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TOWARD INTEGRATED LAW CLINICS THAT TRAIN SOCIAL CHANGE ADVOCATES

MARCY L. KARIN AND ROBIN R. RUNGE*

The integrated approach to clinical legal education enables law students to explore and to utilize more than one legal advocacy strategy simultaneously to achieve social change. This framework facilitates law students' ability to develop a range of essential lawyering skills including reflecting upon the connection between law and social justice by addressing the broader social problems impacting our communities. The integrated approach has been accepted as an effective clinic structure, and is being successfully developed and applied in a range of ways that are best suited to specific legal issues and geographic regions. In this article the authors, who are new professors, describe their experiences with two integrated legal clinics: the Arizona State University Civil Justice Clinic advocating for servicemembers, veterans, and military families and the Housing and Employment Law Clinic at the University of North Dakota School of Law advocating for fair access to housing. In doing so, we share our vision of what constitutes an effective integrated clinic and its contribution to the development of the next generation of social justice advocates. Finally, we explore unique pedagogical challenges and questions this model poses for faculty contemplating clinic redesign as a way to achieve broader solutions for communities and expanded educational opportunities for law students.

INTRODUCTION

“By retooling an existing litigation clinic to seek broader solutions for the community and better education for the students, reformers can avoid starting all over from scratch. . .”¹

* Marcy L. Karin is Associate Clinical Professor at the Arizona State University Sandra Day O'Connor College of Law. Professor Karin appreciates the guidance and ongoing support from the other professors with whom she has taught, especially Bob Dauber, Chai Feldblum, and Kevin Barry. Robin R. Runge is Assistant Professor at the University of North Dakota School of Law. Professor Runge is grateful for the tremendous contributions of Professor Margaret Moore Jackson, with whom she directs the UND Law Clinic, and Professors Laura Rovner and Danny Schaffzin, for their vision and work to develop the UND Law Clinic. The authors would also like to thank Cathy O'Grady, Sarah Buel, Margaret Drew, Katie Corrigan, Jane Aiken, Corie Rosen, Kathryn Sabbeth, Zak Kramer, Judy Stinson, Art Hinshaw, Jen Barnes, Megan McCauley, and Chandra Farris for their guidance, input, and research assistance.

¹ Margaret Martin Barry, *A Question of Mission: Catholic Law School's Domestic Vio-*

Margaret Barry wrote these wise words sixteen years ago. There have been some significant catalysts and changes in clinical legal education in that time – the legacy of the MacCrate Report,² the Clinical Legal Education Association's *Best Practices for Legal Education*,³ the technological evolution that has allowed for the sharing of real-time best-practices and have the immediate sounding board of colleagues,⁴ the accreditation requirement to offer significant live-client and practical experiences in law schools,⁵ the growth in the number and kinds of law clinics and number of professors teaching in a law clinic as part of their course load,⁶ among others.⁷ These catalysts and changes have significantly increased the number and quality of clinical experiences in law schools, as well as bolstered the integration of law clinics into legal education generally. As new law school faculty teaching in clinics, the authors are grateful to enter the academy at a time when the importance of clinical education has gained increased recognition.

Clinic programs incorporating more than one type of legal advocacy are not new, and some of the benefits and challenges they pose in terms of opportunities for students to learn, pedagogy, and client work have been and continue to be explored.⁸ Moreover, many have

lence Clinic, 38 *How. L.J.* 135, 153 (1994).

² AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT, AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 207-21 (1992) [hereinafter *The MacCrate Report*].

³ ROY STUCKEY & OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

⁴ See, e.g., CLINICIANS WITH NOT ENOUGH TO DO, <http://kotplow.typepad.com/> (last visited July 12, 2010); *A Place to Discuss Best Practices for Legal Education*, BEST PRACTICES FOR LEGAL EDUCATION, <http://bestpracticeslegaled.albanylawblogs.org/> (last visited July 12, 2010).

⁵ *Standards and Rules of Procedure for Approval of Law Schools*, 2007 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, Std. 302(b)(1).

⁶ Robert R. Kuehn & Peter A. Joy, *Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility*, 59 *J. LEGAL EDUC.* 97, 98 (2009) (noting that “almost every law school” has clinical opportunities, and “the *AALS Directory of Law Teachers* list[s] nearly 1400,” not including “a number of law professors [that] act as attorneys in cases handled as part of law school seminars, applied legal research and writing classes, or live-client components of related upper-level substantive courses”); see also Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 *CLIN. L. REV.* 57, 78 (2009) (“approximately one-third of . . . law students are participating in clinics”).

⁷ See generally Margaret Martin Barry, John C. Dubin & Peter A. Joy, *Clinical Education for the New Millennium: The Third Wave*, 7 *CLIN. L. REV.* 1 (2000) (providing a categorization and history of the three waves of the clinical movement to date); Kuehn & Joy, *supra* note 6 (describing lawyering in the legal academy and the growth of clinical programs during the second wave of clinical education since the 1970s).

⁸ See, e.g., Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, 16 *CLIN. L. REV.* 451 (2010); Barry, *supra* note 1; Katherine R. Kruse, *Biting Off*

asserted the need to educate students about the role of the law in social justice and the unique opportunities and pedagogical challenges of teaching social change lawyering in clinical legal education.⁹

A challenge is how to teach simultaneously about social justice and provide meaningful learning opportunities for law students to develop essential lawyering skills in a semester long law clinic course.¹⁰ There has also been a vigorous dialogue as to which law clinic model is the most effective for achieving the goal of training the next generation of social change lawyers.¹¹ Some have argued that law clinics in which law students represent underserved individual clients are an effective model for teaching them that lawyers should use law for social justice.¹² Others have argued that clinics handling complex, legal reform cases are effective at developing the skills and desire to pursue social justice advocacy.¹³ Still others have argued that neighborhood-based community development clinics provide unique learning opportunities for law students about access to justice and social inequalities.¹⁴

This article builds upon those writings by arguing that not only has the integrated law clinic model been widely accepted as an effective structure to train the next generation of social change advocates armed with essential lawyering skills, but that it can be successfully developed in both rural and urban settings, and designed to address a

What They Can Chew: Strategies For Involving Students In Problem-Solving Beyond Individual Client Representation, 8 CLIN. L. REV. 405, 410 (2002).

