

A BLUEPRINT FOR A CENTER FOR SOCIAL JUSTICE

Bernard K. Freamon*

I. INTRODUCTION

The cutting edge in American legal education in the twenty-first century will undoubtedly be in the area of clinical education.¹ Not since the late nineteenth century introduction of the appellate case method by Harvard Law School's Dean Lang-

* Associate Professor of Law and Director of the Center for Social Justice, Seton Hall University School of Law; B.A. 1970, Wesleyan University; J.D. 1974, Rutgers University School of Law (Newark). Heartfelt thanks are due to Michaelene Loughlin for her suggestions and input into earlier drafts of the blueprint. Thanks also to Steve Wizner, David Luban, Peter Joy, John Marshall and William McNeil for critiquing the blueprint and helping Professor Loughlin and I shape the Seton Hall University School of Law clinical program upon which this article is based; to Michael Ambrosio for providing insightful analysis and sincere encouragement; and to Louise Trubek for offering various forums to test the ideas expressed herein. This article is dedicated to Ms. Leona Freamon of Inwood, New York. She will always be the embodiment of social justice for me.

¹ "Clinical education," as the term is used in this article, refers to instruction and learning based upon observation, role assumption and practical experience as opposed to traditional didactic education which primarily involves lecture and presentation based upon written materials. The Association of American Law Schools (AALS) Committee on the Future of the In-House Clinic defines "clinical legal education" as:

[F]irst and foremost a method of teaching. Among the principal aspects of that method are that students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problem in role; the students are required to interact with others in attempts to identify and solve the problem; and perhaps most critically, the student performance is subjected to intensive critical review.

Final Report of the Committee on the Future of the In-House Clinic, ASS'N AM. L. SCHS. SEC. ON CLINICAL LEGAL EDUC. I-1 (revised Oct. 1991) [hereinafter *Report*] (copy on file with the author). Although this definition is somewhat myopic for our purposes, we adopt it because it is the definition used by almost all clinicians in describing what they do.

Instruction based upon the clinical method is the preferred learning model in the health sciences area and a minimum number of clinical hours is generally required of anyone seeking a license to practice medicine, dentistry, psychology or nursing in the United States. No such requirements are now imposed upon persons entering the legal profession. In the past, many states required law graduates to perform an apprenticeship with an experienced practicing lawyer before admission to the bar. This prerequisite slowly began to disappear in the early 1960's and is now nonexistent in most jurisdictions. Most states now allow a lawyer to begin the practice of law with no practical training whatsoever. It is not surprising, therefore, that law school clinical education programs have proliferated. These pro-

dell² has any teaching methodology had such a profound effect upon the lives of law students and law teachers. In little over twenty years, clinical education has become a permanent part of the curricular landscape in virtually every American law school. This is the consequence of a veritable revolution in methods and content of instruction in legal education, spawned in the 1960's, that continues to this day.³

Like much of the 1960's phenomena, this revolution has had no overarching focus and no sense of direction. Law teachers

grams generally take one of three forms: "externship," "simulation" or "live client."

An "externship" sends students outside the law school to gain practical experience in a variety of settings in the professional world. Externship students may or may not be involved in the actual practice of law. Many "externs" are assigned to government agencies and other organizations functioning in the legal arena. The experience of the student in an externship-type program will necessarily be as varied as the kinds of settings and the supervision made available.

The "simulation" form uses models and vignettes that are designed to artificially replicate the experience the student will have when he or she enters the practice of law. In the litigation area, the best known examples of this kind of training are the National Institute of Trial Advocacy (NITA) programs. See Thomas F. Geraghty, *Foreword: Teaching Trial Advocacy in the 90s and Beyond*, 66 NOTRE DAME L. REV. 687 (1991). Mock situations involving pre-determined factual scenarios are created and students do pre-trial and trial tasks and solve problems within the context of those scenarios. The emphasis is almost exclusively on skills training. The NITA model is very often used in law school seminars on trial practice and is extremely popular with both students and teachers.

The "live-client" clinic services real clients with real problems. These problems are addressed by the students in a controlled environment with the student taking action, giving advice and making decisions, ideally under the supervision of an experienced lawyer. This setting offers the best opportunity for critical reflection on the role of the lawyer in society and the nature of the lawyer's relationship with his clients and other members of the profession. The term "live-client" has become a term of art in clinical education and most often refers to a law office operated within the law school (in-house) by law school personnel with the dual goals of service to client and community and education of the student in the practice of law. The term "clinical education," as used in this article, refers to education undertaken in the in-house live-client clinic.

² See generally Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1 (1983).

³ See generally David Barnhizer, *The Revolution in American Law Schools*, 37 CLEV. ST. L. REV. 227 (1989). Barnhizer argues that most of the changes occurring in law school curriculums are caused by 12 "loosely related" primary forces, some from within legal education and others from the university communities and society at large. *Id.* at 228. He attributes the genesis of many of these forces to a brewing ferment still permeating the faculties of most educational institutions after the erenetic times of the late 1960's and early 1970's. Barnhizer also points out that there has also been a radical change in the racial and sexual make-up of law faculties and student bodies, a renewed interest in jurisprudence and philosophy not seen since the 1930's, and the birth of a "Legal Skills" movement that emphasizes instruction during law school in the technical aspects of lawyering. *Id.* Whether or not one accepts the accuracy of Barnhizer's operative forces description, it is clear that legal education is currently undergoing a profound change.

now know intuitively that in addition to traditional concerns, they must also be sensitive to race, class and gender as well as philosophical and jurisprudential issues. Universities are traditionally trendy places and law schools have their own brand of trendiness. Exhibiting sensitivity to race, class and gender in the law school classroom seems to be the top of the line these days. Whether such interest is more than a trend remains to be seen.

Law teachers also know that they should emphasize experiential and other forms of non-didactic learning in their classes, but many seemingly do not perceive the real purpose behind such endeavors. If the technical skill is taught reasonably well, the typical teacher's inquiry ends there. For many students this has become an empty and unsatisfying exercise. Skills training and instruction typically adopt a notoriously neutral and amoral attitude toward the business of lawyering.⁴ Students in skill-oriented courses are discouraged from forming value judgments about the worth of the tasks they are assigned in the training exercises, much like first-year students are discouraged from making value judgments about the legal doctrines governing the law of contracts, torts and property. Often there is a continuing emphasis on the interplay between lawyering tasks and the law of professional responsibility, but this emphasis may teach more about the avoidance of moral issues in the practice of law than about finding solutions to those issues. Meanwhile, law school graduates continue to report that the quality of life in the legal profession remains dismal and may even be getting progressively worse.

