LITTLE CASES ON THE MIDDLE GROUND: TEACHING SOCIAL JUSTICE LAWYERING IN NEIGHBORHOOD-BASED COMMUNITY LAWYERING CLINICS

JULIET M. BRODIE*

This Article describes the model of a "neighborhood-based community lawyering clinic," and theorizes how it serves clinical education's twin pillars of social justice and pedagogy. These clinics are characterized by a neighborhood location, a robust and evolving caseload, and a docket that shifts in response to threats and opportunities that emerge on a local community's landscape. With an emphasis on individual "service" cases over which students have primary responsibility, each student in such a clinic has exposure to a range of clients, cases, subject matters, and modes of lawyering. The Article summarizes salient critiques of such a docket on both justice and pedagogical grounds, and argues that the docket in fact deconstructs the putative tension in clinic design between social justice and pedagogy. The Article articulates the role that the neighborhood docket can play in the professional education of both public interest minded students and those headed for the private sector. Using the Carnegie Report's three apprenticeships as a framework, the Article concludes that the general poverty law practice of a neighborhood-based community lawyering clinic offers unique lessons about the role of law, lawyering, and lawyers in addressing enduring questions of access to justice and persistent social inequalities.

INTRODUCTION

The past ten years have witnessed the emergence and consolidation of an informal group of clinical teachers who self-identify as

* Associate Professor (Teaching), Stanford Law School and Director, Stanford Community Law Clinic. I would like to thank the members of "Working Group 14," *see infra* note 18, including but not limited to those who responded to my community lawyering survey in the summer/fall of 2008, and in particular Sameer Ashar, Susan Brooks, Jeanne Charn, Liz Cooper, Ascanio Piomelli, Jeff Selbin, and Karen Tokarz for extraordinary conversation on the themes of this piece over the past ten years. Thank you to the organizers of and participants in the Community Lawyering Workshop at Harvard Law School, November 14, 2008, and to Russell Engler, Peggy Maisel, and Ilene Seidman for insightful feedback at that gathering on a draft of this Article. I also thank Wendy Bach, Randy Hertz, Bill Koski, Larry Marshall, Bridget McCormack, David Santacroce, and Jayashri Srikantiah for conversation and comments. Thanks, too, to Larisa Bowman for extraordinary research assistance, and to the exceptional reference staff at the Stanford Law School library. Most thanks, as ever, to Jane Schacter.

"community lawyering clinicians." Ongoing discussions among participants in this roving group have revealed a handful of consistent questions about the definition of "community lawyering," its unique contributions to clinical legal education, and the challenges of clinical teaching on a community lawyering model.[1] These questions, and the brainstorming, theorizing, and storytelling that have occurred in the collaborative effort to answer them, give rise to this Article, in which I explore the social justice impact and pedagogical value of community lawyering clinics and how the core values of community lawyering clinics strike a balance between two age-old pillars of clinical education: service and teaching, social justice and pedagogy.[2] After outlining some of the trends and values embodied in the contemporary community lawyering movement in clinical education, I focus on a particular subset of community lawyering clinics: "neighborhood-based" clinics, which are located in their own offices, off-campus in

[1] The story of this newly consolidated group of clinicians self-consciously engaging in "community lawyering" and the "resurgence" of community lawyering as a theme in clinical legal education are described in 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). Indeed, the authors of that piece are among the most active and engaged of the group dedicated to community lawyering, and their piece arises from many of the same conversations that inspired this one. *Id.* at 360 ("This Article seeks to capture some of [the] conversations [of Working Group 14], crystallize some of the ideas that have arisen out of the discussions, and examine the implications of these ruminations for future directions in clinical legal education.").

[2] The debate began with the advent of clinical teaching in the 1930s. *See, e.g.*, Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 951 (1997) ("An examination of the first clinical programs reveals that despite strong ties from the outset, service assumed a secondary role to educational objectives."); 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, 518 (2003) ("The service objective of providing legal assistance to the poor has close ties to the early history and development of clinical legal education; nevertheless, the service goal is generally secondary to educational objectives."); Mark Spiegel, *An Essay on Clinical Education*, 34 UCLA L. Rev. 577, 590 (1987) ("If there was an explicit educational rationale [in early clinic teaching], it was related to some connection between providing service and learning."); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997 (2004) ("From the outset tensions emerged between the public service goals of the first generation of clinical teachers and their funders, on the one hand, and the academic values of law school faculties on the other.") And it continues today, particularly as clinical education has assumed a more prominent role in the mainstream legal curriculum. *Compare* Jane Aiken, *Walking the Clinical Tightrope: Embracing Teaching*, 4 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 267, 268 (2004) (arguing that the transformation of clinical educators from service providers to academics "does not mean that we are somehow less"), *with* Stephen Wizner, *Walking the Clinical Tightrope: Between Teaching and Doing*, 4 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 259 (2004) (arguing that over the past thirty years clinical educators have moved too far from "teaching *through* doing" to "teaching *about* doing," thereby compromising the social justice ideal).

low-income neighborhoods. I demonstrate how these clinics embody a clinical practice that serves both foundational missions of clinical education: to advance social justice for under-represented people, and to provide an educational environment in which law students can engage in reflective, hands-on law practice that contributes mightily to their acquisition of the skills and values we associate with excellent lawyering.

On some accounts, the recent identification of clinical education with the notion of "community lawyering" is really a retrospective move.[3] The history of clinical education has been well-told and will not be repeated here, but individual service cases in which law students represented poor people on a "dispensary" model were an important feature of the earliest days of clinics at United States law schools.[4] Pedagogy was not the focus of these early programs, although the value to students of "hands on" work with clients was recognized. In the 1960s, responding to students' demands for "social relevance," the notion of the social justice mission of clinical education "blossomed" but was joined by a more explicit pedagogical mission and the goal of teaching students not only lawyering skills, but also lawyering "values" and the need for engagement with *pro bono* and other access to justice endeavors.[5] Clinical scholarship was born and educators began to articulate the unique pedagogical value of law students learning through structured and reflective experience.[6] In the decades since the birth of clinical education in these dispensaries, a vast range of clinic designs has emerged, reflecting diverse priorities and visions. By one account, "service clinics" (where students represent individuals in "ordinary civil and criminal cases or transactions") now comprise just over 50% of the types of clinics that are

---

[3] Tokarz et al., *supra* note 1, at 359, 360 n.1 (referring to the community lawyering movement "as a resurgence of interest, because community lawyering and community lawyering clinics are certainly not entirely new").

[4] *See, e.g.*, Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLIN. L. REV. 1, 6 (2000) ("[L]aw students at several law schools in the late 1890's and early 1900's established volunteer, non-credit 'legal dispensaries' or legal aid bureaus to provide hands-on opportunities to learn and practice lawyering skills and legal analysis, and also to serve a social justice mission by providing legal assistance to those unable to hire attorneys."); Blaze, *supra* note 2, at 944 ("The legal aid 'movement' was [a] significant influence leading to the earliest clinical efforts."). The Harvard Legal Aid Bureau considers itself the nation's oldest student legal services organization, founded in 1913 "for the purpose of rendering legal aid and assistance, gratuitously, to all persons or associations who by reason of financial embarrassment or social position, or for any other reason, appear worthy thereof." Harvard Legal Aid Bureau, http://www.law.harvard.edu/students/orgs/hlab/; *see also* HARRY SANDICK & JOHN A. FREEDMAN, A HISTORY OF THE HARVARD LEGAL AID BUREAU (1996).

[5] *Id.* at 12-14.

[6] *Id.*

offered in a selection of twenty-three U.S. law schools.[7] Joining these among the panoply of clinical programs are clinics that specialize in certain areas of substantive law (using both "service" and "impact" cases to advance reform on a particular subject), clinics that emphasize certain modes of practice, clinics that place more or less emphasis on a particular skill set,[8] and clinics with other creative and varied practice and teaching designs.

So-called "impact clinics," with an emphasis on law reform in a particular subject area, have also gained prominence as clinical education has evolved.[9] This evolution is attributable in part to the fact that clinics are now one of the important variables on which law schools compete for students.[10] We should not be surprised that law school marketing campaigns often emphasize their students' clinical work in "splashy" cases: matters with recognizably important results. Law students and their clinical teachers have done amazing work on issues that have wide-reaching and important effects—from protecting natural resources,[11] representing classes of unlawfully detained asylum

---

[7] Andrew P. Morriss, Clinical Legal Education's Role in Access to Justice: Interests and Interest Groups (Nov. 22, 2008) (unpublished manuscript, on file with author).

[8] Mediation or alternative dispute resolution clinics, for example, are increasingly popular choice for teaching a particular set of skills. *See, e.g.*, Columbia Law Sch., Mediation Clinic, http://www.law.columbia.edu/center_program/adr/mediation.

[9] Carey, *supra* note 2, at 530-31 (describing the recent move to impact litigation as away from apolitical lawyering for the indigent poor and toward "political lawyering" for legal and societal reform); Morriss, *supra* note 7, at 4; *see also* Heather MacDonald, *Clinical, Cynical*, WALL ST. J., Jan. 11, 2006, at A14 (degrading clinical law reform projects as "aimed at substituting an unelected lawyer's judgment about the allocation of taxpayer resources for the legislature's"); Heather MacDonald, *This Is the Legal Mainstream*, FRONT PAGE MAG., Jan. 17, 2006, *available at* http://www.frontpagemag.com/Articles/Read.aspx?GUID=0F3614C4-F87C-46A4-B719-5B949D77C4F6. Of the eight in-house clinics at Stanford Law School, four are service clinics (the Community Law Clinic described herein, the Immigrants' Rights Clinic, the Organizations & Transactions Clinic, and the Youth and Education Law Project). These four all include some larger scale advocacy projects in their dockets, but the mainstay of the work is cases on behalf of individual low-income clients/non-profit organizations. The other Stanford clinics are better described as "impact" clinics, animated by law reform agendas and using appellate or other "significant" litigation as the exclusive mode of practice. Stanford Law School, Mills Legal Clinic, http://www.law.stanford.edu/program/clinics/.

[10] U.S. NEWS & WORLD REPORT now ranks schools' clinical training as one among a set of "specialty area rankings," indicating the increasingly central role that clinical offerings play in attracting students. *See* Law Specialty Rankings: Clinical Training, U.S. News & World Report, *available at* http://grad-schools.usnews.rankingsandreviews.com/grad/law/clinical.

[11] *See, e.g.*, UCLA Law, Frank Wells Environmental Law Clinic, http://www.law.ucla.edu/home/index.asp?page=1813; University of Michigan Law School, Environmental Law Clinic, http://www.law.umich.edu/centersandprograms/clinical/environmental/Pages/default.aspx; Washington University Law, Interdisciplinary Environmental Clinic, http://law.wustl.edu/intenv/.

seekers,[12] and beating back the excesses of the "War on Terror."[13] Students are understandably excited about the prospect of working on such landmark and high profile issues and about arguing before courts they have heard about their whole lives.

In this Article, I resurrect the profile of the legal services-type clinical practice in a neighborhood-based context—clinic students representing individual poor people in "routine" poverty law cases in areas such as housing, consumer, income maintenance, and family law, working hand-in-hand with poor communities— as a "middle ground" between the pure "service" and "impact" dockets.[14] I argue for the pedagogical and service value of law students' spending time and practicing law in poor neighborhoods near and around their law schools, and articulate the impact of such an experience on a student's legal education. While the educational value of these service cases may be well-known,[15] I argue that, if undertaken in a consolidated and strategic way and in a community lawyering pedagogical context, they also can play an important role in struggles for social justice in the low-income communities that surround many of the nation's institutions of higher learning, and in enhancing the social justice education of our clinic students.

The neighborhood-based community lawyering clinic hovers between the two archetypical visions (service and impact) of social justice lawyering. Students in neighborhood-based community lawyering clinics gain a critical mass of experience on which to form at least a novice's impressions of poverty law practice. Such clinics provide enough material for a student to test her assumptions—about poor people, about law practice, and about how they come together—but not so much that she is overwhelmed and removed completely from the reflective practice and intellectual rigor that are the hallmarks of the clinical method. This middle ground proves a solid terrain on which to educate a diverse set of law students in lawyering for social justice for the poor.

This article proceeds in four parts. First, I describe the recent

---

[12] Press Release, Rutgers Sch. of Law—Newark, Rutgers-Newark Constitutional Litigation Clinic Wins Top Award from National Legal Education Association for Landmark *Jama* Case (May 5, 2008), *available at* http://news.rutgers.edu/medrel/news-releases/2008/archivefolder.2008-02-11.2860899469/rutgers-newark-const-20080505.

[13] New York University School of Law, International Human Rights Clinic, http://www.chrgj.org/opportunities/clinic.html#waronterror.

[14] *See infra* Part IV.B.4.

[15] *See* DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS (2002). *But cf.* David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLIN. L. REV. 191, 192 (2003) (arguing that the case-centered model that is dominant in most clinics today "may shortchange clinical education itself" by not sufficiently teaching lawyering skills).

emergence of an informal group of clinical teachers who self-consciously identify their clinics as "community lawyering clinics" and who, in that context, wrestle with the pedagogical challenges associated with the service docket on a community scale. Part I describes the varied clinic designs represented within this informal group and outlines what I see as the three over-arching values and themes that characterize contemporary "community lawyering" clinical education: first, a commitment to the social justice mission of clinical education; second, a commitment to lawyering on a community scale;[16] and, finally, a flexibility of practice that is responsive to that scale. In the context of other work in the field and ongoing conversations among community lawyering clinicians, I describe how these themes link "community lawyering" clinics of a wide range of designs to one another conceptually. Part I also introduces a (small) subset of these community lawyering clinics that I dub "neighborhood-based community lawyering clinics" and articulates their unique embodiment of community lawyering values.

Part II locates neighborhood-based community lawyering clinics within the long-standing discussion about how (and whether) to strike the balance between service and teaching in clinic design. This Part first summarizes a recent and important critique that the traditional clinical service docket is inadequately oriented to the social justice imperative of the current historical moment. Specifically, Part II outlines the view that any clinical docket that privileges individual service cases outside of an explicit, articulated commitment to "politicized" collectives of local poor people misses the social justice mark and squanders the opportunity to participate meaningfully in the fight for global justice. The neighborhood-based program described here rests upon just these kinds of cases, and thus must be defended against this critique. Part II also articulates the challenges that community clinics pose to certain clinical pedagogical orthodoxies, such as maximizing student autonomy and emphasizing the non-directive ideal of clinical supervision. Using the clinic I direct in East Palo Alto, California, Part III responds to the pedagogical critique by describing how any compromise of these orthodoxies is matched by other teaching value. Finally, Part IV presents a normative argument for the social justice and teaching value of the neighborhood-based community lawyering clinic model and argues that the much-theorized "tension" between clinical education's twin goals of service and teaching is in fact a false one.

---

[16] *See infra* note 17 and accompanying text. The term "community" can of course itself be deconstructed and/or hotly contested, and community lawyers must be mindful about the range of constituencies who might have a stake in any given conception of "community."

Without trying to be all things to all people, neighborhood clinics expose students to fundamental and fungible lawyering skills, but within the frame of participating in local community justice struggles. Because they operate on the "middle ground" that gives students exposure to a wide range of clients, lawyers, and theories of practice, these clinics introduce students, whether they be committed to careers in public interest law or not, to their duty to engage with access to justice efforts in their communities and to think creatively about the crisis in legal services delivery in the United States.