⁹ See STUCKEY & OTHERS, *supra* note 3, at 197 (asserting that several learning goals of in-house law clinics “are best pursued when they are designed and operated mindful of the social justice mission assigned to the legal profession”) (citing Barry, Dubin & Joy, *supra* note 7, at 12-16); Jane H. Aiken, *Provocateurs For Justice*, 7 CLIN. L. REV. 287 (2001) (exploring the process of inspiring law students to pursue social justice in clinical legal education, asserting that exposure to and participation in a social justice experience in the clinic is insufficient to achieve the goal of “justice readiness”); Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327 (2001) (arguing for the need for clinical pedagogy to sustain and pass on to students the passion for social justice and the knowledge, awareness, and desire to use law in pursuit of social justice).

¹⁰ See, e.g., Aiken, *supra* note 9, at 288-98 (articulating the urge to do more than is possible in a law clinic course and recognizing the need to make choices and decisions).

¹¹ See, e.g., Wizner, *supra* note 9 (arguing that law clinics providing opportunities for law students to advocate for individual low income clients are an effective model for teaching students about the need for social justice advocacy); Frank Askin, *A Law School Where Students Don't Just Learn the Law; They Help Make the Law*, 51 RUTGERS L. REV. 855 (1999) (arguing that law clinics, such as the Constitutional Litigation Clinic at Rutgers Law School, which handle law reform cases are the most effective in teaching students about social justice).

¹² *Id.*

¹³ See, e.g., Askin, *supra* note 11.

¹⁴ See, e.g., Juliet M. Brodie, *Little Cases On The Middle Ground: Teaching Social Justice Lawyering In Neighborhood-Based Community Lawyering Clinics*, 15 CLIN. L. REV. 333 (2009).

wide range of legal issues. In this article, the authors describe two examples of integrated law clinic programs, sharing our vision of what constitutes an integrated clinic, what makes it so effective, and some of the unique pedagogical challenges and questions it poses for faculty teaching in law clinics. By providing descriptions of integrated clinical programs in different settings, one in a rural community focused on access to fair housing, and one in an urban community with a focus on employment matters, the authors demonstrate the benefits of varied applications of the integrated advocacy model and explore some of the issues the incorporation of this model raises.

Part I contains our definition of integrated clinical legal education. It also explains how this type of clinic design meets our dual goals of training students to be effective social change lawyers and providing quality representation that meets the needs of the community. Throughout the article we then highlight the ways this integration enables our students to develop analytical skills and identify the connections between the legal issues facing individual clients, the broader problems to be solved, and the political realities that impact how these issues can be addressed.

Part II introduces the clinics we teach: the Civil Justice Clinic at the Sandra Day O'Connor College of Law at Arizona State University and the Housing and Employment Litigation Clinic at the University of North Dakota School of Law. In this section, we outline the structures we have created to integrate different types of legal advocacy and pedagogy into our clinics. Professor Karin discusses the Civil Justice Clinic's work on behalf of individuals and organizations helping military families in the Phoenix metropolitan area. Then, Professor Runge describes the University of North Dakota School of Law Housing and Employment Law Clinic's work in a rural state.

Finally, in Part III, we reflect on the benefits and challenges of moving towards an integrated clinic from our first year teaching experiences. We identify some of our unanswered questions and practical issues others might consider before integrating their clinics.

By sharing our experiences to date, we hope to contribute to the ongoing conversation about how best to train effective social justice advocates and how to improve clinical legal education. In so doing, we hope our experiences will provide additional fuel to the discussion and facilitate a robust conversation about the importance of combining individual representation with other types of learning and work for the community within the same clinic.

I. WHAT IS AN INTEGRATED LAW CLINIC?

Two primary goals of clinical legal education are: (1) providing

high quality educational opportunities for law students; and (2) providing quality representation to underserved, low income clients in an effort to impact social change.¹⁵ Taking these goals together, we share the view held by others that a primary purpose of clinical legal education is to train students to be effective legal advocates that bring needed and thoughtful social change to their communities.¹⁶ Effective social change legal advocacy today requires an attorney to undertake a multifaceted problem-solving process that requires the application of a spectrum of legal skills and legal strategies often in multi-disciplinary collaboration.¹⁷ Clinical legal education programs can most effectively achieve the goal of training law students to become effective social justice advocates by provide opportunities for them to engage in different models of social change lawyering simultaneously.¹⁸

The integrated approach to clinical education provides one of the best frameworks for creating optimal learning experiences for law students by providing multiple, different opportunities to experience lawyering, to reflect on what happened or was done, to interpret the task

¹⁵ See, e.g., Margaret Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL'Y & L. 161, 165 (2005) (discussing several goals of clinical education including teaching creative lawyering, ethical lawyering, and social justice); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 471 (1995) (discussing the mission and goals of clinical education); but see Susan Bryant & Elliott S. Milstein, *Reflections upon the 25th Anniversary of the Lawyering Process: An Introduction to the Symposium*, 10 CLIN. L. REV. 19-27 (2003) (discussing the lack of consensus around the goal of clinical education is to promote social justice).

¹⁶ See Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 1010 (2004) ("Clinical education today creates opportunities for law students to recognize the injustices in society and in the legal system, to appreciate the role they can play in challenging social injustice and in reforming the legal system, to make society and the legal system more just, and to inspire them to do just that."); Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLIN. L. REV. 1, 10 (1997) (discussing ways to effectively teach about achieving justice in their daily lives as attorneys in clinical education).

¹⁷ See Srikantiah & Koh, *supra* note 8, at 488 ("Lawyers today must be familiar with legislative and local advocacy, public education, regulatory work, and broad-scale impact litigation."); Kruse, *supra* note 8, at 409-10 (discussing the efficacy of clinics in enabling students to develop problem-solving skills and describing different clinical structures that integrate more than one legal advocacy opportunity for students, reflecting that individual representation is not the only way nor the most effective way to make structural changes to improve access to justice); see also Scott L. Cummings & Deborah L. Rhode, *Public Interest Litigation: Insights from Theory and Practice*, 36 FORDHAM URB. L. J. 603, 616 (2009) (explaining that "[a] growing number of examples across different substantive fields suggest the potential of linking litigation to other forms of advocacy"); Louise Trubek, *Crossing Boundaries: Legal Education and the Challenge of the "New Public Interest Law,"* 2005 WIS. L. REV. 455, 461-67 (2005) (explaining that new public interest practice requires "reliance on flexible and dynamic tools").

¹⁸ See, e.g., Brodie, *supra* note 14 (describing the poverty law practice of a neighborhood-based community lawyering clinic).

or event and to see it in a larger context of social change lawyering, thereby enabling them to effectively apply their experience in the future.¹⁹ As Margaret Barry so wisely stated over sixteen years ago, law clinics focused exclusively on litigation not only fail to solve the problems faced by its clients, but they also limit the effectiveness of clinical education by providing law students with a limited view of their clients and the role that lawyers can play in addressing their needs.²⁰ The structure of an integrated law clinic provides the opportunity for law students to identify and to address the underlying social justice problems facing individual clients and communities, to engage in social change advocacy in multiple forums, and to develop skills in multiple areas.

