised in the clinical literature is: how do clinicians ensure that these goals are met in practice? This question has historically been answered by reference to “non-directive” supervision and the related principle of “non-intervention,” two related supervision methods that have been the subject of much debate and discussion among clinicians. Non-directive supervision has been described as “clinical orthodoxy.”<sup>111</sup> The problem is that discussions about adherence to the principle of non-directiveness often imply, if not directly state, that non-directiveness is a goal in and of itself. But this cannot be true. The goal is not to use a particular teaching “style” or “technique,” which is what non-directiveness actually is. Instead, the goal, as described above, is to maximize student learning

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MD. L. REV. 185, 284 (1989) (arguing that the most important goal of clinical education is teaching students to learn from experience).

<sup>107</sup> *Id.* See also Meltsner & Schrag, *supra* note 32, at 584; Mlyniec, *supra* note 85.

<sup>108</sup> See David F. Chavkin, *Am I My Client's Lawyer? Role Definition and the Clinical Supervisor*, 51 S.M.U. L. REV. 1509, 1531-32 (1998) (finding students receive the most educational benefit from clinical experiences where student autonomy is maximized); Srikantiah & Koh, *supra* note 1, at 453; Kruse *supra*, note 1, at 407.

<sup>109</sup> What distinguishes the skills taught in clinic from those in other courses is the existence of role assumption and context. Assuming the role of a lawyer and performing [lawyering] tasks in the context of real cases and projects are basic tenets of clinical education. They are also essential to professional development and transformative learning.

Mlyniec, *supra* note 85, at 536.

<sup>110</sup> See Stuckey, *supra* note 16.

<sup>111</sup> Katz, *supra* note 85, at 320 (“In its pure form, non-directive orthodoxy contends that other supervisor-student working relationships are inferior, and that they are sometimes actually detrimental in regard to producing the desired educational results.”); Srikantiah & Koh, *supra* note 1, at 453 (“The clinical orthodoxy, developed in the small-case context, encourages maximizing student ownership and minimizing instructor direction and intervention in decision-making.”).

and role assumption.

The commonly-articulated notion of non-directiveness holds that a supervisor should not tell a student what she should do at any point in her work on a case, but instead allow the student to make all decisions related to the representation and take action without instruction from the supervisor. The most extreme articulation of this principle embraces the idea that *any* intervention by the supervisor is a failure of supervision.<sup>112</sup> The dichotomy between directive and non-directive supervision is pervasive and powerful in the clinical literature and widely referenced in practice. The idea behind the dichotomy is that directive supervision, telling a student what to do, limits her ownership of the case and undermines her role assumption, thus clinicians should prefer non-directive methods.

The persistence of the directive and non-directive supervision framework is a challenge for any discussion of clinical methodology because it creates a situation where clinicians run the risk of using the same words to talk about methods or actions that look very different in practice. What one clinician calls directive may be non-directive for another.<sup>113</sup> The dichotomy persists despite the fact that leading clinicians have noted that this framework is simply not very useful and does not reflect the actual practice of clinical teaching.<sup>114</sup> Ann Shallick has noted that supervision in practice results in a question-and-

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<sup>112</sup> Chavkin, *supra* note 108, at 1542-43.

<sup>113</sup> [M]any clinicians in the late 1980's and early 1990's believed that, in order to implement . . . [the] theory of adult learning in the clinical context, their supervisory role required them to be 'nondirective.' . . . the same supervisor could be directive with a student in one type of lawyering task and nondirective with the same student with respect to a different task . . . clinicians believe that one educational theory of supervision is not going to fit in all circumstances; there are too many variables involved, including the ability of the student, the task that the student was performing, and the motivation of the student.

Linda Morton, Janet Weinstein & Mark Weinstein, *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLIN. L. REV. 469, 480-81 (1999) (citing James H. Stark, Jon Bauer & James Papillo, *Directiveness in Clinical Education*, 3 B.U. PUB. INT. L.J. 35 (1993)).

<sup>114</sup> There is a 'mantra' among many clinical teachers that direct supervision does not empower a student. In truth, all teaching is directive and it should be. That is why teachers exist. Moreover, what clinical teachers call indirect supervision is actually quite directive. Clinical teachers are always 'directing' a student in an exploration that leads to new knowledge or a solution to a problem. This is true even when we are merely asking them what their goals are or why they took a particular course of action. How a student is led to the knowledge or resolution involves the degree, not the existence, of directiveness . . . Experienced clinical teachers continue to act with that understanding, but now respond in ways that do not easily fit into the directive/non-directive dichotomy.

Mlyniec, *supra* note 85, at 518. *See also* Katz, *supra* note 85, at 319 (noting that non-directive supervision is not "without criticism from both theoretical and practical perspectives").

answer dialogue between supervisor and student, where the supervisor asks questions, rather than offering answers, but nonetheless guides or directs the student's thinking and analysis of the issue at hand.<sup>115</sup>

In practice, all teaching is directive by definition; the variables are timing and degree.<sup>116</sup> When we are at our best, we are not telling our students exactly what steps to take. Instead, we can make intentional choices about when and how to ask questions that guide students down a path of learning and realization, giving students as much room as possible to uncover insights on their own. In many, if not most, clinical settings, a supervisor is present every step of the way, asking questions, prompting reflection, and guiding students as they develop the case, build a relationship with their client, and immerse themselves in the doctrinal, procedural, emotional, and relational aspects of legal practice. The most important teaching method a supervisor can employ is to identify his or her goals for the student and map out a path that will lead to achievement of the goal, rather than worrying about using a particular supervision style or tactic.<sup>117</sup>

A troublesome aspect of the directiveness dichotomy is that it presents a technocratic view of supervision, suggesting that supervision involves only discrete and individual reactions, isolated from context, and that certain supervision choices are always wrong or always right. To ignore the contextual reality of supervision is to divorce clinical teaching theory from the reality of the day-to-day work and experiences of clinical teachers, their students, and their clients. There is no one set of rules or single prescription that can possibly

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<sup>115</sup> Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 154, 179 (1993-94) ("While any given interaction between teacher and student may have become very nondirective . . . in the sense of not leading to a particular answer . . . the teacher was nonetheless both defining the educational agenda and making decisions in a self-conscious, directed manner.").

<sup>116</sup> Mlyniec, *supra* note 85.

<sup>117</sup> In a forthcoming article, Jane Aiken urges clinicians to let go of the directiveness vs. non-directiveness dichotomy and embrace the idea that all good clinical teaching instead involves what she terms "ethical manipulation," a term coined by Stephen Brookfield. Brookfield has written extensively on adult learning theory and the development of critical thinkers. STEPHEN BROOKFIELD, *THE POWER OF CRITICAL THEORY FOR ADULT LEARNING AND TEACHING* 116 (2005). Aiken urges that clinical supervisors worry less about whether they are being directive or non-directive, and instead focus on identifying our teaching goals and projecting a path that will move students toward those goals:

Supervision is merely one, albeit perhaps the most effective, means of teaching our students to become competent and compassionate professionals. The debate should not be about how directive we should or should not be but rather, what is the best way to use our interactions with students to help them learn from that experience, reflect on it, make good use of more experienced practitioners and embrace the need to provide clients the best possible service.

Jane Aiken, *Ethical Manipulation* (draft on file with author).

guide every supervision decision or teaching moment. Teaching, supervision, learning, and lawyering are all endeavors that are deeply rooted in human relationships and psychology. Thus, a single prescriptive vision of how to “do” clinical teaching will inevitably be unsatisfying. An approach to supervision that is holistic and grounded in context starts with a recognition that supervision is not a series of moments that exist in isolation; it is a complex relationship between people—the supervisor(s) and the student(s), as well as the client(s).

Clinical supervisors face a wealth of possible choices: we can tell a student precisely what we want her to do; we can ask an open-ended question that gives the student no substantive guidance; we can ask a question that will trigger the student to head down a particular path in her thought process; we can ask a question that suggests an answer; we can model behaviors or skills; and we can work collaboratively with students, as we would with a colleague. Which path we choose depends on our relationship with the student, the stage of the student’s development and degree of ownership they have taken in their work, the needs of the client, logistical and practical considerations, and our goals for the student’s learning.