On June 26, 1991, the American Bar Association (ABA) Task Force on Law Schools and the Profession (Task Force) circulated a tentative draft "Statement on Fundamental Lawyering Skills and Professional Values" for comment from the bar and legal educators. The ABA expects to publish the committee's final draft this fall. The formation of the Task Force was prompted by concern about a growing chasm between the student's law school instruction and the realities of the practice of law. In addressing this concern, the draft statement recognized the "dramatic expansion in the number and variety of clinical legal education programs in existence, accompanied by the emergence of a significant body of clinical legal scholarship analyzing the nature

⁴ See Ronald J. Allen, *NITA and the University*, 66 NOTRE DAME L. REV. 705 (1991) (discussing the pitfalls of skills training in general and particularly the NITA model).

of lawyering skills and the best means of teaching them.”⁵

Unfortunately, in its approach to the perceived “chasm” between education and reality, the Task Force put its collective head in the sand, as legal educators have done over the last twenty years. The Task Force proposed the same kind of skills training as we described above: training that accomplishes nothing other than reinforcement of the same traditional notions of professionalism that apparently have caused practitioners, students or teachers to avoid any reflection about what they are doing and its effect upon society. William Simon describes the law school curricula and the bar examination as a “professional catechism”⁶ that discourages contemplation about the nature of one’s work as a lawyer. The Task Force also relies upon this classic conception of the American lawyer—a detached, partisan advocate who champions client confidentiality and autonomy at the expense of all other values and interests except those values specifically condemned by the criminal law and poorly drafted, myopic rules of professional ethics. Hopefully, the final draft will address this problem.

We suggest that the primary reason for a growing “chasm” between an idyllic, surrealistic legal education and the reality of an unhappy and alienated profession is that we live in a horribly unjust and morally bankrupt society.⁷ The traditional law school curriculum continues to substantially ignore this fact, despite a more widespread emphasis on experiential learning and some attention paid to race, gender, and class issues. Any legal education program purporting to close the gap between education and reality in America must, therefore, be explicit and direct about injustice in our society and the responsibility of lawyers, legal educators and students to address the problem of injustice.

Robert Condlin, in his highly critical and provocative article “*Tastes Great, Less Filling*”: *The Law School Clinic and Political Critique*,⁸ observed that the two most important areas in creating a law school clinical program are the issues of design and re-

⁵ *Narrowing the Gap*, ABA TASK FORCE ON LAW SCHOOLS AND THE PROFESSION I (1991) (citing Anthony G. Amsterdam, *Clinical Legal Education-A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984); David Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67 (1979)).

⁶ William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29, 31.

⁷ The “Rodney King verdict” and the events that followed are recent examples that illustrate the depth of the justice problem in American society.

⁸ 36 J. LEGAL EDUC. 45 (1986).

sources.⁹ We find merit in Condlin's observation, and a good portion of this blueprint will be concerned with the design and structure of a law school clinic. Although more recent observations from experienced clinicians¹⁰ have downplayed structural concerns, Condlin also offers good reason why a law school clinical program should be explicit about its commitment to justice:

To make judgments about what would be better, principles of individual action and social organization must be linked to a theory of society or a theory of justice, a theory of the way in which lawyers and legal institutions ought to operate in order that fair and just states of affairs be produced. These theories can be incomplete, tentative, or not wholly (or even in major part) original, as long as they are also coherent, intelligent, and genuinely open to further development.¹¹

Therefore, the structure we propose in this blueprint will also necessarily be conducive to the furtherance of the clinical mission to do and bring justice to our community and the role that mission should play in the education of law students. This article will serve as a blueprint for such a program, entitled the Center for Social Justice.¹² We will take up the justice mission first and then outline a

⁹ *Id.* at 53.

¹⁰ See, e.g., David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 N.Y.L. SCH. L. REV. 87 (1990); Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990); Gerald P. Lopez, *Training Future Lawyers to Work With the Politically and Socially Subordinated: Anti-Generic Education*, 91 W. VA. L. REV. 305 (1989).

¹¹ Condlin, *supra* note 8, at 49.

¹² The clinical program described herein is based upon the Center for Social Justice at Seton Hall University School of Law in Newark, New Jersey. The University recently received a federal grant, authorized by congressional appropriation, to develop a national model clinical program that can be implemented at other law schools throughout the country. See Pub. L. No. 101-162 §§ 612(b)(1), (2), 103 Stat. 1039 (1990) (grant application and supporting documents on file in the offices of the Center for Social Justice). The program is now in its first year of implementation.

Although clinical education at Seton Hall University School of Law is, like many similar programs, only a little over 20 years old, Seton Hall's students and faculty have benefitted from the law school's unique location in an urban environment that is rich with opportunities for innovative and important *pro bono* work. Newark, New Jersey, located in Essex County, is the largest city in the state. According to the 1990 census, 58.5% of Newark's 275,221 residents are black and 26.1% are hispanic. 1990 *Census of Population and Housing Summary*, Population and Housing Characteristics, U.S. DEP'T OF COMMERCE BUREAU OF CENSUS (1991). Essex County has the second highest black population in the state at 316,262 persons and a large hispanic population of 97,727. *Id.*

Essex County also has the largest welfare and fixed-income population in the state. In 1991, the approval rate for the applications received for AFDC (Aid to

structure that will assist in accomplishing this mission. In taking up these questions, it is helpful to take a look at other clinical programs with similar aims.

II. THE NEW LAW SCHOOL CLINICS—AN EVOLVING SENSE OF RESPONSIBILITY AND CONCERN FOR JUSTICE IN OUR SOCIETY

Any law school clinic that myopically defines its educational mission as simply "skill development"—the teaching of professional ethics and methods of critique and self-critique—without explicitly identifying the larger, more philosophic goal of improving the quality of justice in American society will have little success in preparing its graduates for a rewarding and satisfying career in the practice of law in the twenty-first century. We have reached this conclusion after conducting a non-exhaustive survey of recent written materials published by institutions involved in legal education and a number of thoughtful and incisive articles by clinical teachers and scholars. Although this survey certainly cannot definitively predict where clinical teaching and methodology will be in twenty or thirty years, it provides strong evidence, based on the trends we have discerned over the last twenty years and the current state of the art, that a definitive, evocative pedagogy is beginning to emerge.

This new clinical pedagogy is one that demands from its adherents an explicit dedication to the attainment of goals and objectives that are specifically justice-oriented and morally rigorous and challenging. It abhors clinical training that is morally and jurisprudentially neutral. Such neutral training pretends

Families with Dependent Children) assistance in Essex County was 90.4%. In 1991 Essex had 32,355 welfare cases with benefits extended to 91,028 persons. Moreover, Essex County received and approved nearly twice as many welfare cases as compared to the two other large urban counties. In 1991, Camden received 14,109 welfare cases with benefits extended to 45,178 persons, and Hudson County received 16,860 welfare cases with benefits extended to 52,791. In addition, in the same year, 52,998 households in Essex County received food stamps. This figure is nearly double the amount of households receiving food stamps in Camden County (27,713 households) and Hudson County (27,333 households). *Economic Assistance Statistics*, New Jersey Dept. of Human Services Division of Economic Assistance, Table I-A, Table III-A (May 1992).