Integrated law clinics may take a variety of forms but they all employ more than one legal advocacy strategy at a time, engaging the students in the process of considering an individual's legal issue as a part of a larger community and societal structure. Integrated law clinics may include a combination of individual representation and organizational representation in litigation, legislative advocacy and community education.²¹ They may combine patent or contract drafting with policy advocacy and community education.²² They may involve local, national, or international work.²³ Some of the more

¹⁹ See STUCKEY & OTHERS, *supra* note 3, at 166 (citing Steven Hartwell, *Six Easy Pieces: Teaching Experientially*, 41 SAN DIEGO L. REV. 1011, 1013 (2004)).

²⁰ See, e.g., Barry, *supra* note 1.

²¹ See, e.g., Kruse, *supra* note 8, at 408-09, 433-42 (arguing that clinical education programs are expanding the opportunities for students to develop problems-solving skills in other types of advocacy designed to meet unaddressed legal needs); Barry, *supra* note 1 (describing the involvement of law students in community projects in addition to individual representation of victims of domestic violence); Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?* 67 FORDHAM L. REV. 1879, 1920-26 (1999) (describing integration of public education seminars on divorce and teen dating violence and legislative reform efforts with direct representation in the Families and the Law Clinic at Catholic University Law School); 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, 315-16 (2001) (describing the integration of the development of community educational materials by law students as a community lawyering project in the clinical education program at the University of New Mexico School of Law); Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771 (1998) (describing the Community and Economic Development Law Clinic at American University, Washington College of Law); Meredith J. Ross, *A "Systems" Approach to Clinical Legal Education*, 13 CLIN. L. REV. 779 (2007) (describing the "systems" approach used at University of Wisconsin Law School that combines skills training with social justice).

²² Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLIN. L. REV. 147 (1997) (describing the transactional Small Business & Community Economic Development Law Clinic at The George Washington University Law School).

²³ See, e.g., Brodie, *supra* note 14, at 338-49 (describing the model of a "neighborhood-based community lawyering clinic"); Chai Rachel Feldblum, *The Art of Legislative Law-*

innovative models of integrated clinics are community development or community lawyering clinics that involve a wide variety of legal advocacy opportunities for students in response to the needs identified by their community partners.²⁴ Other law clinics that have focused on a particular population or area of law have integrated both individual representation and larger law reform opportunities for students.²⁵ The factors that result in the combination of legal advocacy strategies integrated into a law clinic may include the pedagogical goals of the clinic, the gaps in legal services identified by a community to be served, the interests of the students, and/or the skills and interests of the professors teaching in the law clinic. Regardless, we join those who urge that the decision to integrate a law clinic be intentional, involve careful consideration of these factors, and continued reflections, with a social justice focus.²⁶ Moreover, our notion of integration needs to be flexible to ensure responsiveness to student interest and community need, while at the same time retaining a clear focus on the learning goals and opportunities for law students.

We recognize the integrated model of clinical legal education may not be right for every clinic, just like there is no textbook that is right for every course.²⁷ However, we believe the mixture of skills taught and experiences provided to students through this framework provides a compelling model to achieve our mutual goal of training students across the country to be effective legal advocates that bring needed and thoughtful social change to their communities.

We also recognize that our experiences fall within a long tradition of social change lawyering and that it is important to maintain that

ying & *The Six Circles Theory of Advocacy*, 34 MCGEORGE L. REV. 785 (2003) (describing the potential contribution of the six circles theory of effective advocacy to structuring legislative and regulatory efforts on the national level); Lauren Carasik, "*Think Global, Act Local*": *The Praxis of Social Justice Lawyering in the Global Era*, 15 CLIN. L. REV. 55, 106-28 (2008); see also Tamar Ezer, Ludmylla Deshko, Nicola Gunn Clark, Enga Kameni, & Bruce A. Lasky, *Promoting Public Health through Clinical Legal Education: Initiatives in South Africa, Thailand, and Ukraine*, 17 HUM. RTS. BRIEF 27 (2010) (describing four interdisciplinary efforts involving clinical legal education, human rights, public education, and public health).

²⁴ See Brodie, *supra* note 14, at 338-49 (describing the different models of community lawyering clinics and the shared characteristics of a commitment to social justice and flexibility in terms of subject area and model of practice); Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLIN. L. REV. 445 (2002).

²⁵ See, e.g., Ross, *supra* note 21 (describing Wisconsin's Frank J. Remington Center Law Clinic as adopting a "systems approach" to clinical legal education, focusing on teaching law students how particular systems work, such as the criminal justice system, so that they will use their knowledge to improve the fairness and effectiveness of them).

²⁶ See, e.g., Barry, *supra* note 1.

²⁷ See Ross, *supra* note 21, at 806 (reminding us that there is no "one-size-fits all pedagogy" for clinical education).

tradition in our clinical programs today.²⁸ We believe that law clinics can be designed to teach students that lawyers have a variety of strategies and legal tools at their disposal to create social change, including individual representation, organizational representation, community education, and policy advocacy. Our particular paths towards integrating our law clinics are based in the varied backgrounds and experiences we describe below. We hope that sharing our stories helps others explore the importance of trying and testing new combinations of legal advocacy to provide meaningful learning experiences for law students.

II. TWO (IN PROGRESS) MODELS OF INTEGRATED LAW CLINICS

The Arizona State University Sandra Day O'Connor School of Law (ASU) and the University of North Dakota School of Law (UND) are located in very different parts of the country, face different challenges, and serve different populations focusing on different legal needs. Nonetheless, the faculty at both law clinics identified the need to develop programs that integrate a variety of legal advocacy strategies simultaneously. The following is a description of the integration of different legal strategies — individual representation, organizational representation, community education, and policy advocacy — in each law clinic. In the next section, we draw out issues that each clinic addresses as they maintain and build upon these integrated models.

A. *Arizona State University's Civil Justice Clinic – Working Toward An Integrated Clinic that Meets the Needs of an Urban Community*

The Civil Justice Clinic at the Sandra Day O'Connor College of Law at Arizona State University (“CJC”) “prepare[s] law students for the reality of law practice and assists them in becoming truly reflective professionals.”²⁹ The CJC does this through a one semester 6-credit course that combines coursework with client representation.³⁰ For more than 40 years, the CJC has focused on training law students by assisting Arizona's indigent population.