### *B. Complexity as a Learning Opportunity*

The very complexity that makes project supervision a challenge and raises concerns about student ownership and supervisor directive-ness is also the source of the model’s benefits for student learning. Projects engage students in the process of struggling with complex and ill-structured problems and expose them to the challenge of managing the chaos of such problems.<sup>118</sup> Through complex problem-solving, students can practice multidimensional lawyering skills and gain a broad view of the possible roles of lawyers in private practice and in social justice work. Projects challenge students’ traditional views of lawyering by presenting them with multifaceted problems that do not have an obvious remedy through litigation, and that might be addressed using a range of lawyering skills and tactics.<sup>119</sup> To the extent

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<sup>118</sup> See Aaronson, *supra* note 2, at 257 (“Indeed, most perplexing and interesting lawyering situations involve what cognitive scientists would refer to as ill-structured problems.”); Andrea M. Seielstad, *supra* note 1, at 449 (2002) (“...problem-solving refers to this more complex, multi-faceted, and ambiguously-structured manifestation . . . a process that requires technical expertise, creative artistry, and empathy . . . it require(s) taking into account the perspectives and interests of multiple stakeholders . . . it may involve aspects of crisis management, systemic reform, prevention, and dispute resolution.”)

<sup>119</sup> The skills that students learn in community lawyering clinics are varied: they learn to tolerate chaos and disorder . . . they learn to think outside the legal box . . . they learn about lawyering in multiple settings (from corporate board rooms to the courts to the administrative offices of many different government agencies to the streets of the communities they serve); and they learn that intelligence and education do not



that litigation clinics offer limited opportunities for law reform and systemic change beyond the courtroom, projects offer opportunities for experiencing what lawyers can achieve in other contexts.<sup>120</sup>

For most of law school, as students study appellate cases, they learn the important skills of analytic reasoning and analysis, but they may internalize a relatively straightforward view of problem solving that is rooted in the ethic of the adversary system. As Carrie Menkel-Meadow has argued, the reading of appellate cases tends to present a legal landscape of clear winners and losers and a relatively linear progression of predictable steps in solving legal problems.<sup>121</sup> The reading of appellate cases, with their neatly packaged facts and clear winners and losers, runs the risk of developing in students a lack of appreciation for context and complexity.

The work of any lawyer tackling a real-world problem is to investigate, examine, and appreciate complexity and context.<sup>122</sup> Project work emphasizes the recognition that there are more than two sides to

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always coincide. They come to understand that lawyers and clients are co-producers of the strategies and actions that have the capacity to solve some of the problems facing the clients in our more under-resourced communities . . . For clinic students, it is highly rewarding to be asked to think as strategic problem solvers, dispute resolution experts, and partners with their clients.

Tokarz et al., *supra* note 1, at 399. See also Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1, at 417; Karin & Runge, *supra* note 1. Kruse, *supra* note 1; Srikantiah & Koh, *supra* note 1; Seielstad, *supra* note 1.

<sup>120</sup> Students learn that the central skills needed to do this work effectively are problem solving and collaboration, resilience and creativity. They learn that the traditional lawyering skills connected to individual client representation and litigation, while valuable, are of narrower value than they thought, and that they can, indeed must, expand their sense of what lawyering can and should involve.

Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1, at 455.

<sup>121</sup> Our litigation system most often consists of two sides (plaintiff and defendant), even when modern day problems are more likely to be multi-party and multi-issue. Judges have “limited remedial imaginations,” meaning that by law they can only order certain things—past-oriented verdicts for one side or another, guilt or innocence, or injunctions and monetary damages. Juries may nullify or compromise, but they also have limited remedies or solutions at their disposal. The jurisdiction of courts to craft remedies and solve problems is limited—by legal principles and by procedure. And, the forces of adversarial thinking are behavioral—the structures and frames of thinking about the legal system have together created a system of adversarialism that leads us to argue in oppositional modes, to see black or white, to resist nuance and complexity, and at worst, to be uncivil to each other.

Menkel-Meadow, *supra* note 2, at 908-09.

<sup>122</sup> At the problem-identification stage in problem-solving for a client community, the problems are much more difficult to locate and identify because there is no one client with an individual perspective to understand and appreciate. Instead, one encounters a multiplicity of differing needs and perspectives that converge at some points and conflict at others. It takes time and experience to hear the diversity of voices needed to even begin to identify the problem.

Kruse, *supra* note 1, at 430.

most legal problems and that third-party interests matter.<sup>123</sup> Students learn that political, social, and economic forces are a critical part of legal analysis. Because projects involve complex social and legal problems and ask students to find creative solutions to those problems, students must account for multiple interests, needs, and perspectives.

The multidimensional skills that students learn through projects include problem definition, analysis, and solution generation, short- and long-term strategic planning, written and oral communication for lay audiences, negotiation, community organizing, and legislative and policy advocacy. To build these broader skills, projects ask students to take into account legal, social, political, and relational factors as they analyze and generate solutions to a problem.<sup>124</sup> The basic process of problem solving in this context can be broken into five stages: (1) problem identification/definition, (2) gathering evidence, (3) identifying and exploring alternatives, (4) developing and possibly implementing a strategy for solving the problem, and (5) repeating the process again if necessary, as problem solving is typically an iterative process.<sup>125</sup> Of course, different problems will require different entry

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<sup>123</sup> Negotiation and mediation work also demand an appreciation of context and take into account shared and diverging interests. See, e.g., Carrie Menkel-Meadow, *Ethics Issues in Arbitration and Related Dispute Resolution Processes: What's Happening and What's Not*, 56 U. MIAMI L. REV. 949 (2002).

<sup>124</sup> See Amy L. Ziegler, *Developing A System of Evaluation in Clinical Legal Teaching*, 42 J. LEGAL EDUC. 575, 579 (1992).

<sup>125</sup> These steps are drawn from personal experience as well as Kruse, *supra* note 1, at 422-423, and EUGENE BARDACH, *A PRACTICAL GUIDE FOR POLICY ANALYSIS: THE EIGHTFOLD PATH TO MORE EFFECTIVE PROBLEM-SOLVING* (4th ed. 2011). Andrea Seielstad offers a thorough and thoughtful framework for the problem-solving process in the context of community building, a framework that is applicable to many other problem-solving contexts, see Seielstad, *supra* note 1, at 506-509. See also AMERICAN BAR ASSOCIATION SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 141-151 (1992) (listing problem-solving first in a list of essential lawyering skills). Linda Morton has offered an alternative model, called “creative problem-solving,” which takes into account a broader range of questions and issues by incorporating analysis of the needs and interests of the parties, and the values that underlie various solutions. Morton, *supra* note 2, at 376. This approach allows for more emphasis on non-legal solutions to the problem, as well as on solutions which attempt to prevent the problem from recurring. *Id.* Despite its broader scope and more holistic approach to problem-solving, the creative problem-solving model she proposes still maintains a basic structure of six phases that is similar to the model in the MacCrate Report. *Id.* The six phases are: (1) identifying the problem, (2) better understanding the problem, (3) posing solutions to the problem, (4) selecting a solution, (5) implementing the solution, and (6) final analysis of the chosen solution. *Id.* at 381-83. Morton points out that the “[p]hases do not necessarily proceed in the order named” and that the process of creative problem-solving must remain “spontaneous and flexible.” *Id.* at 381-83. Krieger & Neumann list six steps: (1) problem-identification, (2) gathering and evaluating information and raw materials, (3) solution-generation, (4) solu-

points and the “stages” of problem solving are inevitably porous and overlapping in practice.<sup>126</sup> In addition to the basic problem-solving stages, as Linda Morton has argued, a thorough analysis of any complex problem should take into account:

- (1) consideration of underlying needs and interests of multiple stakeholders, including society at large, (2) analysis of values inherent in the process, (3) investigation into legal and non-legal resources, (4) “modes of creative thinking not found in legal analysis alone,” (5) greater emphasis on problem prediction and prevention, and (6) self-reflection and analysis about process as well as the outcome and impact of the chosen solution.<sup>127</sup>

Unlike litigation-based models, where the rules of the game are provided by the substantive and procedural legal framework of a given case, project-based work requires that student attorneys learn to apply a highly-contextualized and self-generated problem solving process. Here, the challenge for supervisors is to guide students down the problem-solving path. Ultimately, this can be achieved in the same way students are trained in any other clinical context. Clinicians can provide background learning in problem-solving processes and methodology, whether through seminar, readings or simulations, and in supervision sessions, and then utilize supervision sessions to ask the challenging questions that help guide students toward insight and understanding.