I. THE (RE-) EMERGENCE OF COMMUNITY LAWYERING CLINICS

A. Core Values/Themes

The term "community lawyering" has been used for years to talk about a particular vision of poverty law practice.[17] While nuanced differences can be identified, the term is largely used to identify a social justice lawyering practice that places commitment to something called "community" (a term of course easy to contest) at its core. A loosely organized group of clinical teachers who self-identify as "community lawyers" has undertaken to wrestle with questions about community lawyering specific to the pedagogical context of their clinics.[18]

In the summer of 2008, I undertook a survey (informal and un-

---

[17] *See, e.g.*, Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 75 (2000) ("I use the term 'community lawyer' to describe a type of practice as well as a type of lawyer. The practice is located in poor, disempowered, and subordinated communities and is dedicated to serving the communities' goals. The community lawyer is one whose commitment to this practice includes collaborative interaction with members of the community."); 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, 315 n.52 (2000) ("We used the term community lawyering because of our relationship with community service sites and because we went out into the community to find our clients; we did not wait for them to come to us. I realize that 'community lawyering' has been used to describe representation of community groups and community organizing."); 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, 451 ("Broadly speaking 'community lawyering,' refers to the activities and actions of lawyers working in and for communities. . . . While community lawyering need not be limited to such communities, I use the term here to refer to lawyering with and on behalf of groups who are in some way chronically underserved or underrepresented and the majority of whose members (or intended beneficiaries) are eligible for free legal representation on account of their indigence.").

[18] I refer here to the AALS Clinical Workshop/Conference "Community Lawyering" small group, known affectionately to some of us as "Working Group 14" (for its numeric designation at one key gathering, in Chicago, 2005). I am grateful to all the members of Working Group 14—present at its inception and since—for remarkably far-ranging, insightful, and generous discussions of the issues discussed in this Article, and consider my project here at least in part as one of reporting on our collective work. *See also* Tokarz et al., *supra* note 1, at 360-61.

scientific, to be sure) of the 42 clinical teachers, representing 35 law schools, who had attended recent gatherings of the "Community Lawyering" Working Group at Association of American Law Schools annual clinical meetings.[19] The survey asked ten questions about the physical location (on- versus off-campus) and about the practice design of the represented clinics. Fourteen clinicians (33%) responded. While a small sample,[20] the program descriptions these teachers offer provide a window into at least some of the nation's clinics that identify with the idea of "community lawyering." Perhaps the most interesting result of this small survey is that there are very few objective criteria that these self-identified "community lawyering" clinics share.[21] There is no singular model with respect to the physical location of these "community lawyering" clinics. Only three of the programs are in free-standing offices off-campus.[22] Some programs are co-located with other community agencies.[23] Others have their main student office on the law school campus, but send their students out to the com-

[19] The survey, hereinafter cited as Survey Results, was designed, disseminated, and analyzed using the free online tool available at http://www.surveymonkey.com/ (last visited January 15, 2009). The list of clinicians to which the survey was submitted was comprised of the attendees of the "Working Group" titled "Community Lawyering"—referred to herein as Working Group 14—at the 2007 (Tuscon, Arizona) and 2005 (Chicago, Illinois) spring clinical conferences who had provided email addresses. (A list for attendees of the comparable session at the 2006 (New York, New York) conference was unavailable.)

[20] Given my utter lack of sophistication in designing or analyzing survey data, it is with some reluctance that I report at all on the results of the survey. Flaws and biases are readily identified: selection bias (who knows who chooses Working Group 14?), small sample size (while 33% is a decent rate of return, forty-two seems a small number to start with), etc. Indeed, there are well-known community lawyering clinicians who have been active participants in Working Group 14 who, for whatever reason, are not included in the survey respondents. Nevertheless, even if only anecdotal, the reports of these clinicians can at least provide a jumping-off place for discussion and further study.

[21] There are several questions I now wish I had included, which might have revealed some consistency: "Is the phrase 'community lawyering' in your clinic's name?" and "In one to two sentences, please describe why you identify your clinic's practice with 'community lawyering,' and describe the features of that practice that are driven by that identification."

[22] These are Harvard's WilmerHale Legal Services Center, Berkeley's East Bay Community Law Clinic, and Osgoode Hall's Parkdale Community Legal Services. *See infra* note 57 and accompanying text. In the months since the survey was disseminated, two additional off-campus programs have been brought to my attention. The first is Boston College's Legal Assistance Bureau, which is located off-campus and affiliated with Greater Boston Legal Services. Email from Paul Tremblay, Clinical Professor of Law, Boston College Law Sch., to author (Nov. 11, 2008, 05:41 PST) (on file with author). The other is Washington University Law in St. Louis' Criminal Justice Clinic, which has a suite of offices at the local public defender's office a mile and a half from the law school. I am sure there are more, and I apologize to any program of which I am ignorant for its omission.

[23] *See, e.g.*, Juliet M. Brodie, *Post-Welfare Lawyering: Clinical Legal Education and a New Poverty Law Agenda*, 20 WASH. U. J.L. & POL'Y 201, 230 (discussing the co-location of the University of Wisconsin Law School's Neighborhood Law Project with other social service and non-profit agencies).

munity or to local non-profit service agencies to do intake, community education, community organizing, etc.[24] Nor is there uniformity in subject areas of practice.[25] Of the seventeen options ("check all that apply"),[26] the top vote-getter among substantive areas was housing, in which eight of the responding clinics practice.[27] The next tier in popularity included community economic development, environmental law/justice, and public benefits, each of which was listed by six programs. Thus, at least among these respondents, there is no substantive or physical consistency that renders a clinic a "community lawyering" clinic.

Some aspects of the program designs *were* consistent across the fourteen responses, and they illuminate the values associated with "community lawyering." First, regardless of the subject area(s) in which any given clinic practices, all include "representation in individual 'service' cases" on their dockets. Only six of the eleven included impact work among the types of lawyering they deploy.[28] Second, while service cases are a consistent mode of practice, virtually all of the responding community lawyering clinics reported a range of law-

---

[24] Of ten responding programs whose offices are on campus, six reported that their students see their clients off-campus at community sites at least some of the time. (One program is entirely co-located with a neighborhood organization and does not sort into these categories.) One of the best known programs operating on this model is the Community Lawyering Clinic of the Jerome N. Frank Legal Services Center at the Yale Law School, whose students provide services through and at the locations of two local non-profit organizations while maintaining their own clinic office on the law school campus. *See* http://www.law.yale.edu/academics/communitylawyeringclinic.asp.

[25] There is, however, some consistency. When compared with available data for clinics nationwide, the subject areas of housing, community economic development (CED), consumer, and environmental law are vastly overrepresented in the community lawyering survey, with the following comparative reporting rates in the two data sets: housing (87%/2.5%), CED (46%/4.7%); consumer (30%/0.9%); and environmental law (46%/3.5%). *Compare* Survey Results, *supra* note 19, with DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., REPORT ON THE 2007-2008 SURVEY 8 [hereinafter C-SALE RESULTS], *available at* http://www.csale.org/CSALE.07-08.Survey.Report.pdf. The vagaries of survey categories ("Other," "General Civil Clinic," etc.) confound any seriously scientific comparison.

[26] The seventeen subjects were: housing, consumer, wage and hour, unemployment insurance, workers compensation, criminal record clearance, community economic development, corporate (governance), criminal defense, immigration, family/domestic violence, environmental, health care access, civil rights, public benefits, child advocacy, and other civil (tort/contract). Survey Results, *supra* note 19.

[27] Community lawyering clinics of course have no monopoly on providing free civil legal services to poor people, and indeed virtually all of the subject areas captured in the survey are also covered by clinics that are not represented in the sample herein and perhaps do not identify with notions of "community lawyering" at all. My contention is that these substantially parallel "non-community" clinics engage in their practices from a different point of view and with differing resultant lawyering lessons.

[28] An additional two programs also listed "appellate litigation," but that choice was distinct from "impact litigation" on the menu. Survey Results, *supra* note 19.

yering modalities across their subject areas. The survey offered a list of typical lawyering strategies (ranging from the "individual representation in 'service cases'" referenced above to "appellate litigation," "community legal education," and "organizing"),[29] and virtually all of the respondent programs listed a *range* of modalities with respect to each practice area.[30] For example, one program, which listed a single practice area, identified five modalities that students engaged in their practice. A different program, one of the largest, identified nine subject areas of practice, and reported using multiple modalities in virtually all of them.[31] Advocacy and outreach efforts described by community lawyering clinicians include community education, self-help training, door-to-door or other outreach and organizing events, legislative advocacy, and other "projects" aimed to leverage an office's legal work for the benefit of more community members. Finally, the majority (ten out of fourteen) of the responding programs craft their intake criteria around partnerships with community groups or organizations, using membership in and/or referral from such a group as a criterion for intake.[32]

Despite these linkages, the differences among programs outnumber the similarities, and, one might reasonably ask, "What links these clinics as 'community lawyering' clinics?" Indeed, what motivates any given clinician, who might have her choice of relevant Working Groups to choose from (Housing, Civil, Community Economic Development), to choose the Community Lawyering group? Discussions within the Working Group have suggested three themes that unite community lawyering clinics across this wide range of substantive and methodological program designs.[33] The first of these overarching val-

---

[29] The other listed modalities were "Impact/affirmative litigation," "Mediation/ADR," "Policy/legislative advocacy," "Representation of community-based non-profits," and "Transactional work."

[30] *See, e.g.*, ALAN W. HOUSEMAN, CTR. FOR LAW AND SOC. POL'Y, CIVIL LEGAL AID IN THE UNITED STATES: AN OVERVIEW OF THE PROGRAM AND DEVELOPMENTS IN 2005 2 (2005) (reporting on "new innovations in how providers intake clients and deliver legal assistance, increased involvement of legal aid providers in addressing the problems of self help participants in the judicial system and a range of creative uses of the Internet and websites to provide legal information and coordinate advocacy").

[31] This survey response included a note in the available "comment" field: "We appreciate a mode of work that starts with the particulars but helps the clients move to the systemic issues—so that the work affects larger groups." Survey Results, *supra* note 19.

[32] Kimberly E. O'Leary, *Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics*, 11 CLIN. L. REV. 335 (describing methods used in various clinical settings to select cases that further the social justice agenda).

[33] Tokarz et al., *supra* note 1, at 363-64 (identifying three core values of community lawyering clinics that are very consistent with those identified here: assumption of a community perspective; work toward systemic change; and collaborative, often interdisciplinary, practice).

ues is the straightforward prioritization of a social justice mission in clinic design. Regardless of subject area or modality, the animating principle of all community lawyering clinics is the active engagement with social justice movements involving the poor, immigrants, people of color, and other disempowered groups in the local community.[34] Community lawyering clinicians are of course not alone in making that commitment central to their work,[35] but it is the foundational principle of community lawyering.

The second, and more specific, principle that connects these clinics to one another is a commitment to social justice lawyering *on the scale of a particular community*.[36] That community might be defined geographically, economically, in terms of employment (e.g., "day workers" or "TANF recipients"), or along other identity/interest grounds, but a notion of each client as a member of some socially cognizable and systematically disadvantaged group animates community lawyering clinics and forms the core of these clinicians' pedagogical and service missions.[37] In harmony with this theme, community

---

[34] *Id.* at 364-65.

[35] Civil rights, community economic development, and international human rights clinics are examples of other programs that may also share this commitment. *See* Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics, and Professionalism with a Social Justice Mission*, 16 CAL. REV. L. & SOC. JUST. 23 (2006) (chronicling the social justice agenda of the Anti-Discrimination Clinic at Western New England College School of Law); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461 (1998) (discussing the social justice features of the Community Development Clinic and the International Human Rights Clinic at the St. Mary's University School of Law's Center for Legal and Social Justice).

[36] Community lawyering does not occur only in the clinical education context. New York Lawyers for the Public Interest, a "non-profit, civil rights law firm that strives for social justice" states that "the community lawyering model drives much of our work. At the heart of this model is the belief that the community knows its own needs and challenges best." http://www.nylpi.org/main.cfm?actionid=globalShowStaticContent&screenKey=cmpAbout&s=NYLP (last visited 2/23/09).

[37] Indeed, for some the formal representation of community groups or organizations, as opposed to individuals, is central to the definition of "community lawyering." *See, e.g.*, Diamond, *supra* note 17, at 69-72 (2000) (arguing that representation of "extemporaneous" groups, or ones with fluid membership and no long-term agenda, can have greater impact on "community well-being" than representation of "bureaucratic" groups, or ones with a hierarchical power structure); Michael J. Fox, *Some Rules for Community Lawyers*, 14 CLEARINGHOUSE REV. 1, 2 (1980) (using the term "community lawyering" in describing a practice working with "groups of poor people" and "organized clients"); Sedillo Lopez, *supra* note 17, at 315 n.52 (noting that "'community lawyering' has been used to describe representation of community groups and community organizing"). The "community lawyering" division of New York Lawyers for the Public Interest defines its work as "providing community organizing support with an eye toward coalition building and citywide networking; offering legal assistance to community-based campaigns; and providing intake services that offer direct referral and assistance to callers, and helps inform the office's programs and priorities." New York Lawyers for the Public Interest, http://www.nylpi.org/communitylawyering.html (last visited July 26, 2008).

lawyering clinicians teach their students to recognize their clients not only as individuals deserving of complete professional loyalty and respect, but also as joined to one another as poor people in a particular economic and social community setting, and in a way that necessarily affects the lawyering.[38]

In conceiving of their clients in community, as bound together by economic and social conditions, community lawyering clinicians build upon a long intellectual and critical tradition of lawyers for poor people.[39] An oft-quoted passage states this view succinctly: poor people have "problems [that] are the product of poverty, and are common to all poor people."[40] For the community lawyer, the scale of response to these common problems is at the community level. This local engagement is in contrast to the more national or even global level that can be reflected in an impact litigation practice.[41] Community lawyering clinics are committed to the judgment that a dedicated, strategic, local response is a principled way to address that injustice. This commitment unifies community lawyers, separates them from clinical colleagues who may practice in overlapping subject areas but without the framing that the community lawyering model embodies,[42] and structures the teaching at every turn.

The third theme of community lawyering clinics, which flows from the recognition and framing of the practice on a community scale, is *flexibility*—both in terms of subject area and modality of prac-

---

[38] Muneer Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1079 (2007) (defining community lawyering as "a mode of lawyering that envisions communities and not merely individuals as vital . . . and that is committed to partnerships between lawyers, clients, and communities as a means of transcending individualized claims and achieving structural change"); Tokarz et al., *supra* note 1, at 364 ("Community lawyering is an approach to the practice of law and to clinical legal education that centers on building and sustaining relationships with clients, over time, in context, as a part of and in conjunction with communities").

[39] *See generally* Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L. J. 1049 (1970); GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992). As is discussed *infra* note 129 and accompanying text, teaching the canon of poverty lawyering literature, including Wexler and López, is an important feature of the seminar component of the community lawyering clinic described herein. Fluency in the major critiques of traditional law practice as a social justice tool is an important competency for aspiring public interest lawyers.

[40] Wexler, *supra* note 39, at 1053. *See infra* Part VI.B.1 for a fuller discussion.

[41] *See, e.g.*, Lauren Carasik, *"Think Glocal, Act Glocal": The Praxis of Social Justice Lawyering in the Global Era*, 15 CLIN. L. REV. 55(2008) (urging U.S. social justice lawyers to frame their clients' issues in global terms and proposing a collaborative Chinese-U.S. workers' rights clinic as model).

[42] Diamond, *supra* note 17, at 75 ("Since the problems are not solely legal, addressing them usually requires a lawyer to suggest strategies and activities that go well beyond commonly recognized legal solutions or remedies. Too often, though, attorneys who serve poor communities see their function as closely approximating the traditional model: as serving individuals with problems that are readily susceptible to purely legal intervention.").

tice.[43] Community lawyering clinics are characterized by a self-conscious responsiveness to changing community conditions and priorities, which demands nimbleness and a willingness to shift gears and tread on new ground.[44] Not only do community lawyering clinics tend to operate in numerous modes, but those modes tend to shift as new threats or opportunities emerge on the local landscape. Strategies to respond to those conditions may include tactics that stretch beyond conventional notions of lawyering (e.g., litigation or legislative advocacy). A commitment to justice for a local community may compromise commitment to any one area of substantive expertise or mode of practice, and many community lawyers do not define themselves by case-type or skill-set. Indeed, in terms of subject areas of competence, many community lawyers might be called *generalists*—as poverty lawyers have been for generations—committed to the breadth of expertise required by such a practice.[45] While community lawyering clinics tend to work in the civil law subjects in which poverty lawyers have practiced for decades, including housing, income maintenance, consumer, domestic violence, employment, community economic development, and related areas,[46] the commitment to any of those subjects is contingent on their continuing salience to the local community.