The CJC is located on the main campus of Arizona State University in Tempe near Phoenix, the state capitol and fifth largest city in

²⁸ See *supra* notes 1-9 and accompanying text.

²⁹ ASU CIVIL JUSTICE CLINIC, PROCEDURES MANUAL (2010) (on file with authors).

³⁰ Most semesters, the CJC also has a few returning veteran students who previously completed the class and elected to continue representing CJC clients. These “veterans” are not required to come to all of the seminars and earn a reduced number of credits for their work (with the expectation that they also work less hours).

America.³¹ In the last decade, this region has experienced a large population increase. From 2000 to 2009, the Census estimates that Maricopa County, the county in which Tempe and Phoenix are located, grew by 31 percent.³² Despite this population boom, the area has not seen a corresponding increase in lawyers. In 2009, there were 13,028 lawyers registered in the state.³³ Of those lawyers, only a small percentage represent the interests of the 13.4% of the population that fall below the federal Poverty level on a full-time basis,³⁴ and few legal service providers work on employment issues.³⁵ Consequently, significant access to justice issues exist.³⁶ ASU has a robust clinical program that works to fill in some of that gap, and train the state's future lawyers on how to represent the state's indigent population.

Since its inception in 1969, the substantive areas of CJC's client representation have adapted to meet shifting pedagogical goals, community needs and changing faculty expertise and interest. Traditionally, the CJC provided students with the opportunity to represent clients in civil disputes and administrative proceedings under faculty supervision. In recent years, the CJC has focused on cases for consumers who have been defrauded in commercial transactions, clients who needed legal assistance related to fraudulent schemes against homeowners, landlord/tenant disputes and predatory mortgage lending cases.³⁷ Many of these cases were large civil litigations, which the

³¹ *City Statistics: Community Trends and Profile*, CITY OF PHOENIX, <http://phoenix.gov/CITYGOV/stats.html> (last visited Jan. 30, 2011).

³² *State & County Quick Facts: Maricopa, Arizona*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/04/04013.html> (last visited July 12, 2010). In 2009, the Census estimated 4,023,132 people in Maricopa County. *Id.*

³³ A.B.A., NATIONAL LAWYER POPULATION BY STATE (2009), http://new.abanet.org/marketresearch/PublicDocuments/2009_NATL_LAWYER_by_State.pdf. There were approximately 12,000 lawyers practicing in Arizona in 2000. Daniel Gonazles, *Immigration Cases*, ARIZ. REPUBLIC, May 3, 2005 at B1.

³⁴ See U.S. Census Bureau, *supra* note 32. There are three Legal Service Corporation funded legal aid programs in the state (Community Legal Services, DNA People's Legal Services and Southern Arizona Legal Aid.), Volunteer Lawyer Programs, and a handful of organizations that provide direct legal services and other lawyering for these communities in need. See AZLawHelp.org, <http://www.azlawhelp.org/>, for more on these organizations.

³⁵ There are organizations that do critical work assisting individuals seeking to obtain unemployment insurance benefits and support individuals with disabilities on employment law matters. See, e.g., *Legal Practice Areas*, COMMUNITY LEGAL SERVICES, <http://www.clsaz.org/site/what-we-do/legal-practice-areas> (last visited Jan. 30, 2011); *Getting Help*, ARIZONA CENTER FOR DISABILITY LAW, <http://www.acdl.com/default.htm> (last visited Jan. 30, 2011).

³⁶ In 2007, the Arizona Foundation for Legal Services & Education conducted a legal needs study to highlight the state's unrepresented civil needs. ARIZONA FOUNDATION FOR LEGAL SERVICES & EDUCATION, VOICING A NEED FOR JUSTICE: SURVEY RESULTS ON LEGAL AID ACCESS IN ARIZONA (2007), <https://www.azflse.org/download.cfm?filename=AzLegalNeedsStudy2007&type=pdf&loc=azflse>.

³⁷ Press Release, Sandra Day O'Connor College of Law, ASU Civil Justice Clinic

CJC supplemented with narrower – but just as important – cases helping persons who had been wrongfully denied unemployment insurance benefits.³⁸

As the clinic has done many times in the past when faculty changed, my colleagues and I began re-envisioning the clinic to meet shifting community needs and new faculty interests when I arrived in fall 2009. As discussed below, through this (ongoing) process, we have redefined how we teach the essential elements of clinical legal education and apply them beyond the CJC's historic focus on civil litigation. The current CJC re-envisioning has resulted in three main changes. First, our work now includes a range of civil litigation, public education, legislative and regulatory work. Second, the CJC shifted its substantive focus in state, federal, and administrative litigation to employment law matters. Finally, we have engaged in outreach efforts to new populations in the community, such as military families, in hopes of providing students the opportunity to fill the access to justice gap and meet the needs of these groups.

1. *Reflections on G-FLAC and the Creation of the Work-Life Policy Unit*

With my arrival, ASU launched the Work-Life Policy Unit of the CJC to provide students with opportunities to represent local and national organizations in legislative and/or regulatory processes on employment law matters. The genesis of this Unit in terms of clients served, subjects covered, and pedagogical design stems directly from my participation in the Georgetown University Law Center's Elements of Clinical Pedagogy course,³⁹ and teaching in the Federal Leg-

Secures \$250,000 Settlement in Foreclosure Rescue Scheme Case (July 22, 2010), available at <http://www.law.asu.edu/News/CollegeofLawNews.aspx?NewsId=2799>.

³⁸ Unemployment insurance benefits are a good example of how the CJC tries to fill a gap in the legal community's ability to meet the needs of low or no income persons. From 5/1/09 to 4/30/10, there were 65,108 appeals of the state's initial determination whether to provide benefits to claimants. Letter to Ellen Katz, Morris Inst. for Justice (June 3, 2010) (on file with authors). In Maricopa County, Community Legal Services is the largest legal service provider for claimants in unemployment insurance appeals. They have one lawyer who takes these cases on a part-time basis. The CJC is the second largest legal service provider for these appeals.