Essex County also has the highest number of criminal arrests in the state. The total number of arrests was 55,977 and 72.1% of the persons arrested were black. In addition, Essex County had more arrests for murder, rape, robbery, aggravated assault, burglary, and theft than any other county. For example, in 1991, a total of 375 arrests were made in New Jersey and Essex County had 35.2% of those arrests. State of New Jersey, Division of State Police, Uniform Crime Reporting Unit, *Uniform Crime Reports*, at 51-52 (1990).

that lawyering in American society can continue as it has for the last one hundred years, and that no fundamental difference exists between destitute clients—who are subordinated and often cannot afford legal services—and those who occupy the power centers and other top echelons in society.

The new clinical pedagogy uses a number of principles and ideas to advance its mission. We will discuss three of the most important of these principles: (1) an ethic of service and responsibility that integrates theory and practice in reflective, action-oriented legal work with the poor; (2) client empowerment; and (3) interdisciplinary research and collaboration. After this discussion, we will outline a set of goals and objectives for the Center for Social Justice that embodies the principles discussed. We will then describe the structure of the Center, one that puts the “mosaic of justice”¹³ concept in place and is a competent vehicle for the achievement of the new pedagogical goals we have identified.

A. An Integrative Ethic of Service and Responsibility

Institutions involved in legal education are now recognizing a new set of responsibilities to the communities in which they exist. The Association of American Law Schools (AALS) recently adopted a “Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities.”¹⁴ In that statement, the AALS recommended that law professors share in the traditional obligation of members of the bar to engage in uncompensated public service or pro bono activities and that law professors have “an enhanced obligation to pursue individual and social justice.”¹⁵ Similarly, a number of law schools now require their students to provide some form of uncompensated public service as a prerequisite to graduation and at least five require clinical experience prior to graduation.¹⁶ In November 1990, the Dean’s Public Interest Advisory Committee of the Harvard Law School recommended that Harvard Law School adopt a public service requirement and that there be a curriculum change “inspired by a vision of professional responsibil-

¹³ See *infra* note 25 and accompanying text.

¹⁴ See 1992 *Association Handbook*, ASS’N AM. L. SCHS. 59 (1991).

¹⁵ *Id.* at 63.

¹⁶ These include the City University of New York Law School, (CUNY), New College of California Law School, University of Maryland Law School, University of New Mexico Law School and the D.C. School of Law.

ity.”¹⁷ Recently, Cleveland-Marshall College of Law of Cleveland State University co-sponsored a ground-breaking symposium to develop a public interest agenda for American law schools that will be presented to the Association of American Law Schools at its 1993 annual meeting. This followed on the heels of the 1991 annual meeting of the Society of American Law Teachers that also concerned the public interest obligations of American law schools, teachers and students and characterized the discussion of these obligations as a “struggle for the soul of American legal education.”

Further, in 1989, the Ford Foundation funded an “Inter-university Consortium on Poverty Law” (Consortium) based at the University of Wisconsin Law School.¹⁸ The Consortium, now numbering about ten law schools, has convened several national meetings and is currently engaged in identifying and developing models and mechanisms through which law schools can advance the cause of justice for the poor and the marginalized. The Consortium simultaneously seeks to sensitize and educate law students, while encouraging them to embark upon careers in public interest law or to engage in substantial public interest work while in private practice.

Similar efforts are also under way at the curricular level at several law schools. The University of Maryland has established the Cardin Program, a teaching program that is based on a “pedagogy of responsibility” and seeks to integrate responsibility and progressive values in both the practice and teaching of law.¹⁹ This approach is implemented by a series of clinical classes called Legal Theory and Practice (LTP), that begin in the second semester of the first year. All students are required to

¹⁷ *Preliminary Report of the Dean's Public Interest Advisory Committee*, HARVARD LAW SCHOOL 20 (May 14, 1990).

¹⁸ The Ford Foundation's involvement in clinical legal education has, over the years, been very significant. In 1968, the Foundation's Board of Trustees created the Council on Legal Education for Professional Responsibility (CLEPR). CLEPR funded a number of early clinical education programs in an effort to address questions about the American system of justice and the apparent inequities in the system that came to the attention of policy makers in the 1960's. Over the decade starting in 1968, CLEPR made over \$2.7 million in grants to ABA-approved law schools in the United States for clinical programs. See William Pincus, *Legal Education in a Service Setting*, CLINICAL EDUCATION FOR LAW STUDENTS 27 (1973).

¹⁹ Dean Hill Rivkin, *The University of Maryland School of Law: Progressive Ideals in Action*, EQUALIZER 1 (March 1991) (newsletter of the Society of American Law Teachers) (quoting Barbara Bezdek et al., *Report to the Faculty: The First Two Years of Cardin Courses*, U. MD. L. SCH. 7 (Oct. 1990)) (unpublished manuscript, on file with the author).

take LTP. The courses are designed to "form a bridge between the existing clinical program and other, predominantly required, courses in the early semesters of the curriculum."²⁰ Initially developed at City University of New York Law School (CUNY), the institutional objectives of the LTP Program are threefold:²¹

a. To instill in law students, in more than rhetorical or conventional ways, a set of professional values that encompass the career-long obligation and capacity to serve poor and under-represented people and communities;

b. To provide real, needed legal service to poor and under-represented persons and communities, thereby making immediate and concrete the law school's contribution to meeting the legal needs of [the state's] poor;

c. To address these objectives through teaching methods which integrate legal doctrine, theory, and practice; as well as classroom- and practice-focused wings of the curriculum and of the faculty.²²

Professor Howard Lesnick at the University of Pennsylvania has also developed a specific course on legal responses to inequality that is offered to students during their clinical placements. Lesnick subscribes to the "pedagogy of responsibility" credo²³ and asserts that traditional law teaching is dishonest and socially irresponsible because it causes students to pursue careers that have no meaning. Lesnick has promoted the CUNY model that emphasizes:

a. Teaching which integrates rather than dichotomizes different fields of law;

b. Encouraging students to see law in relationship to underlying human problems;

c. Lawyering in the context of moral and political theory; and

d. Promoting the students' capacity to be active, reflective learners, thus empowering them and increasing the likelihood of a less role-defined, more empowering relation with their clients.²⁴

²⁰ *Id.* at 2.

²¹ Barbara Bezdek, "Legal Theory and Practice" *Development at the University of Maryland: One Teacher's Experience in Programmatic Context*, 42 WASH. U. J. OF URB. & CONTEMP. L. (forthcoming 1992) (manuscript on file with author).

²² *Id.*

²³ See Howard Lesnick, *The Integration of Responsibility and Values: Legal Education in an Alternative Consciousness of Lawyering and Law*, 10 NOVA L.J. 633 (1986); see also Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157 (1990).