#### IV. EIGHT PRINCIPLES TO SUPPORT PROJECT DESIGN AND SUPERVISION

This section suggests eight principles to assist clinicians engaged in project design and supervision. These principles, taken wholly or in part, are intended to increase the extent to which project-based clinical work maximizes student ownership and role assumption,

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tion-evaluation, (5) decision, and (6) action. KRIEGER & NEUMANN, *supra* note 3, at 35-36. The Krieger & Neumann text cautions that “[i]n practice, the six stages are not as neatly segmented as this.” *Id.* at 36. Although the Krieger & Neumann text does not have a specific step for evaluating or revising the strategy, the activity of revision is suggested by the authors’ emphasis on self-critical reflection on the problem-solving process and the importance of experience in affecting the solution-evaluation stage. *Id.* at 33-36. *See also* Kruse, *supra* note 1, at 444; Quigley, *supra* note 69, at 471-73 (listing complex problem-solving and creativity as concrete goals of clinical education); Seielstad, *supra* note 1, at 448-449 (endorsing the “creative, humanistic process” suggested by Linda Morton).

<sup>126</sup> Throughout the literature on creative thinking and creative problem solving, scholars emphasize the importance of defining and then redefining problems. *See, e.g.,* Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 420-21 (1971) (possible condition for creativity is that “the problem as initially posed was vague and undefined, so that part of the task was to formulate the problem itself.”); Weinstein & Morton, *supra* note 2, at 877.

<sup>127</sup> Seielstad, *supra* note 1, at 449 (quoting Linda Morton, *supra* note 1, at 388).

teaches complex problem solving and other broader lawyering skills, and exposes students to lawyer's roles in social change and law reform. The pedagogical approach and values implicit in these principles stem from my experience as a clinical supervisor in the Community Justice Project (CJP) at the Georgetown University Law Center.<sup>128</sup> The approach I articulate here is also informed by the work of clinical scholars writing on the theory and practice of clinical pedagogy, and on projects in particular.<sup>129</sup>

Two essential ideas guide my approach to clinical teaching and supervision, first, everything a teacher does is a choice among options, and second, a teacher's choices should be goal-driven and intentional.<sup>130</sup> Clinical teaching, like all teaching, is an evolving process requiring adaptation and revision in response to a range of factors, such as students' personalities, learning styles and cognitive abilities, clients' needs and goals, changes in the law, or the clinic's pedagogical goals.<sup>131</sup> Thus, teaching and supervision, the two main activities in which clinical teachers engage, are always subject to revision and adaptation in response to varying factors at play in a given clinical setting.<sup>132</sup> Because effective teaching requires first identifying where you want to go, and then finding a way to get there, it makes sense to first

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<sup>128</sup> The Community Justice Project, GEORGETOWN LAW, <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/Community-Justice> (last visited September 1, 2013). The CJP is a one-semester clinic that enrolls twelve students each semester. While enrolled, students learn litigation skills by representing low-income clients in administrative appeals where clients have been denied unemployment compensation. Students learn multi-dimensional lawyering skills through their work on projects, where they work in teams of two to four students. CJP completes three or four projects each semester.

<sup>129</sup> See sources cited *supra* notes 1 and 2.

<sup>130</sup> For a discussion of the importance of intentionality in clinical teaching, see generally Colleen F. Shanahan & Emily A. Benfer, *Adaptive Clinical Teaching*, 19 CLIN. L. REV. 517 (2013).

<sup>131</sup> Clinical pedagogy has been called the "art and science" of educating law students. Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 505, 510 (2012). Benfer and Shanahan, *supra* note 130, note that clinical teachers often develop educational approaches through trial and error or instinct. In response, they offer a structured method of guided analysis and reflection called "adaptive clinical teaching."

Clinical teaching is an intensive process of design, classroom teaching, supervision, collaboration, and feedback. It also requires working with diverse generations, races, genders, political affiliations, learning styles, and personalities. As a result, the quality of a clinic directly relates to a clinical teacher's ability to thoughtfully observe situations that arise and adapt her teaching strategies accordingly.

*Id.* at 517.

<sup>132</sup> As a matter of defining terms, "teaching" is used in this article to refer to everything that a clinician does in the course of working with a student, from classroom instruction to debriefing a hearing experience. Supervision refers to a smaller subset of activity when the clinician is working with a student on issues related to the representation of a client or the handling of a particular matter.

identify goals for our students' learning experiences, and then design the clinical model and our teaching and supervision methods to meet those goals.<sup>133</sup>

The eight principles for project design and supervision are intended to be transferable to many clinical settings and to aid clinicians in developing projects that maximize student learning and meet social justice goals, irrespective of subject matter or legal context.<sup>134</sup> Clinics can achieve these ends when projects: (1) are intentionally planned to meet learning goals; (2) are time-limited; (3) serve a client; (4) make students the primary lawyers; (5) require more than traditional research and writing; (6) explicitly develop collaboration skills; (7) practice and de-brief lawyering performances; and (8) include a seminar component. The section that follows describes each of the principles in greater detail and offers examples of each of the principles in action.

All examples are based on a project (hereinafter the Air Quality Project) that brought students together with public health experts to support a group of residents interested in improving air quality in their community.<sup>135</sup> Initially, a public health organization approached CJP supervisors about the possibility of working together. The organization's researchers had been conducting focus groups on community health issues and noted that many residents expressed concerns about air quality. Specifically, many community members were concerned about exhaust emitted by vehicles idling on the streets, dust that blew into the community from a nearby industrial site, and indoor air quality problems created by mold and other sources in public housing units. The public health organization was planning to open a community health clinic in the neighborhood and wanted to be responsive to the needs of residents. The organization's leaders hoped CJP students would provide the legal support necessary to assist community members in their efforts to address the air quality problems. In addition, the organization was in the process of completing a small study of air quality in the community. CJP supervisors saw this as an opportunity

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<sup>133</sup> See generally GRANT P. WIGGINS & JAY MCTIGHE, *UNDERSTANDING BY DESIGN* (2d ed. 2005).

<sup>134</sup> See *supra* Parts II and III for a discussion of the benefits and challenges of project-based learning from pedagogical and social justice perspectives.

<sup>135</sup> As Dina Schlossberg notes, "interdisciplinary" is the term most commonly used to describe collaborations between clinical scholars and scholars or practitioners in other disciplines. Schlossberg, *supra* note 1, at 236. Mary Daly has argued that "'interdisciplinary' implies rigid borders and defined boundaries between disciplines" while the term "multidisciplinary" should be preferred because it "implies permeable borders and blurring boundaries." Mary C. Daly, *What the MDP Debate Can Teach Us about Law Practice in the New Millennium and the Need for Curricular Reform*, 50 *J. Legal Educ.* 521, 522 (2002) (quoted in Schlossberg, *supra* note 1 at 236).

for students to assist the public health researchers and the community in understanding the legal and policy implications of the research findings, and to assist the community in advocacy on the air quality issues.

Over the course of the project, the students engaged in a range of activities that provided learning and skill-development opportunities, served the interests of the client organization, and benefitted the community. For example, in partnership with the public health experts, the team held town hall meetings to inform the community about the air quality issues in the neighborhood and to explain the scientific findings and legal and policy implications. At the meetings, the students first asked the community if they wanted legal support. They then presented information on possible avenues for legal and policy change to address each of the three air quality issues (vehicle exhaust, industrial dust, or indoor pollution). The students then asked community members if there was one issue they wanted to address first. The community members selected the vehicle exhaust problem and the students agreed to focus on developing an advocacy plan to address that issue.