³⁹ This course is part of the Georgetown Clinical Teaching Fellowship experience and allows fellows to learn about the design of all of Georgetown's clinics and explore various pedagogical choices based on those various designs. See Wallace J. Mlyniec, *The Intersection of Three-Visions—Ken Pye, Bill Pincus, and Bill Greenhalgh—and the Development of Clinical Teaching Fellowships*, 64 TENN. L. REV. 963 (1997); THE GEORGETOWN UNIVERSITY LAW CENTER, *THE FIRST 125 YEARS: AN ILLUSTRATED HISTORY OF THE GEORGETOWN UNIVERSITY LAW CENTER* (1995). I was a fellow in this program from 2006–2008 and then stayed for another year as an Adjunct Professor with the Clinic and Legislative Lawyer for Clinic client Workplace Flexibility 2010.

islation and Administrative Clinic at Georgetown University Law Center (“G-FLAC”) from 2006 to 2009.⁴⁰

G-FLAC was a one semester 10-credit class during which students learned the art of “legislative lawyering,” one circle in Professor Chai Feldblum’s innovative Six Circles of Advocacy theory.⁴¹ A legislative lawyer is someone with knowledge of political realities and a thorough understanding of the law. Utilizing this theory, G-FLAC students were legislative lawyers in training (“LLTs”). LLTs learned to develop effective advocacy skills by representing non-profit organizations in legislative and administrative advocacy and in related policy development efforts.

The G-FLAC model was used to form the basic structure of the Work-Life Policy Unit of the CJC. Unlike G-FLAC, which tailored student experiences around only legislative lawyering training, the Work-Life Policy Unit was intentionally integrated as only one part of the CJC.⁴² The goal is to allow student attorneys to learn about effective social change advocacy through the formulation, articulation, negotiation, policy development and advocacy of new employment laws and regulations as well as the interpretation and revision of existing ones.⁴³ And it allows students to learn this at the same time they are taking individual cases involving some of the very same laws they are working on as LLTs.

To help with the transition, Workplace Flexibility 2010 (“WF2010”), my main client at G-FLAC, became the Work-Life Policy Unit’s first policy client. WF2010 is an organization funded by the Alfred P. Sloan Foundation with the primary goal of increasing access

⁴⁰ *Federal Legislative & Administrative Clinic*, GEORGETOWN LAW, <http://www.law.georgetown.edu/clinics/flc/index.html> (last visited Jan. 27, 2010). In 2006, the Clinic was called the Federal Legislation Clinic. The name was changed in 2008 to more accurately reflect the range of legislative lawyering work students were doing.

⁴¹ Feldblum, *supra* note 23.

⁴² Interview with Marcy Karin, Associate Clinical Professor and Director of the Work-Life Policy Unit of the Civil Justice Clinic at Arizona State University’s Sandra Day O’Connor College of Law (Feb. 2010) *available at* http://wfnetwork.bc.edu/The_Network_News/68/The_Network_News_Interview.pdf.

⁴³ The Work-Life Policy Unit also works to meet the school’s goal to be “more involved in global, national, regional and local public policy issues.” Kerry Lepain, *ASU Law: A Legal Makeover*, STATE PRESS, April 30, 2010. In 2008, Paul Berman, Dean of the Sandra Day O’Connor College of Law, noted that policy training is a critical part of the future of legal education. The CJC’s restructuring vision toward being an integrated law clinic fits with the Dean’s vision to create the law school of the future. As Dean Berman has recognized, society’s problems have legal, policy, and regulatory aspects that need to be addressed, and “there are always law and policy components to potential solutions.” *Id.* Training students on legislative lawyering also fits within President Michael Crow’s “reconceptualization” of ASU as the “New American University” that is committed to transforming society and being socially embedded in the community. Video clip: ASU: A New American University, *available at* <http://newamericanuniversity.asu.edu/>.

to workplace flexibility — including flexible work arrangements, time off, and career flexibility — in a manner that works for employees and employers.⁴⁴ Having worked with WF2010 with student attorneys for three years during my time at G-FLAC, I knew it would be a good client to work with CJC students and offer students' innovative legislative lawyering opportunities.

Indeed, CJC students have served as LLTs for WF2010 since the Work-Life Policy Unit was created. By working with WF2010, student attorneys have had the opportunity to: (1) analyze international, federal, state, and local legislative proposals and laws; (2) analyze agency rulemaking and comments submitted in response to proposed regulations and requests for information from the Department of Labor; (3) draft background legal memoranda, charts, and talking points to further the client's understanding of important issues related to workplace flexibility; (4) prepare materials for policy development sessions; (5) generate ideas for federal agencies to increase workplace flexibility; (6) draft background materials for potential partnerships on these issues; and (7) contribute to flexibility policy with the Administration. In addition to thoughtful and creative legislative lawyering, student attorneys assist with strategic thinking, constituency development, and media relations. CJC and G-FLAC student attorneys are key members of WF2010's team.

Although there have been a few kinks, the work for WF2010 and other clients of the Work-Life Policy Unit has been fully integrated into the CJC's existing class and client work, and students now simultaneously represent clients in different processes utilizing various lawyering skills.

2. *Serving Those That Serve: Assisting Active Duty, Guard, Reservists, Veterans, and their Families.*

Another big change came in fall 2009 when the CJC started focusing on supporting military families. A series of events coalesced to make servicemembers and military families new community groups that the CJC started serving in hopes of meeting previously unmet access to justice needs. During my first semester at ASU, an orientation exercise was conducted for CJC staff and the ten enrolled students. Over the course of the exercise, we discovered that three students were in the military. One started law school just days after returning from his second tour of duty in Iraq, another was in ROTC

⁴⁴ See WORKPLACE FLEXIBILITY 2010, <http://www.workplaceflexibility2010.org/> (last visited Aug. 19, 2010); *Economic Performance and Quality of Life: Workplace, Work Force, and Working Families*, ALFRED P. SLOAN FOUNDATION, <http://www.sloan.org/program/32> (last visited Aug. 19, 2010).

and had a Guardsman brother who had been activated, and one who was hoping to be a Judge Advocate General of the Army after graduation. Other students also mentioned military members in their immediate families, and service connections in their extended families and communities. Additionally, CJC staff had direct connections to the military – our Program Coordinator was a Staff Sergeant in the Army in the 1980s and our Office Supervisor has sons serving in the Marines and Navy and who recently completed tours of duty in Iraq and Kuwait.

In addition, I had spent part of my last year at Georgetown working with students to learn about the work-life needs of the military, military families, and veterans as well as participating in outreach efforts for WF2010 with related communities. These groups identified how military service and its structures impacted the community and its members' work-life needs. Some of these needs were the same as needs of others in the communities, and some of the workplace flexibility needs military members have are acute to their particular shared experiences.⁴⁵

Through this work, my students and I learned about the significant tolls Operation Enduring Freedom (“OEF”) and Operation Iraqi Freedom (“OIF”) had on servicemembers, families, and communities across the country. But in the six semesters I taught at Georgetown, only one student spoke of a direct military connection. The contrast from my experiences at Georgetown where one student in three years mentioned a direct military connection to learning that a third of my students at ASU had a direct and active connection to the military surprised me. In fact, these numbers were striking to me at the time. Now that I have learned more about Arizona, the surprising part is that only one third had direct connections.