²⁴ *Id.* at 1183. For a detailed description of the CUNY model, see John Delaney,

The course work that this model generates causes a complete redefinition of the curriculum. There has been a strong effort made to accomplish such a redefinition at CUNY. From the beginning of the first year, students take on the role of active, committed public interest lawyers both in classroom exercises and simulations and in live-client clinical placements. Although no law school has wholly adopted the CUNY approach, a number of law schools have borrowed aspects of it in developing innovative curricular changes. This is in large part due to Professor Lesnick's efforts and the difficult, ground-breaking work undertaken by members of the CUNY faculty.

It is our view then, based on the success of the institutional and curricular initiatives we have seen, that any model clinical program must have as one of its fundamental principles the inculcation of a sense of social and moral responsibility in the students who participate in the program.²⁵

Demystifying Legal Pedagogy: Performance-Centered Teaching at the City University of New York Law Center, 22 SETON HALL L. REV. 1332 (1992) (this volume).

²⁵ See Barnhizer, *supra* note 10, at 110-113; see also Howard Lesnick, *The Integration of Responsibility and Values: Legal Education in an Alternative Consciousness of Lawyering and Law*, 10 NOVA L.J. 633 (1986). Professor Barnhizer calls for clinical faculty to assemble a "clinical mosaic of justice" that would focus on "the processes, values and actions involved in doing justice." Barnhizer, *supra* note 10, at 110-11. Barnhizer cautions that, while assembling this mosaic, clinical faculty should be careful not to impose their particular political beliefs or definitions of justice on impressionable law students. After acknowledging that lawyers frequently criticize others for not having a sense of justice, Barnhizer argues:

If, however, those with experience, reflection, commitment and maturity refuse to stand for integral values and principles, they will have betrayed and deceived law students about to enter into a world in which principles and values are continually abused, distorted and pressured. The principles and values which need to be professed openly are those involved in developing a personal sense of justice and integrity. . . . [T]he point is not to proselytize law students into accepting the law teacher's personal vision of justice but to assist students, in fact to demand that students become aware of their responsibility to do justice and the need to develop their own reflective system of justice.

Id. at 112.

Robert Condlin argues that clinical teachers are disabled by an inherent conflict of interest with their students because of the teachers' dual role of practitioner-collaborator and evaluator. Condlin, *supra* note 8, at 53-59. The AALS Clinical Committee Report on In-House Clinics dismissed his observation as a pedantic, overly technical concern, which could apply to all teaching roles in the academy. See Report, *supra* note 1, at I-6 n.5.

Condlin's view becomes much more real if clinical teachers begin to be explicit about their pedagogical quest for justice. Differing opinions about the nature of social justice and methods of achieving it are magnified in the clinical setting. The structure of any endeavor having social justice as an explicit goal must, therefore, be one that encourages the synthesis of competing and contrasting visions of jus-

B. Empowerment

A number of important clinical programs, including the Stanford and Yale programs, emphasize student empowerment, client empowerment and lay lawyering.²⁶ The student's practical experience is generally coupled with an intensive seminar on critical theory on race, gender and poverty and sometimes more specialized poverty law courses. The writings of leading legal commentators support this approach²⁷ and give a rich texture to the teaching. These writers assert that lawyering for the poor is meaningless unless the poor are the actual decision-makers in the process. They emphasize that most clinical clients are from marginalized and subordinated groups and that these groups will never improve their position in society until their members begin taking charge of their lives.

William Simon has consistently proposed that lawyers abandon the "professional culture" that permeates the attorney-client relationship. This culture diminishes the human and social value of the client and transforms the lawyer into an unwitting agent in a power relationship with indeterminate boundaries that are built

tice. Barnhizer does not offer a structure that accomplishes this purpose. The structure proposed herein is, in Condlin's words, the first "tentative" step toward putting theories of social justice into action in the law school setting.

²⁶ See Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984); see also Stephen Wizner, *Homelessness: Advocacy and Social Policy*, 45 U. MIAMI L. REV. 387, 403 (1990); Gerald P. Lopez, *Training Future Lawyers to Work With the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989).

²⁷ See Lucie E. White, *Representing "The Real Deal,"* 45 U. MIAMI L. REV. 271 (1991) [hereinafter *Real Deal*]; Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFFALO L. REV. 1 (1990) [hereinafter *Mrs. G.*]; Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WISC. L. REV. 699; Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. AND SOC. CHANGE 535 (1987-88); see also William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 MD. L. REV. 213 (1991); William H. Simon, *Ethical Discretion in Lawyering*, 101 HARV. L. REV. 1083 (1988); William H. Simon, *Rights and Redistribution in the Welfare System*, 38 STAN. L. REV. 1431 (1986); William H. Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469 (1984); Austin Sarat, *Lawyers and Clients: Putting Professional Service on the Agenda of Legal Education*, 41 J. LEGAL ED. 43 (1991); Peter Margulies, "Who Are You To Tell Me That?": *Attorney-Client Deliberation Regarding Non-Legal Issues and the Interests of Non-Clients*, 68 N.C. L. REV. 213 (1990); Paul R. Tremblay, *Toward A Community-Based Ethic For Legal Services Practice*, 37 UCLA L. REV. 1101 (1990); Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990); Joel F. Handler, *Dependent People, The State, and the Modern/Postmodern Search for the Dialogic Community*, 35 UCLA L. REV. 999 (1988); Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-88); Stephen Ellman, *Lawyers and Clients*, 34 UCLA L. REV. 717 (1987); Carrie Menkel-Meadow, *The Legacy of Clinical Legal Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555 (1980).

upon false and misleading notions of the lawyer's role in society.²⁸ Simon characterizes the liberal view of the attorney-client relationship as instrumentalist and the conservative view as egoist and profoundly anti-social. Simon rejects both views and suggests that lawyers instead adopt a non-hierarchical approach to the relationship. This approach creates a community of interests among lawyers and clients and emphasizes participation, meaningful dialogue, critical judgment of behavior, imagination, creativity and equality between the participants.

Simon's approach to the attorney-client relationship is an important aspect of the empowerment theory. The poverty client's relationship with society and the political order will not be substantially affected by the client's relationship with his attorney until the attorney-client relationship is itself restructured. This concept is fundamentally different from the liberal notion of "empowerment" that dominated the discourse among policy makers and scholars in the "Great Society" years of the mid-to-late 1960's. In those days, empowerment meant simply that the lawyer would create, through his use of power and advantage in society, opportunities for the client to exercise control over various aspects of her life, such as relations with landlord, welfare board, spouse, children, etc. Without the lawyer's instrumentalist intervention, according to the 1960's model, there would be no empowerment.

In the new clinical settings, empowerment has a completely different meaning. It is a fundamental, critical examination and re-alignment of the attorney-client relationship such that the client's relationship with society's power centers takes on a different form—a form defined by the collaborative, non-hierarchical, non-instrumental nature of the poverty attorney's relationship with his client. This re-alignment may often lead to reflection and self examination by the client as well as the lawyer. Emotions that often plague clients, such as fear, intimidation, and lack of self esteem, are identified and challenged using a variety of tools. The client begins to listen to her own voice, rather than the lawyer's voice, and truly to begin to approach her destiny as someone other than a victim.²⁹

The goal of the poverty lawyer-teacher in a justice-oriented

²⁸ William H. Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469, 470-84 (1984).