Following the town hall meetings, students built relationships with community members and organized a core group of residents who were interested in being involved in ongoing advocacy to address air quality issues. Students and community members held a number of joint meetings with local leaders, policy makers and government officials to press them to address the vehicle exhaust problem. By the end of the semester, the students had identified specific strategies to address the air quality problems in the community, with a particular emphasis on vehicle exhaust. The students compiled their findings and strategic recommendations into a report that included a detailed advocacy plan and supplemental media and policy advocacy materials. This report was delivered to the client organization and to the newly-organized community group.

### 1. *Intentionally Planned to Meet Learning Goals*

To create an optimal student learning experience, projects should be intentionally planned<sup>136</sup> to meet a set of learning goals articulated

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<sup>136</sup> See Barry, *Question of Mission*, *supra* note 1 (noting the decision to take on systemic reform work should be considered carefully and intentionally chosen); Karin & Runge, *supra* note 1, at 568 (noting that those who choose to integrate clinics to add systemic reform work must be intentional, carefully consider the factors influencing the decision to take up the work, and continually reflect on the decision); Mlyniec, *supra* note 85, at 518 (“By intentional, we mean that interventions should be planned to achieve a specific outcome and that the method chosen for the intervention should be specific to the context in which it occurs.”); Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1, at 412. (“Teachers and students must both be committed to the student’s involvement in educa-

by the supervisor before the project begins. The principle of intentional and goal-driven planning is the meta-principle of the project model; indeed, it is a core principle of successful teaching.<sup>137</sup> This predictive method of planning for project supervision is familiar to any clinical teacher because it is precisely the same exercise of intentional planning that clinicians apply to classroom teaching and case supervision.<sup>138</sup> As an example of how this process works, the following are a set of broad learning goals that the eight principles of project design and supervision are designed to meet. Individual projects may share some of these broader learning goals, as well as more specific learning goals based on the nature of the project:

- Assume the role of lawyer and take full ownership of clinical work.
- Develop professional judgment.
- Develop professional communication skills.
- Develop the ability to manage chaos and engage in complex problem solving.
- Develop collaboration skills.
- Develop habits of reflective learning.
- Understand and experience the role of lawyers as strategic planners and as advisors to other professionals.

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tion, and must educate ‘co-intentionally.’”).

<sup>137</sup> The principle of intentional planning follows Grant Wiggins’ theory of backwards design, which holds that teachers should craft learning experiences based on specific learning goals. As summarized by Mlyniec,

[Wiggins] asserts that curriculum should be designed to meet a particular end and not originate from methods or activities [and] posits that a curriculum that is intended to create understanding in students will fail unless the teacher knows ahead of time what he or she wants the students to understand. Backward design has three stages: identifying a desired result, which involves clarifying priorities; determining the acceptable evidence that will establish what is necessary to demonstrate that the students understand the material; and planning learning experiences and instruction to formulate the most effective way to teach the material so that it will result in the desired outcomes. Wiggins’s backward design forces teachers to focus on building student’s understanding of a concept when designing a curriculum and not merely on increasing their knowledge.

Mlyniec, *supra* note 85, at 560 (citing WIGGINS & MCTIGHE, *supra* note 133).

<sup>138</sup> *Id.* Kate Kruse adds:

In my experience teaching in the more traditional clinical paradigm, in which students represented only individual clients in small manageable cases, I had become used to being able to predict the types of issues that were likely to arise in resolving the cases, both in the substantive law and in the attorney-client relationship. As a supervisor, I would make choices about what information to share and what information to withhold so that the students could find it out on their own. I strategized about how to prepare students for what I predicted would lie ahead for them, recycling experiences from previous semesters into hypotheticals or simulated class exercises.

Kruse, *supra* note 1, at 441-42.

- Develop a broad view of inequality, power and privilege that accounts for systemic injustices and looks beyond individualized experiences.
- Develop an understanding of the varied roles lawyers can play in promoting justice.

Although it is true that every clinic project will involve surprises and changes, it is equally true that much can be predicted in advance. The starting point of intentional planning is prediction, by the clinical teacher, of the trajectory of the project over the course of the clinic semester or year. This might involve creating a plan for supervising the project that envisions how the project could evolve over the course of the semester and plots out particular supervision options and choices to move the student team through the project. The resulting supervision plan might include choices about how much background material and substantive information to offer at the outset of the project, a clear set of learning goals for the students, a prediction of the final products or outcomes of the projects, a timeline for achieving completion of the project, and anticipation of possible intervention points that may arise.<sup>139</sup> This planning can be done with the recognition that some aspects of the project plan may shift, whether based on client need, student capacity, or external factors. Thus, during the life of a given project, the clinical teacher must continually return to the project plan and make adjustments to account for change.

Intentional planning should include clear and transparent communication to clients about the possible scope of the work and their expectations for the final product or outcome of the project.<sup>140</sup> This

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<sup>139</sup> Praveen Kosuri points out the range of choices supervisors have in their pedagogical methods:

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. 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 arise during the course of a representation from that perspective.

Kosuri, "Impact" in *3D*, *supra* note 1, at 26-27.

<sup>140</sup> I take the view that while the clinic may have long-term relationships with community members, it is the responsibility of the clinical faculty to be transparent with community groups and members about the inherent limitations of working with a clinic. By necessity, giving students ownership over clinical projects requires a certain amount of restraint on the part of the clinical supervisor, recognizing that the supervisor is not purely and solely a community lawyer, but instead a teacher with primary commitments to her students. However, clinicians can still have long-term relationships with and commitments to community groups and community members and maintain those relationships through



can be achieved through explicit conversations with the client about expectations and the scope of the work, conversations that ideally take place before the clinic and client agree to continue with the representation. A critical part of these conversations is transparency about the fact that the students will be the primary contact and information about what it means to work with a student team in the clinical context. For example, clients who have worked with students in the past will need to understand that the clinic students will not be interns, but will serve as the client's lawyers on the project. Having engaged in the project planning process multiple times with client groups, from large non-profit organizations to informal community groups, this clinician can attest that potential project clients are remarkably understanding and appreciative of transparency regarding expectations for the lawyer-client relationship and expectations for final products and outcomes.

Planning a new project or set of projects each semester or each year requires an increased amount of work by the clinical teacher, but that increase is well compensated by the value projects offer to students and clients.<sup>141</sup> Indeed, as Paul Reingold has argued in the context of complex litigation, the stimulation provided by new projects adds value for the clinical teacher, who benefits from the stimulation of building new relationships in the community, learning (or re-learning, in some cases) new areas of substantive law, and testing out a range of advocacy tactics.<sup>142</sup>

*a. Implementation: Intentional-Planning*

In the Air Quality Project, clinic supervisors began by developing a supervision plan for the semester, including a specific gets of goals

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transparent communication. As Tokarz et al. note:

Even as community lawyering clinic faculty struggle with skill building in the classroom and clinic, they must concern themselves with the ramifications of their commitments to the community. The bottom line is that community work is always long term. The commitment will never be for a single semester or a single year. In most instances, community lawyering clinics must make year-round, multi-year commitments to the client community and community partnerships.

Tokarz et al. *supra* note 1, at 395.

<sup>141</sup> See Seielstad, *supra* note 1, at 494 (“Identifying and managing effective community projects and collaborations can be complicated and time-consuming, and even more so when that work must be balanced with different clinical activities.”).