In a way that can confound clinical orthodoxies,[47] community lawyering clinicians do not hesitate to try new things—an eviction defense lawyer finds herself representing a group of mobile home owners;[48] a litigator attends community meetings to discuss the need for a locally-owned grocery.[49] A community lawyer will stretch herself (within the bounds of reason and professional competence) to participate meaningfully and usefully in the project demanded by the current situation, even if it takes her out of her comfort zone. This "stretch" can have the result of a very diffuse docket, with a mix of individual service cases and organizing, legislative, outreach, and other projects

---

[43] I rely here more on the conversations among community lawyering clinicians than on the responses to my inartful survey, which failed to capture data or comments on this subject.

[44] My thanks to Wendy Bach, who teaches at CUNY, for assistance in identifying "responsiveness" as a core value of community lawyering clinics across subject areas and clinic designs.

[45] JoNel Newman, *Re-Conceptualizing Poverty Law Clinical Curriculum and Legal Services Practice: The Need for Generalists*, 34 FORDHAM URB. L.J. 1303, 1305 (2007) ("Poverty law is not a specialized field.");Lopez, *supra* note 17, at 308 ("[P]overty law is shorthand for the myriad areas of law that affect poor people.").

[46] *See supra* note 25.

[47] *See infra* Part II.B.

[48] *See infra* Part III.

[49] LÓPEZ, *supra* note 39, at 30-34 (describing Sophie, a fictional and idealized community lawyer).

across a number of subject areas.[50] Such a docket poses challenges for supervision and for a clinical seminar,[51] but can lead to rich discussion of the tension between serving individual clients and working on larger social change initiatives, and to involving a young generation of lawyers in brainstorming on how to manage—or reconceptualize—that tension.[52]

The themes set out above—social justice on a community scale and flexibility in practice—can be and are expressed in any number of clinic designs.[53] In fact, the community lawyering model I describe and defend below—one that combines a neighborhood-based location, wholly operated by a law school, with a big, diverse, and evolving caseload—is quite unusual.[54] This neighborhood model, which has much in common with that of traditional legal services offices, offers unique opportunities and challenges both for the social justice impact of the work (on clients, communities, clinic students, and clinic faculty) and for the clinical method. A brief description of that subset, "neighborhood-based clinics," follows.

B. Community Lawyering in the Neighborhood: High(ish) Volume on the Ground

A small but, to my mind, conceptually important, subset of community lawyering clinics can be dubbed "neighborhood-based" clinics. This moniker bows to what I consider the most important feature of community lawyering clinics: a walk-in, free-standing law office based in a poor community that frames and drives the agenda of the clinic. Clinics on this model, such as Stanford's in East Palo Alto that forms the basis for further discussion below: (1) operate out of a free-standing office in a low-income community, (2) maintain a somewhat[55] ro-

---

[50] This form of lawyering can be seen as analogous to corporate lawyering in which corporate lawyers provide broad-based legal services for their clients. Tokarz et al., *supra* note 1, at 391.

[51] Sameer Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355, 399 (2008) (referring to his class syllabus as "not as orderly as that of clinicians in the case-centered approach or as complete and thorough as those who subscribe to the skills-centered approach").

[52] 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).

[53] The examples that follow are not meant to be exhaustive, but rather illustrative of the kinds of models and designs that have been discussed among community lawyering clinicians.

[54] *Survey Results*, *supra* note 22.

[55] The qualification is out of recognition of the fact that even the most active of neighborhood clinics serves only a fraction of the clients that a non-clinical legal services office serves. According to the federal Legal Services Corporation (LSC), its attorneys, who numbered 3,845 in 2002, assisted nearly one million people in the year 2004. LEGAL SERVS.

bust caseload, mostly in small, service cases, in which every student handles a number of matters across a range of subject areas, and (3) are structured by a commitment to the needs and interests of the host community more than they are to either a subject of law (e.g., housing) or a mode of lawyering (e.g., litigation). That is, both the subjects and the modalities are subject to change, within the professional bounds of competent representation and the pedagogical mission of clinics to undertake matters that are suitable for law student practice. One way to think of these clinics is as mini community-based legal services offices. They may resemble a Legal Services Corporation (LSC)-funded or privately funded legal aid operation (especially those of the early LSC branch offices) as much as they do a conventional law school clinic.[56] As will be shown, this model fits squarely within some trusty, old-fashioned traditions of clinical education (most importantly, that of giving students as much autonomy and responsibility in case-handling as possible), but can also challenge some of clinical pedagogy's orthodoxies, with respect to the supervisory role and the pace of the practice.

By my count there are very few clinics in the United States that fit this narrow description, although many more hybrids that may come close in design and operation.[57] These clinics fit squarely within

---

CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 7, 16 (2005). Extrapolating from this, it seems clear that the average legal aid attorney handles a huge number of cases per year. For instance, not atypically, during the 2002-2003 fiscal year, the average caseload of a Child Welfare Legal Services attorney in Florida was 122 cases, though the American Bar Association (ABA) has determined 40-50 cases to be a reasonable number. FLA. LEGISLATURE, OFFICE OF PROGRAM POL'Y ANALYSIS AND GOV'T ACCOUNTABILITY, CHILD WELFARE LEGAL SERVICES SHOULD BE PROVIDED BY DCF OR PRIVATE LAW FIRMS, REPORT NO. 04-05, at 3, 7 (2004).

[56] Some law school neighborhood-based clinics look more like regular legal services offices than do others. Indeed, the Stanford Community Law Clinic (SCLC), described here, is unusual even in this small set in that its supervising attorneys do not handle their own cases above and beyond those on which they supervise students. Survey Results, *supra* note 19. In this, SCLC sacrifices a volume of client service and is a more conventional law school clinic than the others. *See* Jeanne Charn, *Service and Learning: Reflections on Three Decades of the Lawyering Process at Harvard Law School*, 10 CLIN. L. REV. 75, 87 n.39, 93 & n.55 (2003) (describing Harvard's then Hale and Dorr (now WilmerHale) Legal Services Center as a "teaching law office," or a "legal aid office with a full caseload" with students handling four to twelve cases per semester and clinical instructors carrying a caseload "always larger than the cases their students are working on"); WilmerHale Legal Services Center, http://www.law.harvard.edu/academics/clinical/lsc/about/index.htm (stating that the Center serves over 1,200 clients per year).

[57] The ones I know of that most squarely fit it are ours in East Palo Alto, the one Gary Bellow founded for Harvard in Jamaica Plain (now known as the WilmerHale Legal Services Center), the one I directed in Madison, the one that Berkeley operates in Oakland, and Osgoode Hall's Parkdale Community Legal Services office in Toronto. East Bay Community Law Center, http://www.ebclc.org/; Neighborhood Law Project, http://www.law.wisc.edu/fjr/clinicals/nlp.html; Parkdale Community Legal Services, http://www.parkdalelegal.org/; WilmerHale Legal Services Center, http://www.law.harvard.edu/academics/

the community lawyering tradition outlined above, embodying as they do the commitment to social justice for a local community and a responsive, flexible agenda. In the next section, I illustrate how neighborhood-based community clinics strike the balance between clinical education's two touchstone missions: to provide justice and to operate within a pedagogically sound methodology. Each of those touchstones is challenged by the neighborhood model: based on small service cases, the docket of these clinics must be assessed against the critique that they provide only band-aids, rather pursuing a cure to the disease of injustice.[58] On the teaching side of the balancing act, the rough-and-tumble quality of neighborhood clinics—the happy by-product of being located in a poor neighborhood and subject to its priorities and rhythms—challenges some of clinical teaching's most sacred tenets: reflective practice and student autonomy.

II. CRITIQUE OF THE SERVICE DOCKET: NOT ENOUGH JUSTICE, NOT ENOUGH TEACHING

The overarching challenge to the marriage between a legal services-style docket and a clinical education program is balancing the commitment to the community with the commitment to students. While it's not a zero-sum game, in some basic sense, the more thorough the education for the students, the fewer clients the program can serve and the less justice it can "deliver."[59] Indeed, this could be said to be the overarching drama of clinical education.[60] Every clinical model demands excellence in its practice; debate over whether and how meeting that standard is consistent with the clinical teaching model has been the subject of extensive clinical literature.[61] Neighbor-

clinical/lsc/about/index.htm; *see also* Symposium, *Parkdale Community Legal Services*, 35 OSGOODE HALL L.J. 413 (1997).

[58] Paul Reingold has argued against the orthodoxy of privileged, individual, legal services-style cases and in favor of the pedagogical value of big, "hard" cases in clinics. Paul Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLIN. L. REV. 545 (1996).

[59] Justice is of course not "delivered" by lawyers to clients. Community lawyering clinicians are committed to the principle that lawyers and client communities work in partnership.

[60] *See, e.g.*, Jon C. Dubin, *supra* note 35, at 1478-82 (discussing the reconciliation of "service and instructional goals in social justice-oriented clinical design").

[61] *See e.g.*, Blaze, supra note 2, at 953 ("'[I]t is important . . . that community service fall within the proper scope of law school educational activity to the extent that service affords demonstrably sound, pedagogic opportunities for the education of law students.'") (quoting Charles H. Miller, Living Professional Responsibility: Clinical Approach 4 (1973) (unpublished manuscript, on file with author); Carasik, *supra* note 41, at 24 (discussing the "tension between the important social justice considerations and the premium on practical skills and professionalism training"); David Chavkin, *Spinning Straw into Gold: Exploring the Legacy of Bellow and Moulton*, 10 CLIN. L. REV. 245, 256 (2003) (stating the development of clinical legal education should be geared, above all else, toward "help[ing] the

hood-based community lawyering clinics have their own version of this tension, in some ways intensified by the evolving nature of the practice. Both the "justice" and the "teaching" sides of the ledger are challenged by the nature of the neighborhood caseload. After setting out the challenges on both the social justice and the teaching sides, however, I will offer an explication of how, in fact, the neighborhood-based model can create an environment that lives up to both expectations of clinical education.

A. The Social Justice Critique: Service Cases Unduly Prioritize Student Capacity

Any articulation of the social justice value of a clinic docket that is dominated, as is the neighborhood docket, with small, service cases must contend with the brilliant and provocative critique of such a caseload recently offered by Director of Clinical Education at The City University of New York, Sameer Ashar. In his 2008 piece, "Law Clinics and Collective Mobilization," Ashar delivers a powerful assessment of what he calls a "canonical," "case-centered," clinical educational model that privileges students' acquisition of what he derisively calls "skills" over the social justice impact of the work. Ashar urges law school clinics to adopt a "new public interest practice," organized around working in solidarity with and on behalf of "mobilized collectives of poor people" as opposed to individual poor clients without a self-consciously politicized identity.

Ashar identifies "case-centered" practice as the historic and traditional mode of clinical education, noting that method's preference for a caseload where students represent individual clients in individual cases deemed appropriate in scale for a student to take lead responsibility for the case's progress.[62] He argues that this type of practice is crafted to emphasize law students' professional development at an unacceptably high price for social justice:

> Case-centered clinics are primarily accountable to students and law school administrators, rather than clients, and fail to serve political collectives. When clinical teachers elevate student interests—defined reductively as case intake to provide students with individual cases over which they will have full responsibility—over those of clients and communities, the meta-lesson to students is that lawyers may dispense with social justice to serve one's masters.[63]

---

largest number of students possible develop into responsible and effective practitioners").

[62] Ashar, *supra* note 51, at 369 (stating that the case-centered model focuses on "intake of cases that are small or simple enough for students to fully (and exclusively) assume the lawyer role").

[63] *Id.* at 387.

Skeptical of the "skill-set" approach to clinical education, Ashar urges law teachers to instead teach "the relationship between law, politics, and justice."[64]

As clinical programs have become more mainstream in the legal curriculum, Ashar argues, so-called "canonical" clinical programs have come to emphasize skills at the expense of a social justice mission.[65] On such a model, students are socialized into a professional role that emphasizes allegiance to an individual client's goals without engagement with the client as an agent of social and racial conditions. Setting his sights on clinical programs that lack any "affirmative political and social vision,"[66] Ashar notes that such clinics "conceal their implicit vision, with deleterious consequences for law students, clients, and communities."[67] Ashar calls this "a practice largely devoid of larger political effect"[68] and argues that "clinicians [who] implicitly or explicitly privilege cases and clients with no collective political identification . . . distance the act of representation even further from the struggle for social justice."[69]

Ashar's explicit purpose is to leverage resources—here, law school clinics[70]—to respond to the crushing global inequality, increased privatization, and lowered labor and environmental standards—that all progressive lawyers deplore.[71] He calls for a clinical

---

[64] *Id.* at 357. From an educational perspective, it should be noted that Ashar argues that while the clinical model he advances is particularly well-suited to students who are preparing for a public interest career, all law students can benefit from the kind of collaborative work with collectives that he urges. *Id.* at 390 n.139 ("I believe that this form of clinical fieldwork is a better training ground [than a conventional clinic] for *all* lawyers, without regard for their practice setting upon graduation.") (emphasis added).

[65] *Id.* at 368 (noting that in these programs "the service mission is generally considered secondary to the pedagogical goals").

[66] *Id.* at 389.

[67] *Id.* (internal citations omitted); Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 301 (1996) ("The fact that most law practice is not done self-consciously is simply a function of the degree to which most law practice serves the status quo.").

[68] Ashar, *supra* note 51, at 397.

[69] *Id.* at 377. In this excoriation of lawyers solving poor people's problems, Ashar echoes Wexler's famous remark that the "[t]raditional [legal] practice hurts poor people by isolating them from each other, and fails to meet their need for a lawyer by completing misunderstanding that need." Wexler, *supra* note 39, at 1053; *see also* Gary Bellow, *Turning Solutions into Problems*, 34 NLADA BRIEFCASE 106, 108 (1977) ("When we abandon a view 'from above', it appears that the legal aid system (like the welfare system, the public housing system and other government-funded social services that preceded it) may be supporting the very inequalities that brought a federally financed legal aid program into being.").

[70] Ashar, *supra* note 51, at 357 ("Law schools would be centers of social justice.").

[71] *Id.* at 360-61 (discussing law school clinics' support for resistance movements that "self-consciously act locally and think globally" in the struggle against the forces of "neoliberal globalization" that "besiege[ ]" poor people).

movement that places this political agenda at the center and lets the pedagogy flow from there, where "political and social vision shape intake and pedagogy, rather than being shaped by them"[72] and prescribes a clinical model that will better serve "the politicized collectives of poor people."[73]

Ashar's point is a classic and enduring one: *lawyers* are not going to bring about social justice. Lawyers are by definition agents and can be little more than competent partners to the principals in the fight for global justice.[74] To his mind, the most powerful, promising principals in that fight are "activated client collectives"[75] who are politicized, campaign-oriented, and capable of fighting on, without the lawyers, once the lawyers' part is done. Even if clinics under this model represent individual clients, they do so only if those clients are "linked to mobilization efforts that create the possibility of lasting change beyond the dollars won for an individual client."[76]

Progressive lawyers, including community clinicians, should be grateful for the invitation embedded in Ashar's critique to scrutinize the ways that their clinic designs prioritize student learning at an unacceptable price to justice. I will argue below[77] that the category of "service cases" or "case-based clinics" is too broad, and that the neighborhood-based community lawyering clinical model offers a powerful way to advance social justice, while preserving a pluralist vision of clinical education. Sharing Ashar's commitment to social justice and to seeing our clients not only as individuals but as actors under specific economic, historical, and social conditions, I contend here that the neighborhood-based clinic model, too, can advance that agenda, and can also bring that commitment to a broad array of law schools and law students.

B. The Pedagogy Critique: Too Many Subjects, Too Many Cases!

The foregoing critique from the social justice perspective is not the only one that might be lodged against the legal services-style docket of a neighborhood-based clinic. With their somewhat high volume of cases and the evolving, flexible subject areas and modes of practice, these programs present significant challenges to the core

---

[72] *Id.* at 389.

[73] *Id.* at 374, 388.