²⁹ See White, *Mrs. G*, *supra*, note 27, at 52-58 (one lawyer's approach to the subordination of her client).

clinical program must, therefore, be to empower clients within this new framework and provide students with the knowledge, skill and experience that will enable them to empower their clients after the students enter practice. This is a laudable and attainable goal for any program designed to achieve social justice.

C. Interdisciplinary Collaboration and Research

No well-functioning clinical program dedicated to empowering the poor and under-represented can achieve its ends without involving professionals from other disciplines. This interaction is required not only in the daily practice of law, but also in the theoretical work that must occur if the systemic problems that lead to poverty, injustice, and the intimidation and subordination of poor persons are to be overcome. Law school clinics must assume a greater "think tank" quality in the twenty-first century if they are to have any effect on their individual clients, students and the community. The clinic should also be a place where the nature of the attorney-client relationship is thoroughly explored, criticized and studied.³⁰ A clinic that is nothing more than just another law firm litigating individual or class claims without any overarching theoretical and interdisciplinary perspective is bound to stagnate and eventually fail in its mission. Unfortunately, this occurred with several large law school clinics during the 1970's and 1980's.

The model clinic should, therefore, be a magnet for the best thinkers on the legal areas that the clinic serves. The clinic should attract scholars and advocates from within and without the law school to develop action-oriented strategies to address

³⁰ The Final Report of the Committee on the Future of the In-House Clinic enumerated nine identifiable pedagogical goals of the in-house live client clinic. Among them were the following:

7. Imparting the obligation for service to indigent clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people.
8. Providing the opportunity for examining the impact of doctrine in real life and providing a laboratory in which students and faculty study particular areas of the law.
9. Critiquing the capacities and limitations of lawyers and the legal system.

Report, supra note 1, executive summary at 1.

Lawyers are notoriously ill-equipped to study the sociological, anthropological, economic and psychological effects of their work upon their clients and the other members of society who are affected by their actions. The Committee's pedagogical goals would therefore seem to require the "in-house" involvement of professionals from the other social sciences.

and resolve systemic problems. This collaboration will lead to further dialogue and action among advocates, legislators, policy makers and scholars and will greatly benefit the entire community.

There are only a few examples of this type of clinical program in the United States. Although none have focused on the nature of the attorney-client relationship and its theoretical and practical connections with the achievement of justice,³¹ these "action-research" oriented clinics do focus on a particular issue and devote all of their resources toward developing solutions and strategies surrounding that issue. One such innovative program is the North Carolina Project, a clinical program jointly operated by the University of North Carolina (UNC) and North Carolina Central Law School (NC Central). The UNC and NC Central faculties have met and adopted a plan to be implemented at both law schools by 1993. Led by Professor Jack Boger, the North Carolina Project is targeted toward reform of the public school education system in North Carolina. The North Carolina Project intends to accomplish this goal through:

- * [T]he development of one or more convocations around some substantive poverty issue, with the aim of bringing together scholars, legal activists, and interested community activists from around the state;

- * [T]he encouragement of new scholarship, either for presentation at the convocations or for consideration of unresolved poverty issues identified during the convocations;

- * [T]he initiation of new courses on poverty and poverty law, and perhaps inviting joint enrollment from the various interested schools and departments; and

- * [T]he development of additional clinical activities in the schools of law and social work that would explore law reform solutions to poverty problems.³²

By employing experts to conduct empirical research, surveys and public dialogues, the North Carolina Project plans to have three "convocations" over the next two years to develop an action plan for improving the education of poor children in the North Carolina public school system.³³ These convocations will result in a series of academic offerings in the curricula of both law schools. One course,

³¹ This may not be possible without an outward focus on an identifiable problem of systemic injustice.

³² *Interuniversity Consortium on Poverty Law: Interim Report of the North Carolina Project* 2 (Oct. 21, 1991) (unpublished manuscript, on file with the author).

³³ *Id.* at 8.

"Race and Poverty: Some Constitutional Considerations," has already been offered. A 1992 course is expected to examine in depth the experience of North Carolina's poor families and children, especially:

(i) [T]he interaction between inadequate housing, health care, and social services programs, and the resulting educational deprivation; [and]

(ii) [T]he relationship between poor educational attainment and the resulting underemployment or unemployment, low wage jobs, and the recurring cycle of poverty.³⁴

Beginning in Summer 1992, the law schools will jointly offer an intensive clinical program on the educational projects identified during the first two convocations. Thus, the convocation is an educational tool for the faculty, students and the community, and serves as a "think tank" for the development of advocacy strategies targeted towards the solution of an intractable problem in North Carolina.

A similar "think tank" is the UCLA Homelessness Seminar. In 1990, UCLA Law School Professor Lucie E. White established the "UCLA Law School Interdisciplinary Seminar on Homelessness."³⁵ The seminar had nineteen participants, including a number of advocates and scholars. Half of the participants were scholars in the law, medicine, urban planning, anthropology, history and sociology fields, while the other half was comprised of advocates for the homeless.³⁶ With the help of a Ford Foundation grant, the seminar met for ten weeks, consulted with outside experts and presented papers for discussion and review, all to develop new research agendas, action strategies and policy proposals to deal with the scourge of homelessness.³⁷ White's vision is to develop an "advocacy practice that continually reflects on its own rhetoric and seeks to collaborate with those it is assigned to represent."³⁸ She sees the law school as a "norm setting institution"³⁹ and asserts that "social deliberation about poverty would be enriched if poor people were admitted into those conversations as full, indeed, leading participants."⁴⁰ She es-

³⁴ *Id.* at 9.

³⁵ White, *Real Deal*, *supra* note 27, at 272; see also Gary Blasi, *The Homeless Seminar at UCLA*, 42 WASH. U. J. URB. & CONTEMP. L. (1992) (forthcoming).

³⁶ White, *Real Deal*, *supra* note 27, at 273 n.7. The homelessness advocates included two practicing lawyers, an advisor to a state legislator and four persons who run homeless shelters.

³⁷ *Id.*

³⁸ *Id.* at 275.

³⁹ *Id.* at 308.

⁴⁰ *Id.* at 311.

chews any other method of achieving lasting results.⁴¹

In sum, a sincere commitment to justice and the true empowerment of marginalized, subordinated clients cannot be accomplished in any clinical program without an interdisciplinary collaboration and research component that constantly informs, critiques and educates those involved in the daily practice of law and the supervision of students.