<sup>142</sup> See Susan Bryant & Elliott S. Milstein, *Rounds: A “Signature Pedagogy” for Clinical Education?*, 14 CLIN. L. REV. 195, 242 (2007) (“At the same time, teachers do learn from students’ insights and experiences, and sharing the excitement when that occurs shows that learning is a life-long endeavor.”); Reingold, *supra* note 25, at 554-56 (“To be happy as a lawyer I was either going to have to find a specialty of sufficient depth and complexity to sustain me, or I was going to have to be a generalist whose primary professional stimulation would come from learning new fields. Or (the light dawned), I could do both.”).

for student learning.<sup>143</sup> By the end of the semester, the supervisors' goals were that students would: understand and experience the role of lawyers as strategic planners in policy advocacy and as advisors to other professionals (the public health experts); develop a broad view of the possible roles that lawyers can play in promoting social change; understand when to employ their own expertise and when to refer to the expertise of other professionals; understand the importance of strategic thinking and planning ahead, including anticipating the needs and questions of the various stakeholders involved in a policy advocacy effort; and understand the value of setting discrete and achievable goals as the necessary steps in the process of working towards broader social justice goals.

The supervisors then anticipated some potential final outcomes of the project, with an understanding that these outcomes might shift based on new information as the project developed. The possible outcomes included: researching and reporting on the legal and policy issues implicated by the community's air quality concerns; developing an advocacy initiative to improve air quality in the community and taking at least one concrete action related to the initiative; developing a long-term strategic plan to advise community members on future work to address air quality issues; drafting press releases, letters and other advocacy materials for use by community members; and finally, identifying potential organizational partners to assist community members in implementing the strategic plan over the long-term.

## 2. *Time-Limited*

One of the most important aspects of intentional planning is to plan for projects to be completed within the time frame of the clinical experience.<sup>144</sup> If the clinic is one semester long, the supervisor may

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<sup>143</sup> The notion of a supervision plan may sound quite rigid and "directive" to some readers, but the document is meant to be a work in progress that serves to guide, but not constrain, supervision choices over the course of the project. Just as much can be predicted about how a small-matter will unfold, much can be predicted about how a project will unfold, even in a project as inherently complex as a legislative advocacy campaign. The supervision plan involves anticipating as much as you can, for the sake of planning your own supervision choices, recognizing there are things you cannot plan for at all, and being open to the inevitable changes over course of the project.

<sup>144</sup> Determining whether the task at hand is manageable for clinic students in a given semester or year and whether it constitutes an appropriate case for student learning is a challenge in all clinics. However, given the time frames in which students are participating in a clinic, which frequently are as short as one semester, involving students in a meaningful way in community lawyering projects presents unique hurdles. The scope and scale of community lawyering clinic projects can overwhelm the students and the course. Faculty and students must work with the clients to make sure that the legal work is unraveled, so that the tangible and concrete tasks are evident and are approached in a collaborative and systematic way.

choose projects that can reasonably be completed within a semester. This principle helps to maximize student ownership, it also makes the clinic more nimble and able to take on multiple projects over the course of a number of years.<sup>145</sup> Limiting the time that a clinic is involved in a given project also helps ensure that lawyers (in the form of clinic students and clinical teachers) do not become the default leaders of what would otherwise be a community-driven initiative. Instead, the clinic can focus on meeting the goals and building the capacity of the client.<sup>146</sup>

The pedagogical problems created when projects continue beyond the time of a student's enrollment in clinic have been widely discussed in the clinical literature.<sup>147</sup> There is the question of whether a clinic can have long-term relationships with clients under the project model, particularly given the principle of time-limitedness. Although it may seem counter-intuitive, the principle of time-limitedness still allows clinics to have ongoing and long-term relationships with client groups. Where a client group is willing to work with successive groups of students, the clinician can plan a series of projects with a single client group. These projects may be discrete pieces of a larger overall effort, but each ought to be distinct enough to allow for a clear beginning and end for each group of students. The critical point is that in an ongoing representation, each student team should have a discrete project to complete and the opportunity to build a relationship with the client group, independent of the supervisor's relationship. Thus, the challenge of long-term relationships is for the supervisor to step out of the picture, to remain a secondary, rather than primary contact, in order to allow the student teams to take ownership. Of course, this ideally involves clear communication with the client regarding expectations.

The clinical literature on projects suggests that the problems

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Tokarz et al., *supra* note 1, at 394.

Katherine Kruse uses the concept of compartmentalization to "divide the hugeness of the endeavor into manageable components so that each student has a piece of the process," and suggests continuity strategies to carry over institutional memory in a project that spans semesters or years. See Kruse, *supra* note 1 at 434. *But see* Srikantiah & Koh, *supra* note 1, at 475 (2010) ("Students often do not have the time, in a semester-long clinic, to develop first-hand awareness of the full context of their institutional client work on larger projects, even if they are only working on a component of that work.").

<sup>145</sup> Making projects time-limited is undoubtedly more challenging for lower-credit clinical courses.

<sup>146</sup> For a critique of "lawyer-led" law reform, see generally Ashar, *supra* note 1. A full discussion of the literature on collaborative and community lawyering is outside of the scope of this article. For a review of the literature, see generally Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLIN. L. REV. 427 (2000).

<sup>147</sup> See generally Karin & Runge, *supra* note 1; Kruse, *supra* note 1; Srikantiah & Koh, *supra* note 1.

presented by ongoing projects typically arise where the clinic does not have a client but has instead taken on a project on the clinic's own initiative. Where there is no external client, it is much more difficult to create boundaries in the goals of a given project. Without a client, the clinical supervisor inevitably plays the role of client proxy, or expert, which, as discussed in more detail below, is likely to undermine student ownership.<sup>148</sup>

*a. Implementation: Time-Limitations*

As they drafted the supervision plan for the Air Quality Project, the supervisors paid careful attention to whether the project could reasonably be completed within the course of the semester. The supervisors created a timeline for the project, working backwards from the end of the semester, to anticipate how the project would unfold. The timeline included key events and decision points, and anticipated the time it would take for students to get up to speed on relevant law and policy, build connections with community members, develop a plan, and draft final products. For example, the supervisors anticipated the project might involve at least one community meeting to announce the results of the study on air quality and gauge community interest in an advocacy initiative. The supervisors plotted an anticipated timeframe for the execution of this and other key events, products, and outcomes, with the understanding and anticipation that it would change over the course of the semester, potentially drastically. The timeline helped the supervisors envision a possible beginning and end to the semester and provided guideposts as they worked with the students to move the project forward over the course of the semester.

*3. Serve a Client*

Ideally, a project has a client and thus a source of external accountability.<sup>149</sup> The principle of client-representation in the project context supports both social justice and pedagogical ends. As a matter of pedagogy, projects that serve clients, as opposed to being internally generated by the clinic, make it much less complicated for a supervisor to maximize student ownership because the students are accountable to someone other than the supervisor. In the project context, a client may be a non-profit organization, a community group,<sup>150</sup>

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<sup>148</sup> Kruse, *supra* note 1, at 441 (discussing playing client "proxy").

<sup>149</sup> "Without grounding in the community, 'cause' or group lawyering has the potential to harm community members—sometimes the members whom the lawyers were intending to protect." Land, *supra* note 1, at 69.

<sup>150</sup> Projects can serve community groups that are formal, informal, well-structured, or loosely-structured, as described by Paul Tremblay. For an in-depth discussion of different forms of community groups and the ethical considerations in representing such groups, see

or a government agency, which allows the clinic to teach students about the complexity of representing institutional or group clients.<sup>151</sup> As a matter of responsiveness, projects that represent clients are likely to engage in work that is responsive to the self-identified needs of the community.

Scholars have noted that where a project does not provide students with the opportunity to represent a client it is much more challenging for students to make choices about how to proceed at various stages of the problem-solving process, as compared to projects or cases that do have clients.<sup>152</sup> By ensuring that projects are responsive to the needs of clients, clinicians and students can reap the pedagogical benefits of having a single client in the project context. Just as individual clients provide direction, context, and goals, and thus help increase student ownership in traditional clinic matters, a client provides the same benefits in the project context.<sup>153</sup> When students ask, “What do we do now?” the supervisor can respond, “What are your client’s goals and how do those goals inform the choice you are facing?” rather than providing the goals and next steps herself. The supervisor thus has a reference point, the client’s goals and needs, that will guide students through key decision-making moments over the course of the project.