[74] *See* Wexler, *supra* note 39, at 1053 ("Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. The lawyer who wants to serve poor people must put his skills to the task of helping people poor people organize themselves.").

[75] Ashar, *supra* note 51, at 414.

[76] *Id.* at 392.

[77] *See infra* Part III.

clinical orthodoxies of student autonomy and reflective practice. In assessing how these clinics strike the balance between teaching and service, we must take these compromises seriously and ensure ourselves that they are at least matched by unique pedagogical value.

Student autonomy in case-handling, promoted through non-directive supervision, is thought to be the foundational pedagogical commitment of clinical legal education.[78] This methodology may be observed mostly in the breach, but a setting in which the subject areas and modalities of practice are fluid poses unique barriers. First, as to subject area, the willingness for a community lawyer to go into new substantive territory renders pure non-directiveness impossible.[79] Because it is grounded in a local community's political, economic, and social situation, a community lawyering office must be open to shifting its focus continually—with a new year, a new semester, or a randomly-timed new community priority—to respond to conditions on the ground. A "pure," non-directive clinical model envisions an experienced, seen-it-all-before lawyer in the clinical teacher, one who has been in the setting so many times before that she can effortlessly predict what is down the road, and calibrate her supervision of the student-attorney accordingly. In a community lawyering clinic, by contrast, social and economic forces can compel the lawyers to go onto terrain that is new for all of them in a way that necessarily affects the supervisory role.[80] A clinic that is organized around a subject area (e.g., environmental law or family law) of course also has to elect whether or not to take on new clients or cases, but there is a stability in that practice design that leads to depth and expertise. The range of issues that can emerge in a general poverty law practice is less stable.

A commitment to student autonomy is also compromised by a neighborhood-based clinic's commitment to working in partnership

---

[78] ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 195 (2007) ("The goal of most clinical teachers is to allow students to carry complete responsibility for their cases while the teacher serves as a resource when needed. There are times, however, when the clinical teacher should intervene to protect clients from harm."); David Chavkin, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507, 1537-38 (1998) ("[T[he [clinical] supervisor must design a training program within the clinic that provides the student attorneys with sufficient interpersonal and other skills to competently interact with clients and appropriate non-directive supervision thereafter to protect the rights of clients to 'competent' representation. The burden then is one of providing sufficient guidance and supervision so that intervention does not become necessary.").

[79] *See* Kruse, *supra* note 52, at 440-42 (2002) (describing shifts in her supervisory style when working with clinical students on a larger community project in which "the terrain was always changing").

[80] Indeed, SCLC teachers did the first California eviction defense case of their careers in their role as clinical supervisors, often reading the pertinent rules right alongside the law student, trying their best to fashion a clinical pedagogy out of the scenario.

with local groups.[81] Community lawyering demands long-term relationships with community members, organizations, and leaders, and these partnerships require that the clinic offer up a partner with a long-term investment in the community that is salient to the other players. It is impossible, I would argue, to cultivate and maintain those relationships if clinic students, who come and go, are in charge of them. In short, the clinical teachers have to be the face of the clinic in these relationships, even if one of their important roles is to introduce the incoming students to the community and to vouch for their trustworthiness.

Finally, neighborhood-based clinics require creativity in fulfilling clinical education's commitment to reflective practice. One of the organizing principles of clinical pedagogy is the value of reflective self-observation.[82] Indeed, a clinic's typically small caseload is often rationalized on the basis that the pedagogical setting provides the opportunity for the time-consuming, lawyer-focused practice of reflecting on and analyzing the novice lawyer's performance in a way that "real" law practice prevents.[83] With its requirement that each student manage a somewhat sizable caseload, the neighborhood-based clinical model presents a challenge to this practice. The volume expected of each student can, it must be said, come at the cost of some measure of time for reflection. If a student is handling three or four client meetings in a given week, for example, each one may command less particularized review and critique. Every clinical choice involves compromise, and neighborhood clinics strike the balance in the favor of volume, choosing to do a higher number of interviews and interactions over giving each one a thorough, stand-alone review and critique.

These challenges are not insignificant, but are outweighed by the opportunities that the neighborhood-based clinical model affords in both the service and learning domains. As I will show in the next sections, the high volume, rough-and-tumble neighborhood-based practice gives students a critical mass of personal and professional experience on which to draw as they assume the attorney role. Additionally, from a social justice perspective, the model affords students the chance to work with a number of poor people, to hear how and whether they have concerns in common, and to evaluate a range of

---

[81] This theme has been visited at virtually every gathering of Working Group 14.

[82] Donald A. Schön, *Educating the Reflective Legal Practitioner*, 2 CLIN. L. REV. 231 (1995).

[83] CHAVKIN, *supra* note 15, at 15 (noting that the doorways into law school clinical programs should bear a version of the canonical "No Smoking" sign, only this one showing the word "EFFICIENCY" in the circle with a line through it).

legal responses and strategies to meet the challenges of a poor neighborhood. Moreover, the model provides a platform on which every student can think about his or her own role in law's diverse response to injustice.

III. Striking the Balance in the Neighborhood: Social Justice and Clinical Legal Education on the Middle Ground

The foregoing section has outlined grounds for skepticism about how neighborhood-based community lawyering clinics meet service and teaching goals of clinical education. In this and the final section, I use examples from the neighborhood clinic I direct in East Palo Alto, California, to illustrate how the goals of teaching and service can mutually reinforce one another in a practice based on fundamental lawyering skills and on the legal profession's obligation to serve the poor and provide access to justice. In the neighborhood-based community lawyering model, the putative "balancing act" between social justice and legal education can be reframed on what I term the "middle ground" of social justice lawyering. Poised somewhere between "service" and "impact," the neighborhood docket provides a volume and variety of lawyering experiences that are rich with lessons for law students.

The Stanford Community Law Clinic ("SCLC") is an example of the kind of neighborhood-based community lawyering clinic described more generally above.[84] In this section I demonstrate more specifically how the practice components combine to make up an individual student's learning experience in the clinic. I then set forth my analysis of how this clinic—even with its "canonical"[85] practice of small litigation cases that teach students traditional lawyering skills—nevertheless embodies the social justice values central to any community lawyering clinic and fulfills the important pedagogical goal of embarking students on a lifelong journey of learning and commitment to so-

---

[84] Stanford's work in East Palo Alto has given rise to other clinical literature. *See generally* Shauna Marshall, *Mission Impossible? Ethical Community Lawyering*, 7 CLIN. L. REV. 147 (2000) (describing various ethical issues that emerged in the housing practice of the East Palo Alto Community Law Project); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLIN. L. REV. 427 (2000) (documenting a challenge to East Palo Alto as a rent controlled jurisdiction when he was director of the East Palo Alto Community Law Project). Indeed, many clinical teachers, including the two authors above, as well as Gary Blasi, Bill Koski, Gerry López, and Erik and Nancy Wright, have done a tour of duty in Stanford's East Palo Alto programs, and it is an honor to carry on in their tradition.

[85] Ashar, *supra* note 51, at 357 (defining the "canonical approaches to clinical legal education" as "focus[ed] nearly exclusively on individual client empowerment, the transfer of a limited number of professional skills, and lawyer-led impact litigation and law reform").

cial justice.

SCLC operates out of its own office, just over four miles from the law school campus, in the small city of East Palo Alto, California.[86] East Palo Alto is a storied municipality, the poor cousin to Silicon Valley's string of well-to-do communities that run along the Peninsula stretching from San Francisco to San Jose.[87] With a population of just under 30,000,[88] East Palo Alto was in the national spotlight when it earned the title "murder capital of the United States" in 1992.[89] East Palo Alto has always been a racially diverse city, with a majority people of color. Almost 60% of the city's residents are Hispanic; about half of the non-Hispanic population is African-American, and the other half is white.[90] The city is also one of immigrants: 44% of its residents are foreign-born.[91] Recent data puts the poverty rate at 16.2%, well above the national and statewide rates of about 12%[92] and 13%[93] respectively. Of the 15,000 residents over the age of twenty-five, only a quarter have finished high school, college, or graduate school.[94] It has the highest unemployment rate of any city in San

---

[86] SCLC's practice is not limited to East Palo Alto residents. The clinic serves people who live in the ill-defined area known as the "mid-Peninsula" of the Bay Area that is comprised of portions of San Mateo and Santa Clara Counties.

[87] A brief history of East Palo Alto is available at http://www.romic.com/East Palo Altohistory/frame.htm (last visited June 12, 2008). The city became an independent municipality in 1983 after numerous ballot campaigns. The final one was decided by a margin of fifteen votes and was challenged, ultimately unsuccessfully, all the way to the United States Supreme Court. Wilks v. Mouton, 479 U.S. 1066, 107 S.Ct. 953 (1987).

[88] The 2000 census counted 29,506 people in East Palo Alto. Bay Area Census, http://www.bayareacensus.ca.gov/cities/EastPaloAlto.htm (last visited June 10, 2008).

[89] FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1992 (1992); Mark Dominik, *East Palo Alto Regarded as Drug Haven*, STANFORD DAILY, Jan. 30, 2002; Don Kazak & Bill D'Agostino, *A Long, Hard Climb*, PALO ALTO WEEKLY, Sept. 10, 2003.

[90] Bay Area Census, http://www.bayareacensus.ca.gov/cities/EastPaloAlto.htm (last visited June 10, 2008).

[91] *Id.*

[92] U.S. CENSUS BUREAU, POVERTY: 1999 (2003) (reporting the national poverty rate as 12.4% based on data from the 2000 census). The national poverty rate in 2006, the most recent year for which data is available, was 12.3%, indicating that the rate has remained nearly the same over the past six years. U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2006, at 11 (2007).

[93] California's statewide poverty rate (based on the 2000 decennial census) was 12.9%. Bay Area Census, http://www.bayareacensus.ca.gov/california.htm (last visited June 10, 2008).

[94] Eighteen percent have graduated high school, 7% hold bachelor's degrees, and 3.6% have attained graduate or professional degrees. Bay Area Census, http://www.bayareacensus.ca.gov/cities/EastPaloAlto.htm (last visited June 10, 2008). Statewide rates of those educational attainments are doubled; fifty-two percent of Californians have high school, college, or graduate degrees. Bay Area Census, http://www.bayareacensus.ca.gov/california.htm (last visited June 10, 2008).

Mateo County.[95]

Predictably, legal services to the city's residents are limited.[96] The largest provider of legal services to low-income people in the area is a private legal aid society that served about 1500 families in the 2006-2007 fiscal year.[97] With a few important exceptions, this society generally limits its representation to advice and administrative advocacy. In fact, SCLC is one of the only free legal services providers in the surrounding area that offers full-scale representation in litigation in its three practice areas: housing, wage and hour, and criminal record expungement.[98] As for volume, SCLC students conducted seventy-nine intake interviews in the 2007-2008 academic year,[99] and the clinic went

---

[95] HEALTHY CMTY. COLLABORATIVE OF SAN MATEO COUNTY, 2008 COMMUNITY ASSESSMENT 51 (2008) (citing the city's unemployment rate as 9.7% compared to 3.9% for the county as a whole as of June 2007); *see also* Banks Albach, *Unemployment Rate in East Palo Alto Close to 10%*, OAKLAND TRIB., Mar. 21, 2008 (noting that the rate used to be as high as 12%).

[96] The unavailability of civil legal services for low-income people is a well-documented crisis. In 1993, the America Bar Association estimated that only 30% of the civil legal needs of the poor were met, and it has noted that since then "matters have only gotten worse." ABA TASK FORCE ON ACCESS TO CIVIL JUSTICE, REPORT TO THE HOUSE OF DELEGATES 5 (2006). In 2005, the federal Legal Services Corporation found that "[o]nly a small percentage of the legal problems experienced by low-income people (one in five or less) are addressed with the assistance of either a private attorney (pro bono or paid) or a legal aid lawyer." LEGAL SERVS. CORP., *supra* note 55, at 4. To give another example, "[t]here are only 754 legal aid attorneys in California, out of a total of 165,381 active attorneys, to address the legal problems of an indigent population that numbered 6.3 million in 2005." *See* CAL. COMM'N ON ACCESS TO JUSTICE, ACTION PLAN FOR JUSTICE 32 (2007). That means that there is approximately one legal aid lawyer in California for every 8,360 legal aid clients. *Id.*

[97] LEGAL AID SOC'Y OF SAN MATEO COUNTY, ANNUAL REPORT 2006-2007 3 (2007), *available at* http://www.legalaidsmc.org/archive/Annual_Report.pdf. The LSC-funded provider for the area, Bay Area Legal Aid, http://www.baylegal.org/offices/san-mateo/ (last visited June 10, 2008), maintains its closest office twelve miles away services in housing, public benefits, and health care access matters. Other local legal services resources include the clinical programs operated by the Santa Clara University School of Law, http://law.scu.edu/kgaclc/ (last visited January 17, 2009), and the "unbundled" advocacy provided by Community Legal Services of East Palo Alto, http://www.clsepa.org/ (last visited January 17, 2009), with whom the clinic shares a building and a mutually beneficial referral relationship.

[98] Like many clinics, SCLC starts its semester with an intensive substantive training, to introduce the students to the basic substantive law of the areas in which they will be working. *See* Ashar, *supra* note 51, at 398 (referring to "substantive 'boot camp'" in order "to place students in their fieldwork as soon as possible"). This is no substitute for the particularized legal research that each matter will require, but rather functions as an overview, introduction to the fundamentals, and presentation of the secondary sources available in each field.

[99] The data presented in this paragraph are taken from SCLC's internal client database, reports from which are on file with the author. SCLC enrollment is typically twelve to eighteen students and the program currently has three full-time attorneys (the author/director, a clinical instructor, and a Teaching Fellow) and two full-time support staff. None of the attorneys maintains an independent caseload; all of the cases and projects in the office are managed on the clinical model. In this respect, SCLC is different from some other

on to open individual representation cases for seventy (88%) of those prospective clients, evenly distributed across the three subject areas.

Without question, the mainstay of the caseload is individual representation in a litigation or adversarial administrative tribunal. In the housing context, it is likely to be eviction defense or representation of a tenant whose Section 8 subsidy is threatened with termination on the grounds of an alleged violation of the rules governing the subsidy program.[100] All of the expungement cases are for individuals found to have clearance-eligible convictions. The typical wage and hour case is an individual worker—many day workers and, increasingly, restaurant workers—with unpaid wages and overtime.[101] Each student maintains a caseload, typically with between four and six cases at any one time, with matters in each subject area.

Given the dominance of individual litigation matters, each clinic student engages in what most lawyers and clinicians would agree are fundamental (and traditional) lawyering skills, such as interviewing, counseling, research, investigation, negotiation, and dispute resolution.[102] Using a traditional clinical pedagogical method, the individual representation cases are selected because they provide a scale of representation over which law students can be given primary responsibility. To that end, the docket is dominated by matters that are routine from a doctrinal point of view. Much of the work is what many experienced lawyers and law professors would call "basic"; SCLC students are not typically in the business of making new law.[103] Unpredictable

---

community clinics, and most notably different from the Harvard model of the "teaching law office," that is described in Charn, *supra* note 56, at 101 (describing how at Harvard's clinical center the "instructor and practitioner roles mix").

[100] *See* 42 C.F.R. 982 et seq. (providing grounds for termination of Section 8 voucher). These matters can be construed as both housing matters and public benefits matters, and provide opportunity for historical lessons about the remnants of the War on Poverty on which poor people still rely. These Section 8 termination cases also enable students to see how the legacy of Goldberg v. Kelly lives on in contemporary poverty law, as they represent program participants in hearings that are still demanded by the due process clause. 397 U.S. 254, 90 S.Ct. 1011 (1970).

[101] There is an interesting racial and ethnic breakdown of the clients. Virtually all (83%) of the wage and hour clients are Latino, monolingual Spanish-speakers. The significant majority of the expungement clients (65%) are African-American. The housing clientele is the most diverse: 48% Latino; 32% white, 8% African American, and 8% Asian. These statistics give rise to rich conversations about ethnicity, race, and observable patterns of exploitation and of seeking legal representation.