III. THE LEADING CHARACTERISTICS OF MODERN CLINICS

Based upon surveys of existing programs, therefore, the model clinical program's leading characteristics should be:

- * An institutional and pedagogical commitment to justice, social responsibility and public interest;
- * The law, the law school and the legal profession are viewed in a social context;
- * The pedagogical approach used is characterized by integration of theory and practice together with the study of non-legal disciplines;
- * Service is rendered in collaboration with professionals from other disciplines and reflects a broad approach to advocacy;
- * Serious theoretical examination of poverty, race and gender and their relationship to the law is examined as part of the classroom curriculum; and
- * Client empowerment is valued as an important goal in the practice of law.

Consistent with these characteristics, the state-of-the-art Center for Social Justice would therefore have the following pedagogical and service goals and objectives:⁴²

⁴¹ *Id.* (citations omitted).

⁴² Our statement of goals and objectives are broader than those suggested by the Committee on the Future of the In-House Clinic. This is because we include both the service and justice missions of the clinical program within our vision. We invite the reader to compare our pedagogical goals with those of the Committee. The Committee recommended the following goals:

1. Developing modes of planning and analysis for dealing with unstructured situations.
2. Providing professional skills instruction.
3. Teaching means of learning from experience.
4. Instructing students in professional responsibility.
5. Exposing students to the demands and methods of acting in role.
6. Providing opportunities for collaborative learning.
7. Imparting the obligation for service to indigent clients, information about how to engage in such representation, and

1. To enable each student to embark on a career of continuous professional and personal growth
 - a. by guiding each student in integrating the basic skills of lawyering with his or her personal style and values;⁴³
 - b. by incorporating reflective self-critique into the evaluation of lawyer performance and interaction;⁴⁴
 - c. by emphasizing and reinforcing the tangible and intangible rewards and sense of self-worth that comes from practicing law in the public interest;⁴⁵
 - d. by imparting a sense of personal and social justice to all students that will guide them through their professional careers;
 - e. by teaching the skills required to achieve excellence in the practice of law;⁴⁶
2. To provide high quality legal services to those who could not otherwise afford a lawyer
 - a. by giving full service, within recognized priorities, to the legal needs of individual clients;⁴⁷
 - b. by identifying issues and developing advocacy strategies to remedy or improve systemic problems;⁴⁸
 - c. by teaching and empowering clients and client groups to take charge of their own legal affairs and to effec-

knowledge concerning the impact of the legal system on poor people.

8. Providing the opportunity for examining the impact of doctrine in real life and providing a laboratory in which students and faculty study particular areas of the law.
9. Critiquing the capacities and limitations of lawyers and the legal system.

⁴³ See David Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67; Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT 374, 379 (1973).

⁴⁴ See Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 616-17 (1984) (providing a succinct description of the critical self-evaluation expected of clinical students in modern American law schools).

⁴⁵ See Harold D. Lasswell and Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943).

⁴⁶ See generally Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277 (1982) ("many clinical courses are a response to student, faculty and bar demands for a law school clinical experience without any corresponding effort to present a structured course taught to accomplish designated educational objectives").

⁴⁷ Difficult problems are presented in any endeavor that seeks to balance the sometimes pressing needs of individual clients against the limitations placed upon a legal services organization as a result of funding and staffing parameters. See Marshall J. Breger, *Legal Aid for the Poor: A Conceptual Analysis*, 60 N.C. L. REV. 282 (1982) (offering a thoughtful and provocative treatment of this issue).

⁴⁸ See Marie A. Failinger and Larry May, *Litigating Against Poverty: Legal Services and Group Representation*, 45 OHIO ST. L.J. 1 (1984).

- tively resolve problems;⁴⁹
3. To encourage the ideal of community service as a primary responsibility of the lawyer⁵⁰
 - a. by modeling respect and concern for clients and the importance of their legal problems;⁵¹
 - b. by exploring the various ways a lawyer can be of special service to the community;⁵²
 4. To serve as a catalyst for discussion of issues and as a resource center for the academic community, the judiciary, the organized bar and the lay community on questions of law and justice
 - a. by involving every law student in the law school in *pro bono* service;⁵³
 - b. by establishing a social justice curriculum in the law school and involving members of the judiciary, the organized bar and community organizations in the formulation and presentation of course work;
 - c. by utilizing public colloquia to initiate a dialogue among members of the community on the ideal of social justice.

The Center for Social Justice will seek to accomplish these goals by establishing and operating an educational and service program with three components: (1) curriculum, (2) colloquium, and (3) professional service.

A. Curriculum

We propose that the law school offer, as a definitive concentration within its curriculum, a series of courses inquiring into the nature, philosophy and history of the concept of social justice

⁴⁹ See Alfieri, *supra* note 27, at 658; see also White, Mrs. G., *supra* note 27, at 1.

⁵⁰ See MODEL RULE OF PROFESSIONAL CONDUCT § 6.1; MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canons 2, 8; MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 2-25, EC 8-3 (encouraging every lawyer to render *pro bono* professional service in the public interest when called upon to do so).

This ideal has not been emphasized in the traditional law school curricula. Although many students enter law school with a real sense of mission and purpose in terms of justice for the poor and underrepresented, the doctrinal course work during the first two years alters the professional vision of many students. Clinical education has traditionally acted as a bulwark against this phenomenon.

⁵¹ The role modeling engaged in by law teachers often has a lifelong impact upon students and their views toward their profession. The clinical teacher is in a unique position in this regard because her role modeling is in the experiential context, involving real clients with real concerns. The messages delivered by the clinical teacher are, therefore, potentially much more powerful than messages delivered in the didactic context.

⁵² See DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY (1988).

⁵³ *Id.* at 277-89 (discussing the pros and cons of *pro bono* service).

and the lawyer's obligation to aid in bringing about a more just society. Students desiring practical experience in the professional service component of the Center described below will be strongly encouraged to take one or more of the courses offered in the concentration while doing clinical work. All of the courses in the concentration will be open, subject to space availability, to all second and third year students. Those students wishing to pursue a formal concentration in social justice would declare that desire at the end of their third or perhaps during their fourth semester in law school (or the equivalent for night students).

The students enrolled in the concentration will be able to take specific courses in the Sociology and Anthropology of Law, Statistical and Empirical Research Methods for Lawyers, Legal History including the History of the Legal Aid and Civil Rights Movements, Social Welfare Policy and the Law, Homelessness and its Causes, Urban Community Development, Non-Profit Entities, Civil Rights Litigation, Advanced Evidence, Advanced Jurisprudence, and other courses focused upon the jurisprudence of the subordinated in our society. As this article goes to press, the proposed curriculum is still in the planning stage.

B. Colloquia

It is our view that an interdisciplinary collaborative organization of scholars, teachers, practitioners and activists is an ideal vehicle to develop an action-oriented research agenda. This agenda will inform, enrich and assist the clinical practitioners' efforts in the day-to-day litigation and representational work with their clients. Thus the collaborative group, or Social Justice Colloquium as it is known at Seton Hall, becomes a place where theory and practice come together. The Social Justice Colloquium is a place where there is an interface between the empirical and anecdotal experiences of the clinical teachers and students with the scholarly and research-oriented pursuits of the traditional faculty from all segments of the university, as well as policymakers and social science investigators from public and private sector organizations. It is also the place where community activists and even ordinary citizens affected by the law can speak and exchange ideas about community issues and influence the law school's agenda in dealing with those issues.