When representing a group or organizational client, students must face great complexity in communication and decision-making, as well as ethical considerations, in ways that differ from and are often more complicated than corollary dynamics in the individual client context. As Katherine Kruse notes, “the problems are much more difficult to locate and identify because there is no one client with an individual perspective to understand and appreciate. Instead, one encounters a multiplicity of differing needs and perspectives that converge at some points and conflict at others.”<sup>154</sup> Indeed, in and of itself, the process of identifying a client’s goals is often a major source of learning for students working on projects. Students learn not only that they need to understand their client’s goals and that the process of identifying goals is not typically straightforward, but they also learn that they, as lawyers, play a critical role in advising and assisting their client through the process of identifying and prioritizing goals.

The suggestion that projects always have a client cuts against a

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generally Paul R. Tremblay, *Counseling Community Groups*, 17 CLIN. L. REV. 389 (2010).

<sup>151</sup> Srikantiah & Koh, *supra* note 1, at 463 (discussing how clients of advocacy projects are usually institutional clients rather than individuals).

<sup>152</sup> Kruse, *supra* note 1, at 430.

<sup>153</sup> *Id.* at 439-40.

<sup>154</sup> *Id.* at 430.

tendency to engage in projects that are self-generated by a clinic. Understandably, many clinics take on projects that grow out of the clinic's direct representation or litigation work.<sup>155</sup> Sometimes projects grow out of specific systemic problems encountered by clients, often problems that have no viable litigation-based remedy.<sup>156</sup> Projects may also stem from supervisors' own interests, goals, or relationships in the community.<sup>157</sup> Internally generated projects hold obvious appeal for clinical teachers; such projects may respond to problems that the clinical teacher is deeply concerned about or in which the clinic itself has an institutional interest. In a combined or integrated clinic that handles litigation and non-litigation work, such projects may also give students insight into two different ways to tackle the same problem: one through litigation, the other through, for example, policy reform. Where such clinic-generated projects do not have a specific client and instead rely on internal guidance, typically from the clinical teacher, there is a risk that the students will not be able to assume ownership of the project in light of the supervisor's role in directing the work.<sup>158</sup>

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<sup>155</sup> *Id.* In an eloquent description of how systemic change projects can grow out of a clinic's regular practice, Katherine Mattes writes:

If we are lucky, we teach our students that our job as an advocate may require us to step away from the law and into other roles, roles such as politician, mediator, social worker, or legislator. In my own life as a clinician, this was the moment when I realized that I needed to step away from the "one client, one case" model and help my students, and myself, begin a practice that was broader. Over time, through trial and error, we have evolved into a practice that includes the pursuit of systemic changes, changes that will impact people we will never know . . . the real change came when Hurricane Katrina left us with no other choice; with no courts and no criminal justice system to speak of, formal litigation was not an available option. We painfully discovered that there are times when we had better be prepared to use less traditional advocacy tools if we wanted to help our clients.

Mattes, *supra* note 22, at 80-81.

<sup>156</sup> See Barry et al., *Teaching Social Justice Lawyering*, *supra* note 1, at 416-424 (discussing the University of Baltimore Family Law Clinic on the Legal and Islamic Response to Domestic Violence, and the CUA Families and the Law Clinic, The Emergency Shelter Legal Clinic Project); Mattes, *supra* note 22.

<sup>157</sup> "One of the risks posed by [project-based clinics] is that they can operate on the program director or faculty's sense of justice, which may be different from the expressed needs and understandings of the people who might be the intended beneficiaries of the clinic's work." Land, *supra* note 1, at 64. See also Karin & Runge, *supra* note 1, at 568-69.

<sup>158</sup> Some scholars have argued that a move away from individual client representation has serious costs for student learning.

Exposing the complexity of problems faced by individuals, exploring the legal context of the individual client within his or her community, and teaching our students to be leaders in the development of policy and law are important goals of clinical legal education . . . It is the sense of responsibility that they feel, the fear, the vulnerability when representing real clients, that inspires students to strive to be effective lawyers with excellent skills . . . Unlike second chairing, having direct responsibility for cases means that students must establish independent relationships with clients, must think ahead, and must shoulder the responsibility for the choices they make. We cannot afford to lose those lessons by taking the real clients out of the mix.

There is also a risk that the project itself will meet reform or social change goals that the clinical teacher, the students, or the law school have identified as important, but which may not have been tested against the needs and interests of the communities and individuals affected.<sup>159</sup>

My personal, anecdotal experience is that internally generated projects that lack an external client require pedagogical compromises that made the projects less than ideal for student ownership and ultimately, student learning. But this does not mean that clinics cannot take on internally generated projects; instead, it means that where clinicians see systemic problems they wish to tackle, they might attempt to identify a potential client with an interest in the problem and ask if that client is interested in the clinic's support. Representing a client in project work creates a check on both the process of project selection and the substantive goals of the project. It holds clinics accountable and ensures that project work, which has such powerful potential for systemic and structural change, is firmly grounded by community needs and interests.

*a. Implementation: Serving a Client*

The client in the Air Quality Project was the public health organization. The organization's interests, needs, and objectives determined the scope and content of students' work in the project. The students faced the unique challenge of managing a relationship with an organizational client where multiple individual contacts at the client organization made understanding the client's goals and needs a challenge. Students had to navigate the challenge of communicating with and taking direction from the leader of the organization while also being responsive and respectful to other staff members with whom they had more regular contact. Third parties also played a role in this project, as they do in many projects that tackle complex problems with widespread community impact. Given that the client organization's goal was to address community-identified air quality concerns, the students realized during the course of the project that they had to take into account the interests of the community, which required building relationships with community members.

*4. Students as Primary Lawyers*

Ideally, students are the primary lawyers in clinical projects and, from the beginning of their time in clinic until the end of the project,

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See Land, *supra* note 1, at 48, 56

<sup>159</sup> See Ashar, *supra* note 1, at 387-390 (arguing that clinical programs should be accountable to the needs of community collectives and community organizations).

they are the client's primary point of contact with the clinic. When clinical teachers serve as the primary lawyers and points of contact on a project, student ownership can be so deeply undermined that the students will never truly feel that they are operating as lawyers on the project. This view is supported by the recent literature on the challenges of supervising projects and years of clinical literature on the successes of student ownership in short-term matters.

Professor Deborah Epstein uses the concept of "ego subversion" to help guide clinicians' thinking about the supervisory relationship as we seek to maximize student ownership and role assumption in projects.<sup>160</sup> Epstein's maxim is that "clinical teaching is all about ego subversion." The concept of ego subversion holds that a successful supervisory relationship depends on the clinician ensuring that her own interests, knowledge, and skills do not dominate the relationship—instead, they remain in the background. The more a supervisor can subvert her own ego, the more the student's knowledge, interests, and skills will be the focus of the supervisory relationship. In the project context, the concept of ego subversion suggests that the supervisor step back as much as possible and allow students to manage the client relationship and the substantive work of the project.

Once the students begin work on the project, the clinical supervisor ideally has very limited contact with the client. When the clinical supervisor steps out of the picture, students develop a direct relationship with the project client and are much more likely to take full ownership of the representation. This is an example of a point that must be discussed up-front with potential project clients who might be asked to agree to this arrangement as a condition of being represented by the clinic.<sup>161</sup>

When students bear the full responsibility of representing a client, they internalize the need to determine the client's goals and assess the client's problem with an appreciation for context. They learn, through trial and error, the challenge of building a responsive relationship with

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<sup>160</sup> Deborah Epstein, the Director of the Domestic Violence Clinic at the Georgetown University Law Center, trains new clinical teachers through the "Clinical Pedagogy" course at Georgetown. Epstein introduces concept of ego subversion when teaching new clinicians about supervision methods. Wallace Mlyniec recently described the evolution and development of the Clinical Pedagogy course, a core part of the graduate clinical teaching fellowship program at Georgetown. *See generally*, Mlyniec, *supra* note 85.