Indeed, there are a large number of military families in the Valley and the two current wars have had a huge impact locally.⁴⁶ Almost

⁴⁵ For example, since the military generally cannot hire lateral employees, supporting soldiers' work-life needs of seaman in the pipeline is important to high-ranking officers. See, e.g., *Task Force Life/Work*, NAVY PERSONNEL COMMAND, <http://www.persnet.navy.mil/CommandSupport/TaskForceLifeWork/> (last visited July 12, 2010). Other servicemembers, veterans, and military families also need various work-life supports. See, e.g., Shelley MacDermid Wadsworth & Kenona Southwell, *Military Families: Extreme Work and Extreme 'Work-Family'* (2010), http://workplaceflexibility.org/images/uploads/program_papers/wadsworth_-_military_families.pdf; Marcy L. Karin, *Time Off for Military Families: An Emerging Case Study in a Time of War. . . And the Tipping Point for Future Laws Supporting Work-Life Balance?*, 33 RUTGERS L. REC. 46 (2009).

⁴⁶ Active military bases in Arizona, two of which are in the greater Phoenix area, include: (1) Fort Huachuca (Army); (2) Yuma Proving Grounds (Army); (3) MC Air Station (Marine Corps); (4) Davis-Monthan Air Force Base; (5) Luke Air Force Base; and (6) Gila Bend AFS. American Forces News Service, U.S. Military Major Bases and Installations: Arizona, <http://usmilitary.about.com/library/milinfo/statefacts/blaz.htm> (last visited July 12,

40,000 people in Arizona work for the military: 21,240 are in active service, and 18,737 are in the Reserve and National Guard.⁴⁷ In addition to active servicemembers, approximately 11.9% of the state's population is veterans.⁴⁸ Specifically, there were 567,600 veterans living in Arizona in 2010,⁴⁹ including 47,600 female veterans,⁵⁰ and Arizona has one of the highest concentrations of returning OEF/OIF veterans in the country.⁵¹

These servicemembers (and their families) have legal issues related to the decision to serve our country. Some arise from deployment, such as a reduction in income that can make loan repayment difficult, the need to move before a lease is up, and/or concerns about job security when service is complete. Others arise when someone is transitioning back to civilian life. These issues are acknowledged in federal and state laws that grant military families unique legal protections. For example, the Servicemembers Civil Relief Act, which applies when a servicemember has to leave because of deployment or other service, grants consumer and housing protections.⁵² The Uniform Service Employment and Reemployment Rights Act and related state laws offer returning reservists reemployment rights.⁵³ The Americans with Disabilities Act may require reasonable accommoda-

2010). Plus, the state National Guard armories and reserve units of all branches are active. ARIZONA COALITION FOR MILITARY FAMILIES, www.arizonacoalition.org (last visited July 12, 2010).

⁴⁷ American Forces News Service, *supra* note 46.

⁴⁸ *Fact Sheet: Arizona*, U.S. CENSUS BUREAU, http://factfinder.census.gov/servlet/ACSSAFFacts?_event=Search&_state=04000US04&_lang=en&_sse=on (last visited Jan. 30, 2011).

⁴⁹ *Veteran Population: Arizona*, DEP'T OF VET. AFFAIRS, http://www.va.gov/vetdata/Veteran_Population.asp (last visited Jan. 31, 2011). Some estimate that there are now over 600,000 veterans in the state. Arizona Coalition for Military Families, *supra* note 46. In addition, "[o]ver 7000 National Guard troops from Arizona have deployed since 2001. Before, during, and after deployment, the families of these soldiers live in communities around the state[.]" *Id.* Half of the state's veterans live in Maricopa County. General (Retired) Gregg Maxon, Chairman, Arizona Bar Military Legal Assistance Committee, Address at the Sandra Day O'Connor College of Law Veteran's Day Conference, *Serving Those Who Serve: Basic Civil Protections for Soldiers, Veterans and their Families* (Nov. 11, 2010), available at http://media.law.asu.edu/law/2010/events/veterans_day_11-11-2010.wmv.

⁵⁰ DEP'T OF VET. AFFAIRS, *supra* note 49.

⁵¹ ARIZONA COALITION FOR MILITARY FAMILIES, *supra* note 46. 17,000 returning OEF/OIF veterans are enrolled in the VA Medical Center in Phoenix. Maxon, *supra* note 49. The Phoenix VA hospital is enrolling 250 veterans a month in service-related programs (PTSD clinics, address combat-related wounds, etc.). *Id.*

⁵² 50 App. U.S.C. §§ 511, 527, 535 (2008).

⁵³ 38 U.S.C. § 4301 (1994) *et seq.*; *see, e.g.*, Absence from Employment for Military Duty Act, A.R.S. § 26-168 (2011); *see also* Andrea Esquer, *Overview of Arizona's Time Off Laws for Military Personnel*, available at <http://www.law.asu.edu/justiceclinic/CivilJusticeClinic/NewsandEvents/2010VetsDayCLE/AZMilitaryTimeOff.aspx>.

tions for workers with service-related injuries.⁵⁴ Legal assistance also may be needed to help navigate the various veterans' preferences available to job applicants,⁵⁵ or assist families using job protected time off for a qualifying exigency or caregiving purposes under the Family Medical Leave Act,⁵⁶ or to address homelessness.⁵⁷

Since learning about the demographics and issues relevant to the local military population, the CJC has engaged in outreach to see how best to support this population (and still provide students with quality educational experiences).⁵⁸ Once word got out that we were interested in these issues, local offices of the Judge Advocate General began referring civil cases, and we partnered with the Military Pro Bono Project of the American Bar Association to take referrals for non-family law civil legal assistance.⁵⁹ The CJC now has a steady stream of intakes related to representing servicemembers, veterans, and their families in employment, housing, and benefits matters. And clinic students are responsible for handling all aspects of civil and administrative practice for these matters, including: (1) selecting cases; (2) interviewing and counseling clients; (3) performing fact investigation and conducting discovery; (4) developing a theory of the case; (5) drafting demand letters, pleadings, motions and appellate briefs; (6) negotiating with other parties; and (7) representing clients in hearings, arbitrations, mediations and trials.