Each colloquium should be organized around only one particular issue. At Seton Hall, the Social Justice Colloquium was the first aspect of the Center for Social Justice to be formally es-

tablished.⁵⁴ We considered several possible topics for research and discussion, including prison conditions, AIDS, domestic violence, implementation of the Americans with Disabilities Act and affordable housing. We chose to establish an Affordable Housing Colloquium because the topic is one of major importance in New Jersey and there was an immediate groundswell of interest among faculty, students and community members. The Affordable Housing area also occupies a good portion of the work done in the clinical program.

The Affordable Housing Colloquium began meeting in the Spring of 1991 and is now composed of 25 members, including six regular faculty members, two clinicians, a retired appellate judge, a senior advocate with the New Jersey Department of the Public Advocate, the Director of Seton Hall University's Graduate School of Public Administration, two statisticians, a theologian, two tenant organizers and four students. The Colloquium determined that its first task would be to begin the arduous job of ascertaining whether the New Jersey Supreme Court's three opinions in the *Mt. Laurel* trilogy of cases⁵⁵ have significantly improved the quantity and quality of affordable housing for the poor in New Jersey. A preliminary study indicated that the *Mt. Laurel* decisions have had little or no effect.⁵⁶ These preliminary results have prompted the commission of a state-wide study. The study has the full support of the Council on Affordable Housing, the state administrative agency established to effectuate the mandate of the *Mt. Laurel* decisions and a number of non-profit advocacy groups interested in making the promise of *Mt. Laurel* a reality.

While the preliminary empirical study was proceeding, the Affordable Housing Colloquium sponsored a public dialogue for the university community on the success or failure of *Mt. Laurel*.⁵⁷ Most significantly, discussion in the Colloquium spawned the cre-

⁵⁴ See Res. of Seton Hall Law School Faculty (April 24, 1991) (unpublished, on file with the author).

⁵⁵ *Southern Burlington County NAACP v. Township of Mt. Laurel*, 67 N.J. 151, 336 A.2d 713, *appeal dismissed, cert. denied*, 423 U.S. 808 (1975) (Mount Laurel I); *Southern Burlington County NAACP v. Twp. of Mount Laurel*, 92 N.J. 158, 456 A.2d 390 (1983) (Mount Laurel II); *Hills Development Co. v. Twp. of Bernards*, 103 N.J. 1, 510 A.2d 621 (1986) (Mount Laurel III).

⁵⁶ The study will be separately published under the auspices of the Affordable Housing Colloquium.

⁵⁷ See *Mount Laurel and the Fair Housing Act: Success or Failure?*, 19 FORDHAM URBAN L.J. 59 (1991) (published transcript of the Affordable Housing Colloquium program).

ation of an Affordable Housing Clinic focused on community development issues. The Clinic will commence operation on July 1, 1992, and begin to represent non-profit organizations interested in building low-cost, low-income housing in the Newark Metropolitan area. Research conducted by the Colloquium will be very useful to the clinical teachers and students working in the Affordable Housing Clinic. Additionally, the empirical inquiry into the *Mt. Laurel* policies and practice continues as the Colloquium maintains its primary function as a "think tank" and sounding board for practitioners, academics and activists interested in solving the problem of affordable housing in New Jersey.

C. Professional Service

The professional service component of the Center for Social Justice is where students have the opportunity to practice law in a state of the art law office under the supervision of faculty and members of the bar. The Center's law offices should serve as a model clinical program, resource center, catalyst and example for the public interest bar, the private bar and the community. It should also be a place to put theories about justice into action. To function in this capacity, the organizational structure of the Center must permit continued close contact and coordination with outside organizations that have a long history of service to the community and a close connection with the law school's clinical programs as well as a shared concern for justice for the poor and subordinated. At the same time, there must be clear educational policy and decision-making authority and an opportunity for clinicians, faculty and students to be creative, innovative and effective in the Center's educational, service and justice missions. With these overarching considerations in mind, what follows is a blueprint for the organizational structure and an educational plan for the professional service arm of the Center for Social Justice. The structure we outline is now substantially in operation at Seton Hall Law School.

IV. THE BLUEPRINT

The Center for Social Justice's organizational structure consists of nine semi-autonomous clinical sections and an administrative section.⁵⁸ Three clinical sections will practice in the

⁵⁸ The following breakdown describes the contemplated practice areas of the Center for Social Justice:

CRIMINAL PRACTICE

criminal law area and six clinical sections will practice civil law. A

Juvenile Justice

Third-year students work as special deputy public defenders and represent juveniles charged with offenses in the juvenile courts. The practice will gradually be expanded to include outreach work in the community's high schools, junior high schools, youth programs (Boys Clubs, Jaycees, etc.) and advocacy in legislative and other policy making forums.

Recommended Teaching Staff: One full-time lawyer.

Adult Criminal

Third-year students work under the supervision of an experienced criminal lawyer and handle criminal cases referred by the federal courts under the Criminal Justice Act and occasional state court cases referred to the Center.

Recommended Teaching Staff: One full-time lawyer.

Prisoner Rights/Death Penalty

Students handle habeas corpus matters and cases challenging conditions of confinement involving New Jersey state prisoners. The Center will be involved in death penalty litigation arising in New Jersey and would participate, through affiliation with death penalty resource centers, in cases pending throughout the country.

Recommended teaching staff: One full-time and one part-time lawyer.

CIVIL PRACTICE

Family Law and Domestic Violence

This section continues Seton Hall's long standing commitment to family law practice and litigation. The practice would be expanded to establish an interdisciplinary center for the handling of domestic violence matters.

Recommended teaching staff: Two full-time lawyers and one part-time lawyer.

Housing and Community Development

This practice is divided into three segments: Shelter and eviction defense, housing discrimination, and development of affordable housing. The shelter and eviction work is traditional inner-city, litigation-oriented work. The housing discrimination work focuses on breaking down barriers for poor and minority renters and buyers outside of the Newark area. The affordable housing segment would be an interdisciplinary, transaction-oriented endeavor focusing on the development of housing in New Jersey through non-profit organizations.

Recommended teaching staff: Two full-time lawyers and one part-time lawyer.

Immigrants Rights

This section would offer counseling, advice and representation to individuals in the areas of amnesty, asylum, exclusion, deportation, adjustment of status and relative petitions as well as in civil matters in which immigration status is an issue.

Recommended teaching staff: Two full time lawyers.

Disability Law

The Center for Social Justice continues to represent the disabled in service matters and barrier-free access cases. The Center would expand its coverage to deal with important issues involving AIDS, implementation of the ADA and other law reform matters affecting the disabled.

Recommended teaching staff: Two full-time lawyers.