<sup>161</sup> This does not require that the supervisor be absent from all project-related events, but that he or she remain firmly in the background, as a "fly on the wall." In fact, supervisors may affirmatively choose to attend key events, such as the initial meeting between students and the project client, so that the supervisor can give students feedback. When doing this, the supervisor must ensure that he or she does not become the focus of attention. This may involve remaining silent, sitting in the background or at the side of the room, or sitting in the audience at an event.



a client that supports a full articulation of the client's goals. They grapple with ethical, factual and substantive legal issues, and they confront nuances and complexities of legal problems. When students have ownership of their clinical work, a goal that can be achieved, in part, by making students the primary lawyers in their project work, every moment of the clinic experience is a potential source of reflection, and thus a source of insight and understanding.

*a. Implementation: Students as Primary Lawyers*

The students were the primary lawyers on the Air Quality Project, serving as the organization's only contact within the clinic during the semester. Although the project grew out of the clinic supervisors' prior relationship with the public health organization, the supervisors met with the organization's leadership before the semester began to discuss roles and expectations for the semester. The supervisors communicated that a condition of representation was that the organization would work directly and solely with the students and the organization agreed. The students held an initial meeting with the client organization, a meeting that they planned and practiced with supervisors ahead of time. Following the initial meeting, the public health experts introduced the students to community members who were concerned with air quality and the project was off and running.

During the course of the project, clinic supervisors faced challenges in ensuring that the students maintained ownership of the project. A couple of times, a leader in the client organization perceived communication problems with the students but did not bring the issue to the students directly. The leader contacted the clinic supervisors instead. These moments ran the risk of undermining the students' authority and ownership of the project. In one instance, the students were aware of a communication between the supervisors and the client organization and expressed that it had undermined their authority. For the clinic supervisors, it was a lesson in the importance of ensuring that clients communicate only with students during the semester, particularly where there is a challenge to be addressed. Through this experience, clinic supervisors reaffirmed the importance of students and clients communicating about—and resolving—challenges that arise during the course of the representation.

*5. Beyond Research and Writing*

Projects ideally ask students to do more than research and writing. The goal is to engage students in a process that is more dynamic than legal and policy research that involves only Westlaw and Google searches. When it comes to research, a given project might involve

(and perhaps should involve) a healthy dose of such traditional research and writing work, but it can also include research and other experiences that take place outside of the library and away from a computer screen. Just like courtroom experiences in litigation clinics, or the experience of negotiating a deal in a transactional clinic, a clinic that does projects will have the most added value for students when they are exposed to learning experiences that they have not had anywhere else in law school (and potentially in their professional lives to date).

Law students are accustomed to the basic process of doing research and then writing up findings, but they are not well-trained at tasks like gathering information from stakeholders, determining the interests of stakeholders, organizing community members, running meetings, or giving presentations to pitch an idea. Projects can develop these multidimensional skills by taking students out of the classroom, away from the computer, and into the community. Students engaged in project work might have on-the-ground experience with clients, community members, policy makers or stakeholders, and perhaps the chance to implement an action step in the project. For example, a real-world element might involve surveying stakeholders and experts, interviewing community members, meeting with government officials, or holding a town hall meeting.

This principle is crucial for meeting social justice goals and for students' development as reflective practitioners. As a matter of advancing social justice, when students interact with those who are affected by or have an interest in a problem, they will gain a deeper understanding of the complexity and nuance of the problem, and thus produce final products that respond to the realities of the problem. In terms of student learning, interacting with community members, stakeholders, policy makers, and other players will inevitably create the kind of disorienting moments that can, if followed by reflection, lead to powerful insights about the role of lawyers in achieving social change.<sup>162</sup>

*a. Implementation: Beyond Research and Writing*

The Air Quality Project required students to do more than develop their skills in research and writing in the traditional sense. The students had the opportunity to learn about, practice and develop the skills of complex problem-solving, community organizing, strategic planning, policy analysis, advocacy before public agencies and public

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<sup>162</sup> See Quigley, *supra* note 69, at 60-62. See also Kruse, *supra* note 1, at 436-437, who names this as the "connection" strategy in her four strategies for involving students in problem solving.

officials, making persuasive presentations, planning and running meetings (including large community meetings), collaboration with experts in other fields, negotiation, and finally, traditional research and writing as well.

### 6. *Develop Collaboration Skills*

In addition to interaction with the client and other stakeholders, the project model can reap additional pedagogical benefits using a team-based approach to develop students' collaboration skills. In this approach, students work together as a team of lawyers with shared responsibility for all aspects of the project. The team-based approach also holds benefits for project outcomes and final products because student teams can take on projects of a size and scope that would be outside of the ability of any single student. Students working together have greater problem-solving ability when they engage in brainstorming, information gathering, solution generation, and evaluation as a team, which can result in more creative solutions and a stronger final outcome or product.<sup>163</sup> In addition, by using the team approach, the clinic can develop collaboration skills that will benefit students throughout their future professional lives.

Many clinics identify collaboration as a critical learning goal and treat it as an essential professional skill, one that is just as valuable as any of the other skills learned in clinical education.<sup>164</sup> The choice to teach collaboration skills is justified by the idea that collaboration skills are not necessarily intuitive and that these skills can be developed through explicit examination of collaboration styles and methods, followed by practice, and reflection, just as any other skill taught in clinical education.<sup>165</sup> The decision to teach collaboration may also be based on the recognition that lawyers often work together, litigat-

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<sup>163</sup> Jane H. Aiken et al., *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047, 1055 (1985) (citing evidence that collaboration produces better results).

<sup>164</sup> See e.g., Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process For a Diverse Profession*, 17 VT. L. REV. 459 (1993) (arguing that law schools should teach collaboration skills and that law schools have failed to teach lawyers how to work with others); David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLIN. L. REV. 199 (1994); Gary Palm, *Reconceptualizing Clinical Scholarship as Clinical Construction*, 1 CLIN. L. REV. 27, 128 (1994-1995) ("One of the great strengths of clinical education is that clinical teachers and students collaborate on every matter that emerges from the clinic."); Mark V. Tushnet, *Evaluating Students as Preparation for the Practice of Law*, 8 GEO. J. LEGAL ETHICS 313 (1995) (noting that clinical programs value collaboration in the educational process). *But see* Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLIN. L. REV. 485 (1998) (arguing that the non-hierarchical collaboration models of clinical education do not adequately prepare students for law practice).

<sup>165</sup> Aiken et al., *supra* note 163, at 1055.

ing, making deals, drafting documents, and counseling clients in teams and that lawyers also work with other professionals in interdisciplinary practice.<sup>166</sup> To facilitate the development of collaboration skills, supervisors can create regular opportunities for conversations about collaboration methods, successes, and challenges, whether within the student team itself, in the context of the client relationship, or in relationships with third parties, such as experts or stakeholders.<sup>167</sup>

*a. Implementation: Collaboration*

Throughout the course of the semester, the students in the Air Quality Project worked collaboratively as a team and also with the public health professionals and members of the community. At the beginning of the semester, the supervisors taught a class about collaboration that asked students to self-assess and share their collaboration style with their teammates. Regular opportunities for collaboration “check-ins” were built into the student teams’ weekly meetings with supervisors. These regular conversations, facilitated by supervisors, gave students an opportunity to discuss collaboration styles, needs and challenges, and to learn how to resolve collaboration issues. Over the course of the semester, a number of collaboration issues arose between the team members, with the client group, and with community members. Supervisors assisted the students in talking about, understanding, and resolving these collaboration challenges.

*7. Practice and De-brief Lawyering Performances*

The use of performance followed by feedback and critique is a core method of clinical education that can be applied effectively in the project context.<sup>168</sup> The process of practicing a performance, then receiving feedback on the performance, helps students refine skills, improve substantive content, and build confidence for the actual

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<sup>166</sup> See generally Bryant, *supra* note 164.

<sup>167</sup> See *id.* (describing the benefits of collaboration on professional satisfaction and professional performance); Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 CLIN. L. REV. 93, 98 (1994) (“Teaching collaboration is properly a goal of clinical legal education because it will enable students to improve their representation of clients and their professional skills in the various ways.”).