One unique aspect of the servicemember work is the frequency by which matters may be resolved by educating interested parties

⁵⁴ 29 U.S.C. § 12101 (2009) *et seq.*

⁵⁵ See, e.g., ARIZ. REV. STAT. ANN. § 38-491 (2010); ARIZ. REV. STAT. ANN. § 38-492 (2010); see also Matt Cullimore, *Hiring Preferences for Veterans and Spouses of Servicemembers*, available at <http://www.law.asu.edu/justiceclinic/CivilJusticeClinic/NewsandEvents/2010VetsDayCLE/HiringPreferences.aspx>.

⁵⁶ 29 U.S.C. §§ 2601-2612(e) (2004); see Workplace Flexibility 2010 & ASU Civil Justice Clinic, *An Overview Of the FMLA's Provisions for Military Families*, available at <http://www.law.asu.edu/justiceclinic/CivilJusticeClinic/NewsandEvents/2010VetsDayCLE/MilitaryFMLA.aspx>.

⁵⁷ Approximately 8000 vets are homeless in Arizona. JJ Hinsley, *Volunteers offer homeless vets support, resources*, ARIZ. REPUBLIC, Feb. 6, 2010, at <http://www.azcentral.com/arizonarepublic/local/articles/2010/02/06/20100206homelessvets0206.html>.

⁵⁸ These cases have caused us to expand our definition of "our community." Our clients may deploy to other countries or get PCS'd (permanent change of station orders) to other communities during the course of representation. Some of these clients retain local ties to families and friends; others do not. As a result, the CJC has clients who are Valley soldiers currently living in Germany and Afghanistan. We view these clients as ongoing members of our community. And, of course, not all clinics limit services to a particular community located within a geographic distance. See, e.g., *What is Project Salute?*, PROJECT SALUTE, http://www.law.udmercy.edu/project_salute/whatisps.php (last visited July 12, 2010) (project trains volunteers all over country on veterans benefits appeals).

⁵⁹ A.B.A. MILITARY PRO BONO PROJECT, <http://www.militaryprobono.org/> (last visited July 12, 2010).

about the special legal protections afforded to servicemembers. Some of the relevant laws that help this client population were created or amended since OEF and OIF started less than a decade ago. As a result, many servicemembers, veterans, and military families do not understand the protections that are provided to them or how they may exercise or enforce them.⁶⁰ Similarly, many employers and creditors are unaware of these special protections or recent expansions of existing protections.⁶¹ Recognizing the amount of unknown and misinformation, the CJC has organized and participated in a range of public education efforts. For example, the CJC hosted a Veterans Day 2010 Conference to highlight the needs of this client population and bring community leaders together to discuss further collaborations.⁶² The CJC also has worked with state agencies, the new Military Legal Assistance Committee of the state bar association,⁶³ and other non-profit organizations to explore further legal supports for military personnel across the state and the provision of free self-help information and services at future events of the Family Justice Bus program⁶⁴ and local StandDowns.⁶⁵

In addition to individual representation and public education, the CJC has represented non-profit organizations on policy work that targets support for these same populations. For example, students drafted a white paper for The Twiga Foundation,⁶⁶ a non-profit organization that is dedicated to inspiring, promoting and maintaining a

⁶⁰ See also *Veterans Legal Support Center*, THE JOHN MARSHALL LAW SCHOOL, <http://www.jmls.edu/veterans/> (last visited July 12, 2010) (This community “lack[s] the necessary information and understanding to navigate the complexities of the VA claims and appeals process.”).

⁶¹ Students have had positive experiences with counsel for employers and creditors on the other side of these matters. In contrast to the adversarial nature of the opposing counsel on some of our traditional housing litigation, student attorneys have been thanked for bringing updates to the servicemember laws to the attention of other parties. See, e.g., Letter from Creditor to Civil Justice Clinic Student Attorney, Nov. 6, 2009 (on file with authors) (“Keep up the good work and good luck with your future practice of law.”).

⁶² *2010 Vets Day CLE*, <http://www.law.asu.edu/justiceclinic/CivilJusticeClinic/NewsandEvents/2010VetsDayCLE.aspx>; see also *Veterans Day CLE – Serving Those Who Serve*, SANDRA DAY O’CONNOR COLLEGE OF LAW, http://community.law.asu.edu/events/event_details.asp?alias=VetsCLE (last visited Jan. 30, 2011).

⁶³ *Military Legal Assistance Committee*, MYAZBAR, <http://www.myazbar.org/SecComm/Committees/MLAC/> (last visited Jan. 30, 2011).

⁶⁴ See Family Justice Bus program described in text accompanying note 135 *infra*.

⁶⁵ StandDowns are short events that bring collaborative partners from the federal, state, and local government and community organizations together to provide services, often ranging from employment and benefits counseling to referrals and information about housing, substance abuse and food programs. StandDowns are particularly important tools for servicemembers, veterans, and their families who are outside of the Phoenix or Tucson metropolitan areas, where access to legal assistance is even more difficult.

⁶⁶ THE TWIGA FOUNDATION, <http://www.twigafoundation.org/> (last visited Jan. 30, 2011).

family-consciousness at home, in the workplace and in the community.⁶⁷ The white paper provided an overview of the legal framework for flexible work arrangements, time off, and career flexibility for state employees in Arizona and Michigan, and then offered select observations for other state agencies, other states, and other employers striving to be employers-of-choice by increasing employees' access to additional workplace flexibility.⁶⁸ Students focused on specific workplace flexibility options for military families in describing the frameworks in both Arizona and Michigan.⁶⁹

3. *Integrating Policy Analysis and Advocacy into ASU's CJC*

The decision to shift the CJC's priorities has been questioned by some. We have faced the following questions: (1) aren't clinics supposed to train students to practice law for poor people?; (2) why not focus on clients without access to JAG lawyers?; and (3) why aren't you training your students to practice law? These questions have led to some thought-provoking conversations (in and out of class, with colleagues, students, and community stakeholders).

The first question comes out of a historical understanding that one mission of law clinics is to represent indigent persons. Historically, the most expansive growth of clinics was spurred by a "[c]oncern for the poor in the 1960s and the resulting 'war on poverty' [with a] primary focus [of] providing legal services to those who were unable to afford lawyers."⁷⁰ On its face, servicemember work may not immediately fit with the traditional law school clinic model as some servicemembers, veterans, and military families are above poverty guidelines and can afford private representation.⁷¹ Nonetheless, when you look past the generalization, it becomes clear that some military

⁶⁷ Gregory Fetterman, Meghan T. McCauley, MacKenzie Deal & Marcy Karin, *The Legal Framework for States as Employers-of-Choice in Workplace Flexibility: A Case Study of Arizona and Michigan* (2009), <http://www.twigaoundation.org/documents/TwigaWhitePaper.AZ.MI.Final.3.pdf>.