[102] STEFAN H. KRIEGER & RICHARD K. NEUMANN, ESSENTIAL LAWYERING SKILLS (3d ed. 2006); *see* Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Legal Education*, 91 W. VA. L. REV. 305, 320-21 (1989) (noting that the presence of clinical courses—which "focus student attention on the development of previously neglected skills usually through role simulations or through actual supervised work as student practitioners"—suggest "some appreciation for, some fundamental integration [into legal education] of," skills training).

[103] The first exception may come in the rent control case currently on the clinic's docket,

legal issues emerge in virtually every representation, but the relative legal simplicity of these small cases makes them well-suited for novice lawyers' first forays into lawyering.

While much of the law that SCLC students rely on in their practice is established, "black letter" California law, students quickly learn that this is a far cry from an actually functioning protective scheme. That is, while the laws may be clear, they are not enforced, and students often find themselves clearly the first advocate to advance even a simple position to a judge.[104] The doctrines requiring dismissal of a deficient eviction complaint or mandating double-time wages for hours over twelve in a single day are significantly underutilized because of the scarcity of legal resources for low-income people. This is an important feature of the social justice effects of the neighborhood-based clinic model; with the resources to take on litigation, these offices can bring to a local court system a fluency in protective legislation that might otherwise be missing, and introduce a generation of lawyers to the reality that statutes are only as good as the justice system's capacity to have them enforced.

In addition to the individual representation cases, SCLC engages in various other community lawyering activities, all designed to leverage the social justice impact of the case work.[105] These activities include community legal education workshops ("Know Your Rights"), morning strolls along the strip where day workers congregate to answer questions and distribute flyers,[106] and attendance at community meetings where issues of concern to the low-income people of the mid-Peninsula are discussed. Additionally, clinic students have participated in legislative and quasi-legislative activities: working on a bill in the state legislature amending the provision prohibiting retaliation

---

which could establish important precedent on the contours of local rent stabilization under state law. See *infra* note 119 and accompanying text.

[104] This was clearly the case when a student moved to dismiss an eviction complaint against a woman whose tenancy was subsidized by a Section 8 voucher. The student prevailed under a well-established doctrine that the termination of any contract to which a governmental agency is a party can be done only with 90 day's notice. CAL. CIVIL CODE § 1954.535. This doctrine has been expressly held to apply to Section 8 tenancy contracts. Wasatch Property Management v. Degrate, 35 Cal.4th 1111, 1121 (2005) (holding that Section 8 contracts for tenancy are "government contracts" covered by the 90-day statute). The judge had clearly never heard of this application before.

[105] A corollary purpose of the project work, of course, is to expose the clinic students to a range of activities that community lawyers perform and to encourage the students to think broadly about the boundaries of "lawyering" in a community, social justice context.

[106] In an amusing, we hope, attempt to play on "community policing" traditions, we call these outings "Walk the Beat." *See generally* Herman Goldstein, *Toward Community-Oriented Policing: Potential, Basic Requirements, and Threshold Questions*, 33 CRIME & DELINQ. 6 (1987); Herman Goldstein, *Improving Policing: A Problem-Oriented Approach*, 25 CRIME & DELINQ. 236 (1979).

against workers who assert their labor rights; and, in a different forum, presenting public comments to the local housing authority on its screening of people with criminal histories who apply to the voucher program.

The SCLC practice reflects the broad values of community lawyering: practice for local low-income people on a community scale and with a flexibility and nimbleness that permit responding to that community's priorities and needs. While the practice is dominated by individual representation cases, the neighborhood-based practice and accompanying intellectual framing inject social justice effects and community lawyering values into every component of the SCLC practice, even those that could be described at first glance as "regnant."[107] Every client, every case and every project are viewed as existing within a particular social, economic, and political context. These values are expressed through the neighborhood location, the responsiveness of the caseload, and the intellectual framing provided in the accompanying clinic seminar.

SCLC's physical location in a low-income neighborhood is the program's most concrete articulation of its community lawyering values. While some law school campuses are located in urban or other settings that can provide the context for a poverty law practice,[108] Stanford Law School is not. It sits on the bucolic Stanford campus, replete with palm trees and beautiful Spanish-style buildings, but not with parking or public transportation. The SCLC office, on the other hand, is accessible to our clients, and, just as importantly, the setting provides an immediate and material context for the student lawyers. Seeing the physical realities of a low-income neighborhood affects how students understand a client's complaints about habitability or narrative about falling behind in rent because there is no local supermarket and rising gas prices have increased the cost of driving to the next town for groceries. Being in East Palo Alto allows the students to observe residents' interactions with police, to notice the public transportation patterns, and when it pours in January, to experience the high risk of flooding that does not occur on the higher grounds of the surrounding wealthier communities.[109] Our commitment to being in East Palo Alto is an expression of our commitment to the notion that

---

[107] LÓPEZ, *supra* note 39, at 23-26 (outlining the attributes of lawyers who "labor within the regnant idea of practice for the subordinated").

[108] 50% of survey respondents noted that their campus offices were easily or moderately accessible to low-income clients. Survey Results, *supra* note 19.

[109] *See* Vicky Anning et al., *Palo Alto Under Water*, PALO ALTO ONLINE, Feb. 3, 2008 (describing disastrous impact of February 1998 flood on East Palo Alto), http://www.paloaltoonline.com/news_features/storm98/1998_02_03.flood2.html; Michael McCabe & Carolyne Zinko, *Overwhelmed by Waters*, S.F. CHRON., Feb. 4, 1998 (same).

exposure to these inchoate aspects of low-income communities is important to competent representation of the poor.

Another important indicator of the community lawyering ethos that structures SCLC is its criteria for selection of practice areas. In designing the practice, we have looked for areas that lie in the "clinical sweet spot"—the space where clients' legal needs and law students' educational needs overlap.[110] That is, while we remain loyal to our pedagogical commitment to practice in areas suitable for the clinical method, we also pledge ourselves to practicing in areas where there is an immediate, substantial, and articulated community need. The three current practice areas—housing, wage and hour, and criminal record expungement—are areas in which local community members, individually and through social service provider agencies, have articulated significant need for collaboration with lawyers.[111] We consult regularly with the management of the other legal service providers in the community to prevent duplication of services and to ensure that collectively we are maximizing the coverage of our practices.[112]

The clinic's current practice illustrates this feedback loop between the community and the practice. First, and perhaps most illustratively, the clinic's criminal record expungement practice was launched in response to a specific request from community activists.[113] The activists—leaders in the national and statewide movement for justice for formerly incarcerated people—knew that California had a statutory scheme providing for some record clearances,[114] but had no

---

[110] Brodie, *supra* note 23, at 232 n.116 (2006) (referring to a Venn diagram in which the two circles are "pedagogy" and "service," or "student learning needs" and "community legal needs," with the clinic practice occurring where the two circles overlap). This is exactly the kind of balancing that Ashar decries. He would say one should commit to the justice cause and let the pedagogy follow.

[111] We maintain a running list of the subject matters with which callers and visitors seek assistance so that we can watch for trends. This method of course suffers from selection bias, since current outreach materials list our three current practice areas. Nevertheless, we are still approached with a range of subject areas and use this data to revisit our practice design from the perspective of community need.

[112] Even where there is substantive overlap, SCLC is careful to craft particular intake criteria that harmonize with the other providers. For example, while most offices have some type of housing practice, in 2007 SCLC elected to take on full-scale courtroom representation of tenants in eviction defense cases in part because no other provider in the area offered that service. Similarly, while SCLC is the only provider in San Mateo county to offer representation in wage and hour cases, we are careful to refer San Jose clients to our sister clinic in Santa Clara; they do the same for their north county intakes.

[113] The activists are leaders of the East Palo Alto chapter of All of Us or None, a "national organizing initiative of prisoners, former prisoners and felons, to combat the many forms of discrimination that we face as the result of felony convictions," *see* http://www.allofusornone.org/ (last visited June 12, 2008), and of Free at Last, a community-based substantive abuse treatment and transitional housing program, *see* http://www.freeatlast.org/.

[114] CAL. PENAL CODE §§ 1203.4-.4a.

access to lawyers to effectuate that scheme. When the activists approached the clinic, none of its lawyers had any experience or background in California criminal law generally or in the expungement remedy specifically. Nevertheless, as community lawyers, the clinic examined the prospect of the practice, and concluded that it could lie in the "clinical sweet spot" and was worth an experiment.[115] Three years later, the clinic has represented dozens of clients in court and has helped them expunge hundreds of convictions. A similar dynamic has influenced the clinic's eviction defense work, which arose specifically from observed community need and a gap in local service delivery. While all of the legal service providers in the local community do some form of housing work, there were virtually no lawyers who actually represented tenants in court in eviction actions.[116]

The need to respond to salient threats to the community has also driven SCLC out of its comfort zone in the pure service docket. In recent years, two threats to the affordable housing stock in East Palo Alto compelled the clinic to step beyond that model and take on more significant representations. The first involved representation of a group of mobilehome owners whose park was slated for closure. As was made abundantly clear to the prospective clients at the outset, none of the lawyers in the clinic had ever done a mobilehome closure case before, and none had formally represented a group.[117] Despite our lack of expertise in the subject area, and on faith that it would be suitable for clinical teaching, we undertook the representation for simple reasons: the group asked us to; we felt it was an important project because of the threat the closure poses for the future of affordable housing in East Palo Alto; the vulnerability of the homeowners to exploitation was high; and, finally, because no other lawyer was stepping up.[118] The clinic's second larger scale piece of housing litigation,

---

[115] In making this decision, we were mindful that a number of clinics around the country are involved in the important project of removing barriers to re-entry for formerly incarcerated people. One of them, at the East Bay Community Law Center ("EBCLC") in Berkeley, California is in our geographic area. *See supra* note 57. The EBCLC lawyers have provided immeasurable support and assistance to SCLC as we have entered this practice area.

[116] The exceptions have been the handful of private lawyers who have represented individual tenants on a *pro bono* basis, many through a program operated by the clinic's neighbor, Community Legal Services in East Palo Alto, *supra* note 97.

[117] It is undoubtedly in no small part a measure of the clients' lack of alternatives that they nevertheless enthusiastically sought representation from the clinics. *But cf.* Stephen Wizner & Robert Solomon, *Law as Politics: A Response to Adam Babich*, 11 CLIN. L. REV. 473, 478 (2005) (noting that while landlords "rarely, if ever, approach our Landlord/Tenant Clinic for help . . . . we have no question that many landlords, including wealthy corporations, would jump at the chance to have free representation of the quality that they observe our students providing to their adversaries").

[118] In making this judgment, SCLC lets "social vision shape intake and pedagogy,"

which is ongoing, involves the clinic's participation in a multi-faceted campaign against a real estate investment firm that recently purchased a majority of the city's rental stock and proceeded to raise rents dramatically. The campaign involves conventional litigation in state court and in the city's administrative tribunal, as well as organizing, publication of community education materials, and media work.[119]

These two housing projects are notable for how they came about and for the place they hold on the SCLC docket. While the clinic has done scores of housing cases in the past few years, it has not sought to advance any particular housing law reform issue, and SCLC did not go looking for either of these two larger-scale housing matters. Rather, the matters came looking for SCLC. Because of its profile in the community, SCLC has been present when local housing crises have emerged, and because of its resources and freedom,[120] SCLC has been in a position to respond. The clinic would never be involved with either the mobilehome park closure or the mass rent increases if they did not occur right in East Palo Alto, in the clinic's literal backyard. Our connection to the community—to individual tenants, to residents on the City Council, to rent control activists—drives us to play a useful role in these social justice campaigns, even where they take us out of our substantive and methodological comfort zones. We could just as easily be involved in matters of this scale in the workers' rights or prisoner re-entry arena, or in yet an entirely new arena that similarly might arise organically in the community where we work and practice. Our commitment, in other words, is to the low-income people in the community with whom we work, not to the "issues" or subjects currently on our case list.

This flexibility in service area does challenge some clinical pedagogical orthodoxies. But it also creates learning opportunities. The "clinical sweet spot," after all, is half-defined by notions of the types of cases and projects suitable for law students. The commitment to small service cases is animated by the belief that individual client representation in "routine" cases provides a scale of lawyering that is manageable and suitable to clinical teaching.[121] As described above,

---

rather than the other way around. Ashar, *supra* note 51, at 389.

[119] The activities in this campaign would place it squarely in Sameer Ashar's vision of a mobilized collective of poor people. *See generally, id.*

[120] Brodie, *supra* note 23, at 231 (discussing how, unlike a federally funded legal services provider whose work is statutorily restricted, a community lawyering clinic is free "to select subject areas, client populations, and modes of service delivery with an eye only on maximum pedagogical and service (justice) effects").

[121] Reingold, *supra* note 58. Indeed, recent experiences supervising students on the big, "hard" rent control case has underscored the challenges these matters pose to the clinical method. The students' "ownership" of the impact matter is noticeably weaker than it is over their smaller cases. The supervising lawyers are by necessity more involved in the

SCLC's service cases tend to arise under routine protective doctrines. This enables the student to focus on the facts—a skill not emphasized in the traditional law school curriculum—and how to investigate, marshal, and array them. Additionally, the service cases tend to play out over a time frame (four to six months) that enable a single clinic student to oversee most of it, rather than a small piece of a more complex, longer-lasting matter.

Each SCLC student experiences the dynamics of the clinic that embody the community lawyering clinical model described above—the commitment to justice on a community scale and the flexibility of the practice. First, each student works across the subject areas currently in the office mix; students are not assigned to the "wage and hour" department or to the "housing" department. A typical caseload for a clinic student would be an eviction defense case, two wage and hour matters (each in a different stage), and a multi-conviction expungement client. That student might also do a "Know Your Rights" workshop at the Day Worker Center on immigrant workers' protections under California law and how to calculate overtime premiums. This diverse caseload[122] is vital for students in order for them to internalize the nimbleness that a community lawyer must display and it provides a breadth of experience and exposure that would be missing if students' work were limited to one practice area. Students employ a wide range of fundamental lawyering skills while engaged in this community-based law practice: negotiation, drafting, public speaking, counseling, interviewing, collaborating, negotiating, dispute resolution, and basic familiarity with the rules of professional conduct. This breadth—both in terms of subject area and practice activity—enables a student to form her own impressions of the variety of activities and competencies that law practice can involve. Rather than doing the same thing over and over, she is exposed to a wide range of tasks, intellectual demands, and communication challenges. All involve the fundamental competency of legal analysis and of learning to account for the imperfect fit between "the facts" and "the law" when they are set in the motion of a real client's life. But the range of assignments also represents a microcosm of the range of tasks that a lawyer, for any kind of client group, might be asked to undertake.

While challenging, the variety and flexibility of the caseload also offer educational opportunities. There is value to the student and teacher working in partnership in a subject area in which the teacher

---

legal theory, strategy development, and overall advocacy than we are in the more routine cases.

122 Charn, *supra* note 56, at 93 (discussing how each student's caseload is monitored to ensure the "broad task exposure" that the practice area offers).

is herself inexperienced. This model indeed compromises the student's autonomy; the teacher cannot send the student out to discover the law, confident that she herself knows what the search will reveal. Instead, the teacher must position herself to learn the necessary material, either on her own simultaneously as the student does so or, more likely, in partnership with the student. In such a circumstance, the supervisor models the crucial lawyering abilities to learn a new area of law, calibrate advice to a client in light of one's own pace of learning, consult with experts without revealing client confidences, and other important lawyering tasks. This positioning of the student and the teacher similarly – as newcomers – to any given legal regime also reveals competencies more subtle than acquisition of substantive knowledge of the governing law: the experienced lawyer's method of acquiring new knowledge, to the judgment she deploys in electing where to focus, and, most importantly, of the experienced lawyer's ability to incorporate new knowledge into a pre-existing framework. Where the student and the teacher experience something for the first time, the judgment that the teacher brings to bear on it demonstrates what the practice of law demands beyond academic or doctrinal comprehension.