<sup>168</sup> For a discussion of clinical education’s use of performance followed by feedback as method to enhance student learning and skill development, see Victor M. Goode, *There Is A Method(Ology) to This Madness: A Review and Analysis Of Feedback in the Clinical Process*, 53 OKLA. L. REV. 223, 225 (2000) (describing feedback and critique of student performances as a feature of clinical education “from the earliest days of the modern clinical movement.”). See also David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 109-110 (1979); Kreiling, *supra* note 111; Carolyn Grose, *Flies on the Wall or in the Ointment? Some Thoughts on the Role of Clinic Supervisors at Initial Client Interviews*, 14 CLIN. L. REV. 415 (2008).

performance.<sup>169</sup> Student learning is further enhanced when students de-brief the actual performance with supervisors after it is complete. De-brief sessions are an opportunity to engage in reflective practice, and can include positive feedback as well as critique. Project supervision can include practice, feedback, and de-briefing opportunities for students' lawyering performances, such as meetings, presentations, written correspondence, conference calls, or hearings.

To the extent that students are meeting with clients, stakeholders, community members, or other professionals in the course of project work, every meeting or presentation can be practiced and de-briefed in the same way students are prepared for a meeting with an individual client or for a court appearance.<sup>170</sup> In litigation-based clinical models, students learn the theory and method of examining witnesses, practice these skills in simulations, and receive supervisor feedback before they perform in a hearing or trial. Similarly, at the early stages of a project, before students engage in a particular performance for the first time, they can learn skills through seminar sessions, readings, or meetings with supervisors, practice the skill, and receive feedback and critique.

Just as a clinician would not send a student to court without practicing trial skills and running through a mock courtroom experience, students who are engaged in lawyering performances in the project context can learn and practice the associated skills before they are used in the real world. The myriad planning, communication, and presentation skills project work requires can be studied, practiced and refined. In addition to major lawyering performances, supervisors can also review and offer feedback on basic communication with clients or third parties, including email messages and telephone calls. Although emails and phone calls may seem minor, many students have not developed basic professional communication skills by the time they arrive in a law school clinic. Other possible opportunities for practice, feedback and de-briefing in the project context can include the initial meeting with the project client, a presentation before policy makers or a community group, a meeting with stakeholders, or a telephone call with an important ally.

*a. Implementation: Practicing and De-briefing Lawyering Performances*

The students' experience in the Air Quality Project included regular practice, feedback and de-briefing of lawyering performances,

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<sup>169</sup> Barnhizer, *supra* note 168.

<sup>170</sup> *Id.*

scheduled as needed over the course of the semester. The supervisors defined lawyering performances to include everything from email exchanges and phone calls between the client and third parties (particularly early in the semester) to meetings or presentations with the client, community members and third-party stakeholders. When students were close to the date of a key event, for example, a presentation at a town hall meeting, they practiced their performance with supervisors, typically in a simulation setting. In a town hall meeting preparation session, supervisors would act as community members, listening to the presentation and asking questions of the students in a simulation of the actual event. After the event, students and supervisors would meet to de-brief the event and discuss what went well and what might be improved next time.

#### 8. Seminar Component

A critical aspect of any clinical experience is the learning that takes place during the seminar or classroom component.<sup>171</sup> A clinic that handles projects can include seminar components designed to teach and develop the specific skills and substantive information students need to effectively complete their clinic work. Clinic seminar time is also an opportunity for brainstorming, discussing problems that come up during the project, and shared reflection between students—that is, seminar is an opportunity to help students move through process related issues and decision points. Where a clinic handles more than one project in the course of a semester, student teams can explore similarities and differences between their respective projects, which results in shared learning across projects.<sup>172</sup>

Clinic seminars typically cover the substantive law, procedural rules, and rules of professional responsibility relevant to the clinic's work. Seminar time is also used to teach legal skills, such as examining a witness, counseling a client, or negotiating an agreement. Using simulation exercises, students typically practice these lawyering skills in front of peers and supervisors and then receive feedback on their work.

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<sup>171</sup> “Clinical teachers typically engage in three pedagogies: supervision, seminar, and rounds. These pedagogical modes serve different purposes and, although they overlap, supplement and complement each other to maximize the educational benefits attainable from student practice.” Bryant & Milstein, *supra* note 142, at 197. See also Michael Meltner & Philip G. Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978); Joan L. O’Sullivan, Susan P. Leviton, Deborah J. Weimer, Stanley S. Herr, Douglas L. Colbert, Jerome E. Deise, Andrew P. Reese and Michael A. Millemann, *Ethical Decisionmaking and Ethics Instruction in Clinical Law Practice*, 3 CLIN. L. REV. 109, 165 (1996).

<sup>172</sup> O’Grady, *supra* note 164, at 496 (“[I]n theory, collaboration allows all members of the team to participate equally in each step of the team’s decision making responsibilities.”).

Similarly, in the project context, seminar time can be used to teach substantive law, procedure, and professional responsibility issues raised by the project. Class sessions can include structured discussions of project planning and development to help students make decisions and generate solutions to challenges they encounter in their work. Seminars can also teach particular skills utilized in projects, such as making presentations, facilitating meetings, and communicating with clients and stakeholders. In addition, clinics can employ the rounds method during seminars.<sup>173</sup> Clinicians often utilize the rounds method to engage students in structured and facilitated conversations about the choices and challenges they face in the course of their work in clinic. Susan Bryant and Elliott Milstein have described the use rounds in the context of cases—this method offers the same benefits for projects:

In rounds conversations, students hear about their colleagues' cases, and their colleagues' relationships with clients and others; they come to have a detailed understanding of the legal work their classmates perform. Although supervision uses the same case experience for conversation as does rounds, supervision is focused more narrowly on the individual learning of the students handling a case and upon the concrete needs of the case. In contrast, rounds conversations can be more fluid and located in the experience of the entire group. As a result, students broaden the knowledge base from which to assess and draw meaning from their own legal work. Critical perspectives emerge from the patterns they see in their own as well as their colleagues' cases.<sup>174</sup>

Just as the seminar component is a key pedagogical tool for teaching in small and long-term matters, it serves the same function in the project context. In seminar, students learn substantive law for application in their projects, wrestle with ethical questions raised by the representation, practice lawyering skills, critique and learn from one another's performances, and through guided conversations, reflect critically on their experiences.

*a. Implementation: Seminar Component*

Students in the Air Quality Project had regular seminar sessions designed to enhance project development, create structured opportunities for the student team to work together, and learn and develop skills. For example, the students were asked to prepare a presentation about their plan for the project early in the semester and give the presentation to their classmates and supervisors during a seminar ses-

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<sup>173</sup> See generally Bryant & Milstein, *supra* note 142.

<sup>174</sup> *Id.* at 200-201 (citations omitted).

sion. After the presentation, the student team received feedback on substantive issues in the project as well as their presentation skills.

The Air Quality Project is just one example of the wide range of work possible within the project model. The project taught multi-dimensional lawyering skills, from community organizing to strategic planning, and gave students the opportunity to learn, through experience, about the varied roles that lawyers can play in advancing social justice and serving communities. By applying the eight principles of project design and supervision, clinic supervisors were able to offer students a powerful learning experience, play a role in promoting systems change, and meet the goals of the client organization, and they were able to do so in a way that was manageable and achievable within a single semester.

#### CONCLUSION

The eight principles for project design and supervision may assist clinicians seeking to resolve important concerns raised in the clinical literature regarding the viability of the project-based work in clinical education, as well as questions about the role of student ownership and the relationship between the social justice goals and pedagogical goals in projects. The development of clinical projects holds great potential for creating rich learning experiences that teach a broad range of multi-dimensional lawyering skills. Through this emerging model of clinical education, students can learn complex problem-solving and other professional skills while gaining understanding about the roles lawyers can play in advancing justice.

At the same time, clinics can engage in projects that fill unmet legal needs in the communities in which they work, support law reform, and advance social justice goals beyond the bounds of litigation. Clinics can implement the project model to address legal problems using a wide-range of strategies such as legislative advocacy, policy reform, strategic planning, or community economic development. Project-based work in clinical education presents an opportunity for clinics to create innovative and dynamic programs to train the next generation of thoughtful, reflective, ethical and skilled practitioners, while producing outcomes that serve communities and promote systemic change.