General Civil and Pro Bono

This section, now known as the Legal Service Clinic, handles consumer matters, bankruptcy, contract matters including entertainment law, non-disability public entitlement claims and tort defense. It also administers the law school's *pro bono* program through both in-house and outside placements. It is anticipated that this section will function with a good deal of substantive faculty involvement in student supervision and litigation.

Recommended teaching staff: Two full-time lawyers.

Education Law

Faculty Director supervises each clinical section, but two sections may share a Faculty Director. The Center is administered by a Director and an Assistant Director. The Administration Directors implement the policy decisions of an executive committee that is comprised of the administration and Faculty Directors.⁵⁹

Each of the professional service sections should have a direct relationship with one or more outside organizations, such as bar associations, public interest law offices and legal service organizations. Each of these organizations may participate in policy decisions for the unit through interaction with the individual Faculty Director and with the Center's Director. The Director is responsible for maintaining an ongoing relationship with each of the outside organizations and for developing new relationships.

With the securing of adequate funding, students can be trained to represent inner-city students and parents before the Office of Administrative Law and in on-site hearings involving a myriad of issues, including school discipline, special education, segregation, discrimination, etc.

Recommended teaching staff: One full-time lawyer.

⁵⁹ Six of the nine clinical sections of the Center have received faculty approval and are presently operating. Four of these sections, Family, Evening, General Civil (known as Legal Services), and Juvenile Justice, have been operating for many years. The Disability Clinic began operation in 1989. The Community Development section, known as the Affordable Housing Workshop, is a new initiative organized by members of the Center's Affordable Housing Colloquium and the Seton Hall Faculty.

Each faculty director should be a member of the substantive law tenure track faculty or a clinical faculty member on clinical tenure track or long-term contract. Under Standard 405(e) of the ABA Standards for the Accreditation of American Law Schools, law schools are under an affirmative obligation to provide a modicum of job security to clinical teachers. This generally takes the form of a regular tenure track, a "clinical" tenure track having similar evaluative standards that take into account the different nature of clinical teaching and scholarship, or a long-term renewable contract. Long-term contracts generally contain provisions allowing employment for three or five-year terms. The model we propose cannot succeed unless the faculty directors of each of the clinics and, indeed, the teaching personnel in each of the clinics, have the job security contemplated by Standard 405(e).

The Committee on the Future of the In-House Clinic recently found that "unequal faculty status continues to plague clinical teachers, many of whom still function with lesser job titles, lower pay, and a diminished role in the governance of their law schools. Even at schools where their status is equal, clinicians are often expected to work more months of the year than their non-clinical colleagues." See *Report, supra* note 1.

The essence of social justice is equality. Clinical teachers at Seton Hall have proposed a long-term contract system for all non-tenure track clinicians, with provisions for sabbatical leave and contract renewal standards. Although the Seton Hall faculty has not yet acted on the proposal, a decision on this issue is expected this fall. Four of the faculty directors are now functioning on regular or clinical tenure tracks. Additionally, the New Jersey State Bar Foundation has just established a Bar Foundation fellowship program that will enable an experienced litigator to spend a year in residence in the Center for Social Justice.

A. Educational Program of the Center for Social Justice

Faculty members from the substantive law faculty of the law school should be encouraged to teach, supervise and practice in the Center for Social Justice (CSJ). The faculty should, on occasion, be assigned full-time supervisory duties in the CSJ. Eliminating distinctions between substantive and clinical faculty is an important goal and the involvement of substantive law faculty in clinical education greatly enhances the education of students provided such involvement is achieved through cooperation and consensus.⁶⁰

It is our belief that only third-year students should be permitted to enroll in the professional service component of the Center for Social Justice. The rationale is that law school curricula are shifting in the direction of offering trial practice and other similar courses in the second year rather than in clinical courses. This will relieve clinicians of the need to "warm up" students in the second year. We do not believe that the expenditure of resources on a second-year student yields the desired educational return. Resources are scarce and our overall goal is to offer a place in the Center for Social Justice for every student who wants one. This goal will be maximized by limiting enrollment to third-year students.

We also believe that the credit award for student participation in the Center for Social Justice should be uniformly set at seven credits for a fourteen-week semester and five credits for a ten-week summer semester. Piecemeal credit awards should be prohibited and students will be permitted to take no more than fourteen credits of clinical work during their law school career.⁶¹ Students will be expected to devote twenty to twenty-five hours per week to clinical work. This credit structure effectively limits everyone to two semesters in the Center and increases the availability of the experience for all students. Clinics are often grossly under-credited.⁶² By making the credit award realistic, we will increase the quantity and quality of the student work produced.

⁶⁰ See J. Thomas Sullivan, *Teaching Appellate Advocacy in an Appellate Clinical Law Program*, 22 SETON HALL L. REV. 1277 (1992) (this volume) (detailing the advantages of having non-clinical faculty assist in clinical representation).

⁶¹ Seton Hall Law School currently requires the successful completion of 85 credits for award of the J.D. degree.

⁶² Indeed, the faculty clinical committee recently rejected our proposal to increase credit awards for clinical work from three or four credits per semester to seven credits per semester. As experience in the new Center for Social Justice begins to develop, we are sure this issue will be revisited.

We also recommend that current clinical seminars be replaced by an intensive pre-semester training and preparation session, mandatory for all students and offered twice a year. Each individual professional service unit will remain free to conduct periodic in-service training sessions during the school year as the need arises.

We also strongly recommend that eligibility standards for student participation in clinical education be made uniform. The following standard is recommended:

- a. Two-thirds of law school career completed at time of entry;
- b. Good academic standing or waiver from Associate Dean;
- c. Entry to evening clinic limited to evening students;
- d. When course or any section of course is oversubscribed, selection to be made by lottery.

Equality is a prime goal of any social justice endeavor. All other methods of selection are difficult to justify if the goal is equality and maximizing clinic availability for every student. We also recommend uniform grading policies. It is recommended that all students participating in the CSJ receive a letter grade based upon standard, published grading criteria developed by the executive committee and adopted by the faculty. Participation in clinical education should be on par with substantive law course participation.

Students participating in the CSJ should enroll in one major and one minor area of concentration (immigration, incarceration, housing, etc.) per semester. It is educationally desirable and highly effective to offer students contrasting styles and approaches to problems. But the clinical experience should also expose them to a variety of substantive law areas. Sharing of students also tends to improve supervisory skills and encourages collaboration among supervisors.

V. CONCLUSION

This blueprint is designed to provide a state of the art model for clinical education in an American law school. The model's guiding principle is the need for an explicit faculty and student commitment to the concept of social justice. Any other approach to clinical education is doomed to suffer the same pitfalls of coaptation and distortion that befell the clinical programs of the 1960's and 1970's. Although there is no guarantee that such an explicit declaration for justice will ensure success, we are sure that students, faculty, and clients of the Center for Social Justice will be clear about their mission.