Working side by side with lawyers of different experience levels also mimics more closely than does the autonomous model the manner in which most law students are likely to practice law in their careers. Team work and collaboration are vital to successful lawyering regardless of the socioeconomic position of the clients,[123] and the fast-changing docket of neighborhood clinics creates an environment in which to practice operating in that realm. Finally, the long-term relationships with community leaders and organizations that compromise student autonomy also offer important lawyering lessons. While the student may be more observer than principal in, for example, a meeting with the director of the local day worker center to discuss current threats, she will see in that meeting how relationships within communities of interest are vital to successful law practice. Students often come to their clinic experience thinking that "what lawyers do" is limited to research, writing, arguing, and negotiating. Even if they know that lawyers go to lunch with industry leaders and brainstorm about upcoming opportunities and strategies, for example, they don't know where that happens or what it looks like. While it departs from the "pure" clinical method of putting lead responsibility for a client matter on the student's shoulders, such an experience can expand quite quickly that student's vision of what her role as a lawyer might

[123] Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459 (1993).

include.

The community lawyering values of the clinic are also expressed through the content of the accompanying seminar, which provides the intellectual and political framework for the practice and locates it within community lawyering traditions. The classroom component of the SCLC experience teaches from the beginning that the law practice the students are about to undertake does not exist in a vacuum.[124] The social history and economic reality that dominate low-income life in the mid-Peninsula of the Bay Area generally, and in East Palo Alto specifically, are introduced immediately as relevant background features of every client and every matter that the student will approach in the coming months. First, students watch a sixty-minute documentary on the incorporation and history of East Palo Alto, which tells the story of the community from its nineteenth century agricultural roots through its fight for political independence in the 1980s.[125] Clinic students can look out of the office windows and see some of the sites from the movie, including the corner formerly known as "Whiskey Gulch" that is now home to a Four Seasons hotel. Students see footage of the 1996 razing of East Palo Alto's only high school and hear from its mostly Black alumni, whose own teenage children are now bused to local communities for high school.[126] The film provides material for discussion of how students predict or imagine that this social and political history might affect their law practice. From this early moment, then, students are oriented to view their individual clients as members of a community—a community that has been and continues to be powerfully affected by racial and economic forces including gentrification, the Silicon Valley boom and bust, globalization and its accompanying export of manufacturing jobs to unregulated labor markets, the digital divide, and the immigration and emigration trends

---

[124] Another contextualizing exercise is recommended by the March-April 2008 *Clearinghouse Review*, which includes a sample "Know Your Service Area" "scavenger hunt." The hunt encourages legal services providers to inventory the "population, organizations, and local officials" likely to affect their client community and includes topic areas such as "Welfare Resources," "Community Leadership," "Criminal Law Resources," and "Referrals." Robin Bozian, et al., *Learning About Your Community*, CLEARINGHOUSE REV. 633 (March-April 2008), adaptation of materials printed by the Sargent Shriver National Center on Poverty Law, *Poverty Law Manual for the New Lawyer* (2002).

[125] DREAMS OF A CITY: CREATING EAST PALO ALTO (1996).

[126] Tracy Jan, *Ravenswood Revisited, Reunited*, PALO ALTO ONLINE, Sept. 11, 1996, http://www.paloaltoonline.com/weekly/morgue/cover/1996_Sep_11.COVER11.html. The vast majority of East Palo Alto students are bused to the Sequoia Union High School District, specifically Carlmont and Menlo-Atherton. The graduation rate among these students is only 35-40%. The numbers are also troubling for the local charter school, East Palo Alto Academy High School, where the dropout rate was 37.5% over the past four years. Banks Albach, *Charter School Disputes State Dropout Findings*, PALO ALTO DAILY NEWS, Aug. 21, 2008.

that have seen East Palo Alto transition over only twenty years from a majority African-American to majority Hispanic municipality.[127] In addition to screening this film, in the first two weeks of the clinic, students also prepare a family budget based on the mid-Peninsula economy and use that to contextualize the hourly wages on which they will soon learn their clients survive.[128]

The clinic seminar maintains the community lawyering/social justice focus by introducing students to the literature of lawyering for the poor and inviting them to examine how their own clinical practice fits within it.[129] They read work that describes the evolution of poverty law practice from one concerned with the power dynamics internal to the attorney-client relationship to one now more focused on the political effectiveness of the work.[130] Without obscuring their professional duty to any individual client, students are encouraged to ask questions about the possible collectivity of their client's "legal problem." Sometimes this inquiry is as simple as asking questions about other tenants or other workers in a client's environment; sometimes it is more robust, where a student might explore with a client the advantages and disadvantages of asking others to join in a lawsuit or other advocacy

---

[127] In the 1980 census, East Palo Alto was reported as 61.1% "Black" and 13.8% "Spanish origin" while in the 2000 census it had flip-flopped to become 58.8% "Hispanic or Latino" and 27% "Black or African-American."

[128] I have described my pedagogical use of this exercise elsewhere. *See* Brodie, *supra* note 23, at 233-35. The California Budget Project reports that a single parent family in San Mateo County needs to earn $31.67 per hour to support a modest living standard. CAL. BUDGET PROJECT, MAKING ENDS MEET: HOW MUCH DOES IT COST TO RAISE A FAMILY IN CALIFORNIA? 20 (2007). Law students, of course, come from a range of economic backgrounds, and they bring to the budget exercise their own experiences, assumptions, and biases. For some, the enormous gap between what it costs to live and how much their clients earn comes as a huge, eye-opening shock; for others, it is the reality they grew up in and watched their own family manage.

[129] Among the canonical works routinely assigned are LÓPEZ, *supra* note 39; Sameer Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879, 1882-86 (2007); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 MD. L. REV. 213 (1991); Wexler, *supra* note 39. Students also read the recent Ashar article that is discussed herein and discuss how their community lawyering practice fits into the analysis he provides. As will be discussed in more detail, the seminar has particular value to the future public interest lawyers in the clinic, for whom it functions as an introduction to some of the persistent debates and tensions within social justice lawyering traditions.

[130] *Compare* William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099, 1099-100 (1994) (discussing the legal profession's inward focus "the problem of lawyer domination" in the 1980s and 1990s), *with* Ashar, *supra* note 51, at 356 (portraying the supporting role that lawyers must play in community organizing efforts and the establishment of political collectives), *and* Jennifer Gordon, *The Lawyer is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133, 2143 (2007) (declaring groups or coalitions, not the lawyers, to be the protagonists).

effort. Having read Stephen Wexler's canonical 1970 piece about poverty lawyering, students are asked to test its hypotheses—that poor people don't have "legal" problems, but instead have "social problems" common to all poor people, and that traditional law practice does more harm than good in addressing them[131]—against their own experience of the stories they hear from their clients. In weekly case rounds sessions,[132] students become familiar with each other's cases and clients, such that each student's own handful is seen against the accumulation of the clinic's overall caseload. If nothing else, students are taught to recognize that for every individual client they represent, in whichever of the clinic's practice areas, there are likely scores (hundreds?) with analogously serious legal situations who have no representation, and to contemplate the effects of that scarcity on our polity.[133] The students' own experiences with the clinic's caseload give them a stake in the age-old discussion about the various ways lawyers have participated in the fight for justice for the poor, including but not limited to the debate that pitches "service cases" versus "impact cases," as if one had to choose.[134]

Perhaps the best way to understand the effect of this community lawyering framing is to contemplate what a different intellectual frame might look like for our practice. We could frame the SCLC experience entirely differently: we could trace the development of landlord-tenant law back to colonial times and introduce students to the interesting and important legal issues of periodic estates and summary process that they will soon have the pleasure of litigating.[135] We could pursue an appellate docket on the questions that are currently "hot" in California wage and hour law.[136] Another alternate framing device could be an intensive focus on the fundamental lawyering skills that the clinic students will be using in their practice; we could load the

---

131 *See infra* Part IV.B.1.

132 Susan Bryant & Elliott Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLIN. L. REV. 195 (2007).

133 David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering*, 12 GEO. J. ON POVERTY L. & POL'Y 55 (2005) ("[F]or each indigent person we serve, there are at least one hundred more who are invisible to us, but who have the same problems.").

134 Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEO. L.J. 1529, 1537-38, 1539 n.18 (1995) (stating that he "reject[s] the whole approach of impact versus service" and advocates for the synthesis of the two); *see infra* IV.B.4.

135 Such a framing choice would reflect a prioritization of *law* over *lawyering*. López, *supra* note 102.

136 Some clinics do just that. Students and attorneys at the Civil Justice Clinic of the UC Hastings College of the Law litigated a wage and hour case all the way to the California Supreme Court and, in so doing, established a new and important remedy for workers that we now use every day at the clinic. *See* Murphy v. Kenneth Cole Prods., 40 Cal.4th 1094 (2007).

orientation sessions with simulated interviews, counseling sessions, negotiations, etc. to prepare the students for an intense focus on those lawyering events in the coming semester. While any of those frames would be pedagogically appropriate (and we of course *do* introduce them to the tensions in the doctrines they will be using and to the skills they will be practicing), we choose to frame our practice differently. We orient SCLC students to the practice as a fast-paced, evolving community law practice, where they might not do the same thing twice; where the emphasis is on the economic, racial, and social justice components of the work; and where versatility, creativity, flexibility, and nimbleness are among the most important lawyering skills they will be using.

IV. THE NORMATIVE CASE FOR NEIGHBORHOOD-BASED COMMUNITY LAWYERING CLINICS: UNIVERSAL AND SPECIALIZED CLINICAL EDUCATION FOR SOCIAL JUSTICE

As the previous section has shown, neighborhood-based community lawyering clinics offer a learning environment in which foundational lawyering skills can be built and in which the broad range of practice exposes students to a complex view of how lawyers function. This section turns to the defense against the critique that the kind of service cases dominant in a community lawyering docket is inadequately oriented to social justice outcomes and that its pedagogical preference for "student-appropriate" matters comes at too high a cost to justice. In mounting the defense, I take the long view. My point of reference is not only the social justice outcomes for clients and communities embodied in the actual casework of a neighborhood-based clinic. While that is of course vital, I refer also to the outcome of providing a new generation of lawyers with a vision of how to make working for social justice a defining part of their professional identity whether or not they hope to pursue it as a full-time vocation.[137] I remain committed to the idea of balance—to the idea of maximizing social justice for clients, but also acknowledging the pedagogical mission of our institutions. I measure the social justice effectiveness of the work not only in terms of what the clinic students do in their clinical tour of duty but also what they are motivated and taught to do for the rest of their professional lives.

---

[137] The National Association for Law Placement reported that, as of February 15, 2008, only 5.8% of all individuals who graduated from an accredited law school in 2007 had obtained jobs with public interest organizations, including public defenders. Press Release, Nat'l Ass'n for Law Placement, Market for New Law Graduates at Highest Level in 20 Years, Approaching 92% (July 24, 2008), *available at* http://www.nalp.org/press/details.php?id=77.

A. Neighborhood-based Community Lawyering Clinics Promote Social Justice for Poor Clients and Communities

Without reproducing the "impact" versus "service" debate in any depth, it is important to recall that there is no consensus that the social justice impact of individual cases is dispensable.[138] Any committed lawyer for the poor who has experienced the satisfaction that comes from recovering unpaid wages, securing immigration relief, preventing an eviction, or otherwise righting an injustice done to an individual client would recognize this. Neighborhood-based clients, after all, demand and appreciate the individual services they receive. While inflating the significance of these individual victories is unattractive (and there is always the risk of the victories going to the lawyer's head), it is nevertheless important to imagine a world without them. If, in that world, individual legal services were no longer necessary because the forces of global capitalism, exploitation, racism, domestic violence, etc. had been vanquished, then perhaps individual legal services would have outlived their usefulness. But as long as we live in a world with daily injustice visited on the poor, it does not seem excessive to have some number of lawyers and law students at their side in their individual matters.

A case selection model, such as that advanced by Sameer Ashar, which requires clients be part of a collective works a discriminating effect in case and client selection. Indeed, that is the point. If one's goal is to build up organizations of poor people, offering legal services only to members of those organizations is a good way to do it; it's a membership benefit that can boost recruitment and, thus, political power. Many leading social justice lawyers have explored this model, arguing that this incentivizing is an important way that lawyers can leverage their impact.[139] This model has been promoted in opposition to the "first come-first served" model (which SCLC largely follows),

---

138 Ashar himself reports a colleague reminding him that the legal services law school clinics provide to individual clients are of "great value to those individual clients." Ashar, *supra* note 51, at 367 n.45 (reporting an email from Pam Edwards).

139 *See, e.g.*, Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 443-44 (1995) (describing the Workplace Project's evolution to a model where it handled wage claims only for "members" of the project, who were asked in exchange to join a committee, take a class, and otherwise "fight collectively" for immigrant worker justice); *see also* Wexler, *supra* note 39, at 1054 ("One method by which an existing organization can be strengthened is for a lawyer to refuse to handle matters for individuals not in the organization. A lawyer is a valuable piece of property in a poor community; an organization that can command his skills for its members, and deny them to non-members, has a powerful means of building its membership."). Interestingly, eight of the fourteen survey respondents (73%) include "membership in community organization with whom we have a formal partnership" as an intake criterion. Survey Results, *supra* note 19.

which selects clients arbitrarily, perhaps favoring clients who know where the law office is, or who assess the risks of representation (say, against threats of retaliation or deportation) and conclude the risk is worth taking. Still, not all low-income people are politically motivated or activated. Not all clients are connected to "their progressive political and racial identifications" around which Ashar's clients expressly cohere.[140] When one is committed to progressive social change, it is difficult to dispute that one should aspire to whatever model works the most leverage in the fight; however, when one's office is flooded with calls from individuals who are facing eviction, there is value in simply answering the call, without imposing a litmus test on the caller.

B. This One's For You: Neighborhood-based Community Lawyering Clinics as Specialized Training for Future Public Interest Lawyers

Neighborhood-based clinics advance social justice for poor communities not only by virtue of the actual services delivered to clients and their communities, but also by providing a valuable educational environment in which future public interest lawyers can explore how to deliver that service to poor communities in the future. I address here the particular suitability of neighborhood-based clinics for public interest-minded students and articulate how the middle ground, neighborhood-based docket teaches essential lessons that such students can take forward into critical and reflective public interest careers. Because of their high volume of service cases, neighborhood-based clinics offer public interest students a breadth of exposure to poor people and law's involvement with them that can frame their future learning and practice in a unique and important way.

First, as described above, not all of us have abandoned the service docket as an important feature of public interest lawyering. Appreciating that it might not change the world, some students find their calling in serving the one tenant facing eviction next week, and will benefit from the opportunity do it in a reflective and critical manner in a clinical setting. Little in the law school curriculum is geared to those students, and this is one value that the neighborhood-based community lawyering clinic can serve.

But beyond this narrow career preparation, the neighborhood docket offers a unique environment in which aspiring public interest lawyers can gain their own, manageable version of key dramas and questions in social justice lawyering. The neighborhood-based scale of practice offers a terrain from which to address the following four top-

[140] Ashar, *supra* note 51, at 375.

ics crucial for today's public interest lawyers: (1) lawyering for the poor can be conceived as fundamentally different from lawyering for the non-poor, and there's an important academic-activist literature about the distinction, with implications for the core competencies of an effective poverty lawyer; (2) there has been an evolution of collective thinking about lawyering for the poor from concern about the power dynamics between attorney and client to a concern about collective social justice effects of the work (the so-called "lawyer domination problem"); (3) there are important questions one must engage about the role of one's own political conclusions and commitments with respect to those of the client community (is the "activist lawyer" more of a protagonist than a different kind of lawyer?); and, (4) there is a debate, perhaps tired, between "impact work" and "service work," and one must develop a personal frame through which to judge how and whether that debate still has traction.

1. Students' Own Experience Of The Academic-Activist Literature: "Practicing Law For Poor People"

My argument that community lawyering clinics are specifically well-suited for future public interest lawyers starts from the premise that lawyering for poor people is somehow fundamentally different from lawyering for "non-poor" people and that students headed in that direction will benefit from some specialized training.[141] Lawyers for poor people have long wrestled with descriptive and normative questions concerning whether and how their work is and should be the same as and different from that of "regular" or "traditional" lawyers. Neighborhood-based community lawyering clinics give clinical teachers material from which to update classic arguments that lawyering for the poor is "different" and to give public interest students their own critical mass of experiences from which to assess that argument under current conditions.

The argument's premise is that traditional lawyering is not a one-size-fits-all set of skills, but rather a particularized vision of practice

---

[141] I self-consciously adopt the term ("poor people") that Stephen Wexler used in his important 1970 work, *Practicing Law for Poor People*, *supra* note 39, even though it is hardly in vogue these thirty-eight years later, when we are much more likely to use the less coarse term "low-income" to describe legal services clients. I want to associate myself, too, with Marc Feldman's 1985 note critiquing any use of the word "poor" that carries with it the moral condemnation and contempt of modern rhetoric. Feldman, *supra* note 134, at 1529 n.2 (1995) ("By using this term . . . I do not mean to imply or support any of the contemporary anti-poor rhetoric and attitudes."). For a discussion of the terminological shift from "poor" to "low-income," see GORDON M. FISHER, THE DEVELOPMENT OF THE ORSHANSKY POVERTY THRESHOLDS AND THEIR SUBSEQUENT HISTORY AS THE OFFICIAL U.S. POVERTY MEASURE 34 (1992), *available at* http://www.census.gov/hhes/www/povmeas/papers/orshansky.html#C5.

that does *not*, in fact, help the poor. This argument was boldly advanced in 1970 by then-welfare rights lawyer, Stephen Wexler, in his oft-cited *Yale Law Journal* article, entitled "Practicing Law for Poor People."[142] The central argument of this highly influential piece was that "poor people" are not like "not-poor people," and that conventional legal education is geared to representation of the "not poor," and does more harm than good in the poverty context. On this view, poverty lawyers need to learn or create an entirely different way of practicing law in the context of poor clients. Because poor people do not have "legal problems" in the way that "not-poor" people do,[143] they do not need the same kind of lawyers that "not-poor" people need. Poor people need lawyers who get out of the way, refrain from imposing their own middle-class values and aesthetics on their clients' political movements, and provide technical support and solidarity that will advance the cause.[144]

> Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together. The lawyer who wants to serve poor people must put his [sic] skills to the task of helping poor people organize themselves. . . . [T]he object of practicing poverty law must be to organize poor people, rather than to solve their legal problems.[145]

Wexler argues that two core values of traditional law practice—the commitment to the symbiotic attorney-client relationship and the solving of legal problems—actually harm poor people because they rely on and recreate the individuation of the poor when in fact they need the exact opposite: solidarity and political power.[146] Wexler sets out specific prescriptions for a new poverty law practice, urging young

---

142 Wexler, *supra* note 39, at 1049.

143 "Poor people have few individual legal problems in the traditional sense; their problems are the product of poverty, and are common to all poor people." *Id.* at 1053.

144 *Id.* at 1053.

145 *Id.* Wexler assumes that the poverty lawyer's goal is to "end poverty," and offers his argument in the service of improving one's chances of doing so. Not all would agree that ending poverty is a legitimate purview of the legal profession at all, assigning such a mission to an explicitly political organization or discipline. It is a mark of the historical era in which Wexler wrote that whether the goal of ending poverty was a legitimate or attainable goal was not in question. *See, e.g.*, George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 173 (1974) (noting that with the "War on Poverty" in the 1960s there was an "awakening interest . . . in conditions of the poor" that "proved to have the greatest impact on the development of clinical legal education"). *See generally* FRANCIS FOX PIVEN & RICHARD A. CLOWARD, POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL 270, 288, 352-53 (1977) (describing the launch and subsequent demise of President Johnson's "War on Poverty").

146 Wexler, *supra* note 39, at 1053.

lawyers to renounce "traditional practice"[147] in favor of a multi-pronged strategy that depends as much on "attitude" as it does on skill or ability.[148]

While almost forty years old, Wexler's conceptualization of poor people's "legal problems" continues to have profound implications for the training of poverty lawyers. Others have picked up on Wexler's call and have brought current the argument that poor or otherwise subordinated groups demand specialized lawyering, and that the legal curriculum education should account for this specialty.[149] Some recent commentators have argued that conventional legal education is harmful to the social justice lawyer, who must in fact labor to forget its conventions and teachings about the role of the lawyer.[150] Gerry López argued in 1989 for a specialized program for these lawyers, describing the peculiar lawyering competence they would need as follows:

> It demands knowing how to work with clients and not just on their behalf; it demands knowing how to collaborate with allies rather than ignoring their actual or potential role in a situation; it demands knowing how to take advantage of and how to teach self-help and lay lawyering and not just how to be a good formal representative; and it demands knowing how to be part of, as well as knowing how to build, coalitions, and not just for purposes of filing a lawsuit. In sum, anticipating and responding to the problems of the politically and socially subordinated requires training that reflects . . . an idea of lawyering compatible with a collective fight for social change – a 'rebellious' idea of lawyering at odds with the conception of practice

---

147 *Id.* Litigation remains the mainstay of legal services practice. Piomelli, *supra* note 84, at 455 (noting that "the choice of litigation as a remedial strategy . . . . has shaped the structure and activities of most legal services offices"); Robert L. Rabin, *Lawyers For Social Change: Perspectives on Public Interest Law*, 28 STAN. L. REV. 207 (1976) (chronicling how litigation became the mainstay of the ACLU, NAACP Legal Defense Fund, and public interest organizations more generally).

148 These strategies include producing legal education ("know your rights") materials, training poor people to represent themselves and each other in legal and quasi-legal settings, and preparing poor people for confrontations—in street and other political actions, not in courtrooms—with the powers that be. Wexler, *supra* note 39, at 1049.

149 Clinicians and other practitioners are not the only people concerned about a systematic socialization of lawyers that prevents their social justice effectiveness. One of the hallmarks of the critical legal studies movement was the argument that the structure of legal education and of the legal academy reinforced pre-existing social hierarchies based on race and class and prevented the clear-eyed analysis of the effects of capitalism and other economic structures on legal disputes. *See* Duncan Kennedy, *Legal Education as Training for Hierarchy*, *in* THE POLITICS OF LAW (D. Kairys ed., 3d ed. 1998).

150 "'[T]he fully socialized individual' will be of no help in seeking social justice for those who are marginalized, subordinated, and underrepresented." John C. Calmore, *"Chasing the Wind": Pursuing Social Justice, Overcoming Legal Miseducation, and Engaging in Professional Re-Socialization*, 37 LOY. L.A. L. REV. 1167, 1168 (2004).

that now reigns over legal education and the work of lawyers.[151]

Numerous clinicians have addressed the need to supplement or replace the vision of lawyering that informs most clinics with the skills, values, and competencies that lawyering for the poor demand. David Dominguez, in his Community Lawyering class, urges law students to go beyond the typical "access to justice" frame in thinking about lawyering for the poor.[152] He tells them that their intuitions about how to serve the poor are "rooted firmly in the culture of legal education," and asks them, "How far are you willing to grow beyond the role of a transactional attorney completing a task for a client? Who are you willing to become in order to create more substantive gain, process enrichment, and cultural transformation?"[153] On this view, social justice lawyers should continue filing lawsuits and representing clients in adversarial contexts,[154] but should not limit their activities to those conventional modes.[155]

Because a student's practice in a neighborhood-based clinic will be characterized by a *range* of lawyering practices, both "conventional" and innovative or collaborative, a future public interest lawyer gets her own first-hand experience of the spectrum and of her personal reaction to it. Whether she ends up adopting the Wexler view that conventional lawyering does more harm than good for poor people, a neighborhood-based clinical experience gives that student something more than an abstract academic grasp on the debate. She can assess whether her work with clients seemed to cultivate their depen-

---

151 López, *supra* note 102, at 356.

152 Dominguez, *supra* note 133, at 70 (teaching his students that community lawyering provides an alternative to the equal access to justice movement, in that it "share[s] the teachings of integrative bargaining in the streets, thereby enlarging the number of people who possess this critical skill set").

153 *Id.* at 72-73 (referencing López, *supra* note 102, as having proposed a counter to the traditional legal education).

154 Fox, supra note 37, at 1.

155 For example, Shin Imai says that, in working with indigenous communities of Canada, he "learned that conventional legal tools, such as negotiation and litigation, were not enough. Community organizing, media releases, demonstrations, and road blockades were all ways of addressing 'legal' problems, and lawyers could play different supportive roles depending on the strategy chosen. For these non-conventional roles, the lawyering skills learned at law school were at best of no assistance, and at worst, harmful." Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLIN. L. REV. 195, 196 (2002). Imai goes on to identify three core competencies for community-oriented law practice: the ability to collaborate with members of the community; to acknowledge personal identity, race, and emotion and their effects on perception and priorities; and to take a "community perspective on legal problems." *Id.*; *see also* Calmore, *supra* note 150, at 1167 ("Those who seek to learn the appropriate lessons must also resist—not assimilate—the efforts to fully socialize them into the legal profession. What I describe, in simple terms, as 'the fully socialized individual' will be of no help in seeking social justice for those who are marginalized, subordinated, and underrepresented.").

dency on her, and whether a form of lay advocacy might have been more empowering.[156] She will have litigated a wage and hour case herself and be able to assess whether it isolated her client from others similarly situated. She can think through whether that case arose from a client's "legal problem" or from the political and class status he shares with other undocumented low-wage workers in the community. She can assess based on her own experience whether those two are really opposed, and think creatively about how to bring the critique of high volume service work to bear going forward in her social justice practice.

2. *The Lawyer Domination Problem*

The kind of docket that a neighborhood-based community lawyering clinic student encounters is a good one to queue up the perennial question of the extent and continuing political significance of what Bill Simon has called "the problem of lawyer domination."[157] Because lawyers are highly formally educated, and often privileged in other ways, too, as compared with the members of their client community (be it by race, class, immigration status, or other characteristic), the question of the reproduction of social hierarchy within the attorney-client relationship is florid in a poverty clinic. The idea that community lawyers could be reproducing in their own professional relationships some of the very hierarchies that they have pledged to attack as lawyers is, of course, particularly troublesome to social justice lawyers. Numerous clinical and non-clinical scholars have addressed this concern with recommendations on how to minimize oppression and enhance the autonomy and empowerment of one's own clients through one's own practice.[158] This concern may be on the wane; some have observed a renewed focus outside of the attorney-client relationship and back onto the collective impact of the work that animated Wexler, Bellow, and others of the 1970s.[159] Nevertheless, all lawyers—and public interest lawyers in particular—must have basic fluency in this question and in how to address it in a principled way, and community lawyering clinics present the opportunity to ex-

---

156 Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984).

157 Simon, *supra* note 130, at 1100 (1994) (referring to the increased "concern with lawyer oppression of clients" in the 1980s and 1990s).

158 *See, e.g.*, White, supra note 129; *see also* Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narratives*, 100 YALE L.J. 2107 (1991); Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992). Ashar identifies the focus on the power dynamics in attorney-client relationship as the "therapeutics" of law practice and faults it for undervaluing the social justice impact of the work. Ashar, supra note 51, at 380-81.

159 *See supra* note 130.

amine the question in the context of one's own practice.

In the SCLC seminar, we not only read some of the canonical literature on the "lawyer domination problem,"[160] but bring to that reading the clinic students' own collective experience of their relationships with their clients. Because they have a range of relationships, with clients of varying demographic and personal qualities, clinic students can put themselves into the literature's queries about client empowerment. They can muse about whether they, as Lucie White has suggested, seek "to guard [their] own status" by portraying their clients as victims and urge their clients to "be dependent on [their legal] expertise and protection."[161] They can also reflect on whether that question interests them and seems an important one or, as some SCLC students have reported, seems "interpersonal" and "not worth the time we spend on it"[162] when compared to the case work.

3. *The Role Of One's Own Political Judgments And Priorities*

Students in a neighborhood-based clinic committed to responding to the priorities expressed by the local community have the opportunity to consider whether they agree with the community's political priorities and whether that matters. This again places the students' work in the larger tradition of lawyering for social change, as they join the lawyers of their teachers' generation in thinking through their role as anti-poverty activists versus as public interest or poverty law attorneys.[163] Some SCLC students, after eight weeks working in East Palo Alto, identify an issue they think should be an enormous priority for the city and its residents, only to find that it isn't.

As an example of the reverse dynamic, we engage perpetually at SCLC in a conversation about whether the expungement remedy the law offers our clients is "worth" pursuing. Given that the California statutory scheme does not permit the expungement of any crime for which a person served time in a state prison, only relatively insignificant (non-violent) convictions are eligible. While these convictions can create powerful barriers to employment, education, and housing for the convicted person, the limit on the reach of the remedy is

---

160 *See supra* note 158.

161 White, *supra* note 129, at 45.

162 Sometimes one is overwhelmed by the generation gap between oneself and today's law students. They were not raised, as some of us in clinical teaching were, in the era of "the personal is political." *See* Carol Hanisch, *The Personal Is Political*, *in* NOTES FROM THE SECOND YEAR: WOMEN'S LIBERATION (1969) (rev. 2006), *available at* http://scholar.alexanderstreet.com/pages/viewpage.action?pageId=2259.

163 *See* Nancy D. Polikoff, *Am I My Client?: The Role Confusion of the Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443 (1996); *see also* Diamond, *supra* note 17, at 73 ("[L]awyers must directly and substantively act on the results of *their* political analysis of the causes and nature of subordination.") (emphasis added).

profound. Not infrequently, a client's criminal record sheet will report a mix of eligible and ineligible convictions. A student will work for a full semester to expunge the statutorily eligible ones, knowing that at the conclusion of the representation, the client will still have serious felony convictions appearing on the RAP sheet. Some SCLC students inquire, then, "Why do we do the expungement motions?" "Aren't there more efficient or powerful ways to seek justice for the formerly incarcerated?" We discuss the "dignity" effects for a misdemeanant client of standing up in court—often the same court in which she was convicted—and reciting her eligibility for the relief, and we debate the social justice value of that outcome versus, say, rewriting the statute to broaden its application to reach the prison-bearing convictions.

This reflection resonates with similar debates attorneys might have about areas of substantive law, and many offices' policy discussions about how to allocate resources. On a smaller scale, this question iterates some of the same concerns as the lawyer domination problem: for example, when a student attorney wants a client to engage in some higher level of confrontation or resistance than the client elects. The student—fired up to defeat the landlord, for example—is crushed when the client accepts the cash settlement because she needs the money, fears retaliation, and/or simply doesn't share the student's passion for the "cause" of tenants' rights. Future public interest lawyers who participate in a neighborhood-based community lawyering clinic get the chance to experience what could be called alienation when their own sense of the justice at stake in a matter is not matched by the client's, when the solidarity leading to the dramatic victory they had hoped for doesn't materialize. The moment when a student first hears a client decline an invitation to scale up her issue to have larger community effects is a profound one for an aspiring public interest lawyer. The student confronts the limitations on her role as lawyer, and the fact that, as Jennifer Gordon says, she is "not the protagonist."[164]

4. Service/Impact—Aggregation

Social justice lawyering is traditionally characterized by an either/or dichotomy between so-called "impact" work and "service" work.[165]

---

[164] Gordon, *supra* note 130, at 2144.

[165] Feldman, supra note 134, at 1537-38 (1995) ("An almost universally accepted and cherished idea in law practice for the poor is the dichotomy between service and impact. Service cases, undertaken for individual clients, are deemed routine. They respond to the immediate problems of specific clients who present themselves at a program's offices seeking assistance. . . . Impact cases, on the other hand, are viewed as significant and special. These rare cases seek to advance the interests of a number of poor persons by 'reforming' some widespread practice or abuse.")

The community-oriented, service case lawyering I describe here could be said to lie on a middle ground between those two poles.[166] "Middle" because the practice hovers between the extremes, with an emphasis on direct service work, but delivered in a strategic way and in response to a particular community's articulated priorities.[167] This middle ground offers a unique learning environment for *any* law student as she begins to internalize the profession's values, and provides lessons of particular value to a social justice minded student, who aspires to identify and occupy her own place on the spectrum of progressive lawyering. The community lawyering docket gives public interest students a rich environment in which to experience the tension and debate between so-called "impact" work and "service" work.[168] While every "service" lawyer hopes that the strategic provision of that service will have some cumulative effect (e.g., by sending the word out to local landlords that evictions will be contested), in the clinical education context, the lawyers have comparative freedom to experiment with mixed caseloads and different models, free from pressure or restrictions from funders.[169] Moreover, the scale of commitment in a community lawyering clinic is just right to examine assumptions about impact versus service. By aligning oneself, physically or morally, with a specific community, one can hope to have an impact on the local markets with repeated service work

This is the well-known Gary Bellow "case aggregation model," and community lawyering clinics are ideally situated to deploy and study it. Students in the community lawyering clinic have the chance, again with the basis of their own personal experience, to experience

---

166 *See* Newman, *supra* note 45, at 1306 n.10 (2007) (describing community-based legal services as a "third variation" as between impact and service).

167 Gary Bellow, and others following his model, have advocated for the aggregation of cases against selected institutions, offices, or bureaucrats. Bellow, *supra* note 67, at 108 n.4 (critiquing traditional legal services offices for "always deal[ing] with [client grievances individually" and for not making an effort "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"); Feldman, *supra* note 134, at 1536-42 (critiquing federally funded legal services for their "randomness" and inadequately systemic approach to the problems of low-income communities and clients).

168 LÓPEZ, *supra* note 39, at 24 (implying that a lawyer does not have to "choose" between service and impact work because they are not "dichotomous categories"); Diamond, *supra* note 17, at 108 (critiquing the debate over service versus impact cases as "sort of miss[ing] the point" since the goal of community lawyering should be to assist clients in creating lasting, institutionalized power, not solely to enforce legal rights); *see also* Bellow, *supra* note 67, at 303 n.12 (finding "many more opportunities for reconciling individual and collective ends in politically motivated legal work" than the literature otherwise suggests).

169 Of course, clinicians can face other kinds of pressure, such as one to serve a maximum number of students or political pressure to stay away from certain types of cases or opposing parties or financial pressure not to take on projects or cases that will drain the resources of the office.

the office's intake decisions and priorities from the perspective of the community's social justice needs. They learn firsthand that, for example, getting involved in a significant piece of state court litigation would mean taking on fewer administrative wage and hour hearings—and debate among themselves the impact of the trade-offs and how to assess them. The conversation often turns to "who decides," and the pointed observation that, while we are a "community lawyering clinic," and claim to be responsive to the community's priorities, we have no community advisory board or other formal mechanism through which the community tells us what they want us to do. Who is "the community" anyway?

C. Invitation To "The Other America":[170] Neighborhood-Based Community Lawyering Clinics As Investment In The Professional Development Of All Future Lawyers

As described above, a neighborhood-based community lawyering clinic delivers lessons of particular relevance to students who are planning a career in public interest law. In addition, these clinics offer important learning opportunities for law students who are headed to law firms, companies' in-house counsel offices, or government work (clearly the majority).[171] While the pedagogical benefits of small case clinics are well-known,[172] I argue here that the social justice goal of clinical education is also significantly advanced for all students by the neighborhood model. Neighborhood-based clinics give future lawyers a way to imagine sustained involvement with lawyering for low-income people throughout their careers, and on a strategic model that has the potential to deliver more punch than random *pro bono* cases. That is, having experienced law practice in a low-income setting and learned how to assess the common concerns of a community of poor people, an aspiring lawyer is in a better position to judge how to deploy and leverage his or her public service commitments, even if they are modest. Also significant is the reality that a law school's maintaining a physical office location in a low-income neighborhood signals its very concrete financial and ethical institutional investment in and commitment to its community neighbors. This signaling offers an image to all future lawyers of how the institutions that they lead in the future can similarly have sustained relationships "on the other side of

---

170 MICHAEL HARRINGTON, THE OTHER AMERICA: POVERTY IN THE UNITED STATES (1962).

171 Press Release, Nat'l Ass'n for Law Placement, *supra* note 137 (reporting 55.5% of individuals who graduated from law school in 2007 obtained their first job in a law firm, while 27.3% entered into "public service employment," including judicial clerkships, which are time-limited, and government jobs).

172 *See supra* note 15.

the tracks" and spur creativity in envisioning modes of involvement with poor communities going forward.

That lawyers have a professional and ethical duty to render service to the poor and to seek justice for the underrepresented is the subject of a voluminous literature,[173] as is the profession's overall failure to discharge that duty.[174] That failure is striking, particularly given the modest requirements that the bar demands. For example, the State Bar of California "urges" all members to spend:

> a reasonable amount of time, at least 50 hours per year, provide or enable the direct delivery of legal services, without expectation of compensation other than reimbursement of expenses, to indigent individuals, or to not for-profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged, not-for-profit organizations with a purpose of improving the law and the legal system, or increasing access to justice.[175]

The duty to serve the poor remains an important component of the law school curriculum; instruction in the duty is mandated by the American Bar Association's accreditation board.[176] Indeed, at least in a formal sense, the duty of public service remains a core value of the legal profession. The profession's reputation as a guardian of democratic values, both procedural and substantive, is much prized.

In its recent comprehensive study of legal education, the Carnegie Foundation for the Advancement of Teaching emphasized inculcation of the public duty of lawyers among the foundational functions of the enterprise.[177] What has come to be known as the "Carnegie Report" acknowledges the "dual role" lawyers play in American society, acting as agents for clients in the legal system, but also as having

---

173 DEBORAH L. RHODE, ACCESS TO JUSTICE (2004).

174 DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE PROFESSIONS (2005). Two-thirds of lawyers report doing some level of pro bono work to people of limited means or organizations serving the poor. ABA STANDING COMM. ON PRO BONO & PUBLIC SERVICE, SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS (2005). Yet, as previously noted, less than one-fifth of the legal needs of the poor is addressed. ABA TASK FORCE ON ACCESS TO CIVIL JUSTICE, *supra* note 96, at 5.

175 Bd. of Governors of the State Bar of Cal., Pro Bono Resolution (adopted Dec. 9, 1989, amended June 22, 2002), *available at* http://calbar.ca.gov/calbar/pdfs/accessjustice/2003-Pro-Bono-Res.pdf. With this rule, the California Bar adopted the recommendation in the American Bar Association's Model Rule 6.1, which states that every lawyer "should aspire" to render every year fifty hours of service "to those unable to pay." MODEL RULES OF PROF'L CONDUCT R. 6.1.

176 ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS FOR APPROVAL OF LAW SCHS. 301, 302, *available at* http://www.abanet.org/legaled/standards/standards.html.

177 *See* WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 51 (2007) [hereinafter CARNEGIE REPORT].

"obligations to see to the proper functioning of the institutions of the law."[178] Lawyers are tasked not only with caring about the interests of their individual clients but also with advancing the principles of a just society, both fundamental substantive freedoms and procedural norms such as access to justice and the right to have those freedoms effectuated. One of the Carnegie Report's penetrating critiques of the current system of legal education is its failure to educate and socialize students about how to handle that double role and how to incorporate the public function of being a lawyer into what has become the highly privatized practice of law.[179] Describing legal education's calling as a "high one," the Carnegie Report acknowledges the difficulty of the task

> to prepare future professionals with enough understanding, skill, and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizens' loyalty; that is, to uphold the vital values of freedom with equity and extend these values into situations as yet unknown but continuous with the best aspirations of our past.[180]

The Carnegie Report proposes substantial reform to legal education to meet this calling. Clinical education in general, and neighborhood-based community lawyering clinics in particular, can play a key role in law schools' responding to Carnegie.[181]

The Carnegie Report lodges significant critiques of legal education's preparation of students for life as a lawyer, particularly when compared to other professional schools, and provides an intellectual framework for reform, most notably reforms that would supplement law schools' excellence in the "academic" realm with an analogously strong commitment to the practice and ethical/identity realms.[182] The Carnegie Report argues that novice lawyers, like students in other professions, need to acquire competence in three distinct arenas: knowledge, skill, and identity. Professional schools across disciplines, "aim[ ] to initiate novice practitioners to think, to perform, and to conduct themselves (that is, to act morally and ethically) like professionals."[183] The Carnegie Report goes on to associate each of these

---

178 *Id.* at 82.

179 *Id.* at 131-32.

180 *Id.* at 202.

181 *Id.* at 104-08, 194.

182 The Carnegie Report is not the first, nor the only currently salient, comprehensive review of the competencies demanded of a skilled lawyer and of legal education's effectiveness at producing graduates primed to accumulate them. *See* ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT]; *see also* STUCKEY ET AL., supra *note* 78.

183 CARNEGIE REPORT, *supra* note 177, at 22.

competencies with a key "apprenticeship": intellectual/cognitive, expert practice, and, finally, the "apprenticeship of identity and purpose."[184] The third apprenticeship of identity and purpose provides a useful framework for assessing the value of neighborhood-based clinics in legal education. To the extent that we associate an ongoing commitment to public service, and, indeed, the highest values of our democratic form of government, with the identity and purpose of being a lawyer, we must educate our students in a range of ways of meaningfully expressing that commitment.

An apprenticeship in professional identity and purpose must involve schooling novices in the core values of the profession and must then provide a path that will enable the apprentice to continue exploring those values in the context of his or her own education and career. Neighborhood-based community lawyering clinics offer a rich environment for the feature of the third apprenticeship that partakes of a commitment to public service. First, the simple physical fact of spending time in a poor neighborhood can have surprisingly powerful effects. As our society remains remarkably segregated by race and class,[185] any opportunity for cross-exposure to a way of life very different from one's own is politically and socially significant. While the nation's law students themselves come from a range of socioeconomic backgrounds, those who are white and/or middle class are very likely to have lived a life with little daily exposure to people who struggle every week to make ends meet. Their visions of poor neighborhoods may be disproportionately shaped by images in the mainstream media.[186] Spending a significant amount of time (that is, more than a single volunteer outing) presents the opportunity to assess the accuracy of those representations, as well as to see other features of community life that might not be as extant in the mass media.

---

184 *Id.* at 22.

185 GARY ORFIELD & CHUNGMEI LEE, RACIAL TRANSFORMATION AND THE CHANGING NATURE OF SEGREGATION 4 (2006) (finding "segregation is not gone"), *available at* http://www.civilrightsproject.ucla.edu/research/deseg/Racial_Transformation.pdf. For demographic maps showing segregation by race, see Social Science Data Analysis Network, CensusScope, http://www.censusscope.org/segregation.html.

186 *See* Rosalee Clawson & Rakuya Trice, *Poverty as We Know It: Media Portrayals of the Poor*, 64 PUBLIC OPIN. Q. 53, 54 (2000) (stating that while "Blacks make up less than one-third of the poor, . . . the media would lead citizens to believe that two out of every three poor people are black"); Rachel Lyon, *Juror Number Six* (Lioness Media Art 2008) (examining how today's 24/7 news culture creates a climate of fear of minorities, particularly of African American men); Dana E. Mastro & Bradley S. Greenberg, *The Portrayal of Racial Minorities on Prime Time Television*, 44 J. BROAD. & ELEC. MEDIA 690 (2000) (discussing media stereotyping in prime time television, focusing particularly on portrayals of Latinos); *see also* U.S. COMM'N ON CIVIL RIGHTS, WINDOW DRESSING ON THE SET: WOMEN AND MINORITIES IN TELEVISION (1977) (seminal study of the portrayal of people of color on network television).

In addition to its physical location, the volume of a neighborhood-based community lawyering clinic's caseload provides a simple breadth of exposure to poor people that can have a significant effect on a law student, particularly one who has not had such exposure before. Our culture is rife with the kind of stereotypes and judgments about the poor—why they are poor, why they remain poor—that thrive on lack of exposure.[187] Representing one poor person gives a young lawyer a chance to test those stereotypes against the reality of his client's life.[188] However, when students are exposed to only one client, the risk is always present that that they will conclude that their client's story is unique.[189] A clinical experience that involves a critical mass of low-income people provides a richer data set on which to draw. Even if a law student is not planning a career in public interest work, exposure to a more complex and realistic understanding of low-income life in America—of low wages, persistent racial segregation in housing and employment, of the stories behind the racially disproportionate incarceration rates, of the myriad reasons a family may fall behind in rent, etc.—can only help the student internalize his duty to play a part in addressing these persistent social problems.

Beyond the numerosity of clients a student will see, the consolidated approach that a neighborhood-based community lawyering clinic undertakes gives that law student the chance to contemplate analogous schemes that he might design for the institutions of which he is a part going forward. He might, for example, recommend to his law firm's *pro bono* committee that instead of taking "one off" cases randomly as they come in from, say, the local legal aid office, they consider more strategic relationships. Perhaps the firm could partner with a specific neighborhood (or, on a smaller scale, a city block) and commit to representing any tenant there who faces eviction. They could "adopt" a school and see to it that all the pupils' families know their rights (and have access to lawyers to enforce those rights) in some locally important set of issues. The neighborhood-based community lawyering clinic model invites future lawyers, even those lawyers who have *not* dedicated their careers specifically to the fight against

---

187 The myth of the welfare queen, for instance, remains a prevalent stereotype, in spite of "the end of welfare as we know it." *See* DAVID ZUCCHINO, THE MYTH OF THE WELFARE QUEEN (1997). *See generally* HARRINGTON, *supra* note 170 (describing the invisibility of the poor).

188 Some of those stereotypes might fare quite well against the test of reality. However, one student said to me, as his term in the clinic came to an end, "Everything I thought about [people with criminal records] was wrong, was based on," he paused, "myth. Everything I thought about these neighborhoods was based on myth."

189 This risk is present even if the student has read Wexler and those who have followed saying that poverty is a social and political problem.

poverty or racial injustice, to think creatively about how to leverage whatever resources they do devote so as to have meaningful social justice effects.

Conclusion

Two well-worn "tensions" are explored in this Article: the one between service and impact work in public interest law, and the one between justice and pedagogy in clinical education. I hope I have muddied the waters as to both. First, as have many before me, I have described a public interest practice design that hovers in the middle between a pure service and a pure impact docket. Using the resurgent community lawyering model as a frame, I have returned our attention to the idea of neighborhood legal services, and to the strategic aggregation of service cases so as to maximize their impact. While representing mobilized collectives of poor people is one way to leverage scarce legal resources, there are many others, and no one vision of public interest lawyering has yet emerged as the legendary silver bullet – or we all would have fired it.

With respect to the tension between justice and pedagogy in clinical education, I have again tried to "fight the hypo." These two cornerstones of our collective endeavor need not compete. Instead of seeing our work as a zero-sum game in which the interests of clients and the interests of students conflict, I urge here that we reconceptualize the tension. Our students need to learn lawyering skills, indeed. But, as the Carnegie Report and others have noted, so too must they learn to internalize the highest calling of the legal profession: to make good on democracy's promise of access to justice and due process of law. A neighborhood-based community lawyering clinic, while by no means the only way to explore both skills and values simultaneously and in an integrated way, provides rich soil in which to plant those seeds and to array a diverse set of images of how fulfilling that promise can look.

A third tension, perhaps more salient at some law schools than others, for which my argument has purchase, is that between "public interest students" and "law firm students" at any given institution. If we hope to advance social justice in the new millennium, we must seek new models, new collaborations. The social justice lessons examined in a neighborhood-based community lawyering clinic are salient to all law students, regardless of where they take their careers. One of the strengths of the neighborhood-based model is that its appeal is not limited to hardcore public interest students; it can offer a vision for lifetime participation in social justice lawyering for all lawyers. One can hope that when the social justice impact of our clinical teaching is

measured, the long-term view will reveal that some of the private-sector graduates go on to serve the poor in ways that they would not have, had the neighborhood-based clinic not given them a view of a way that could be effective even if not a full-time professional calling.

The legal profession's paramount duty to promote social justice remains a difficult one to effectuate. Current social conditions make it very easy for middle- and upper-class people to not even *see* the working poor that surround them, and to not even think about the non-working poor who have been completely left behind by the globalized economy. If nothing else, a term in a neighborhood-based community lawyering clinic trains the eyes, the minds, and, we can hope, the hearts of the next generation of lawyers to see these members of their communities and to remember that their profession calls on them to seek justice for, and with, them.