⁶⁸ *Id.*

⁶⁹ *Id.* at 2, 7, 14, 15.

⁷⁰ 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, 521 (2003); see Brodie, *supra* note 14, at 371-374; Ross, *supra* note 21, at 780 ("As Kim O'Leary has noted, law school clinics 'developed historically as part of an explicit social justice agenda.'") (internal citation omitted).

Like many other law school clinics, the CJC typically does not take cases for prospective clients with sufficient income or other resources to pay for a private attorney and costs. Financial eligibility under the guidelines established for the Legal Services Corporation may inform case selection decisions, see 45 C.F.R. pt. 1611, but the CJC does not require poverty or indigency to be eligible for representation.

⁷¹ The 2011 poverty guidelines are available at <http://aspe.hhs.gov/poverty/11poverty.shtml>.

families are in poverty.⁷² Indeed, many low-income residents enlist (or re-enlist) in military service, particularly in this economy, as a way to make (or retain) a living wage, get an education, or obtain health-care for their families.⁷³ Plus, members of the Guard and Reserve may experience a severe drop in income when they are called into service, resulting in pay differentials with negative impacts on the economic security of these families.⁷⁴ Returning servicemembers also may come home with service-related disabilities or to no job. Further, “[v]eterans are twice as likely as the general population to become chronically homeless.”⁷⁵ Taken together, these factors help clarify that representing military families is actually consistent with the traditional notions of having law school clinics offer services to help people lift themselves and stay out of poverty.

On a related access to justice point, a civilian lawyer may have a hard time taking these cases without some education and training.⁷⁶ First, the military uses its own lingo, abbreviations, and structures that intersect with civilian institutions, all of which may seem daunting to

⁷² Maxon, *supra* note 49; see Anya Olsen, *Military Veterans and Social Security*, SOCIAL SECURITY BULLETIN, Vol. 66 No. 2, 2005/2006, available at <http://www.ssa.gov/policy/docs/ssb/v66n2/v66n2p1.html> (“[A]lmost one out of every four adult Social Security beneficiaries has served in the United States military. In addition, veterans and their families make up almost 40 percent of the adult Social Security beneficiary population.”).

⁷³ See Office of the Under Secretary of Defense, Personnel and Readiness, *Population Representation in the Military Services FY2007*, at Table B-41, available at http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2007/appendixb/b_41.html (contains charts with the FY2007 breakdown of individuals who have enlisted in each branch by income level and whether the person has previous military service); Office of the Under Secretary of Defense, Personnel and Readiness, *Executive Summary of the 2009 Population Representation in the Military Services*, at 33-35, available at <http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2009/download/PopRep09Summ.pdf> (demonstrates a correlation between the current recession in the civilian labor market and enlistment in the military).

⁷⁴ See Carolyn Hirschman, *Supporting the troops: Employers who offer military differential pay should also offer tips for dealing with the tax rules*, HR MAGAZINE (July 1, 2007) (providing an overview of the laws for and policies of employers who offer active duty income differentials).

⁷⁵ Rick Little & Stacy Garrick Zimmerman, *Helping Veterans OVERCOME Homelessness*, 43 CLEARINGHOUSE REV. 292, 292 (2009); see also *supra* note 57.

⁷⁶ Nonetheless, a growing number of law schools have created clinics focused on this client base. The majority appear to have students work with veterans to file or appeal for disability benefits with the Department of Veterans Affairs. See, e.g., *What is Project SALUTE?*, PROJECT SALUTE, http://www.law.udmercy.edu/project_salute/whatisps.php (last visited July 12, 2010); *Lewis B. Puller, Jr. Veterans Benefits Clinic*, WILLIAM & MARY LAW, <http://law.wm.edu/academics/programs/jd/electives/clinics/veterans/index.php> (last visited July 12, 2010); *Veterans Legal Support Center*, THE JOHN MARSHALL LAW SCHOOL, <http://www.jmls.edu/veterans/> (last visited July 12, 2010). This is an important process for which a large number of veterans need assistance. But this is not the only area for which assistance is needed. For this reason, the CJC has not limited itself to claims for benefits.

an attorney unfamiliar with them.⁷⁷ Second, lawyers may experience a learning curve to understand how the military impacts active duty, Guard, Reservists, veterans and military families and to learn about the unique legal protections their status provides.⁷⁸ Third, these cases usually involve little money and private attorneys may hesitate to take them – just as they do for other poverty law matters – for that reason. Finally, there is the misperception that servicemembers and military families have access to JAG lawyers who will represent them in civil cases. Some JAG lawyers are able to represent a limited number of servicemembers and their families in civil disputes.⁷⁹ Local JAG lawyers, however, usually do not get involved in private civil disputes, although they may give referrals on nonmilitary matters like Guard or Reservists reemployment with civilian employers, landlord/tenant disputes, and disputes with credit agencies.⁸⁰ This misunderstanding that JAG lawyers will take these cases has led to studies that have highlighted a “lack of access to competent legal representation” for servicemembers.⁸¹ As a result, one of the CJC’s goals is to increase the number of lawyers in the community who are knowledgeable about the unique situations of our local military families and might be willing to take these cases on a pro bono or reduced fee basis.

The question of why we aren’t training students to practice law has a simple answer: this is legal work. However, it highlights that the community (including some colleagues at law schools) needs to be educated to understand that legislative and community lawyering is legal

⁷⁷ Recognizing this language issue, class materials include a glossary of common military terms and slang, as well as a listing of rankings relevant to this work. ASU Civil Justice Clinic, *A Cheat Sheet of Abbreviations and Terms for Civilians Interested in Representing Military Clients* (2010), available at <http://www.law.asu.edu/justiceclinic/CivilJusticeClinic/NewsandEvents/2010VetsDayCLE/MilitaryTerms.aspx>.

⁷⁸ See generally David Ackerly, *Special Considerations When Representing Military Veteran Clients*, 43 CLEARINGHOUSE REV. 249 (2009) (articulating some of the opportunities and challenges of representing those who are or have served in the military).

⁷⁹ There are relatively few JAG lawyers available compared to the number of potential clients and claims they could serve. See generally Stephen T. Lynch, *An Introduction to Legal Services and Protections for Military Personnel and Their Family Members*, 43 CLEARINGHOUSE REV. 200, 201-05 (2009) (providing an overview of the scope of services offered and to whom they are offered, as well as describing some of the limitations on the availability of free legal representation).

⁸⁰ See *id.*; *Legal Services FAQ*, U.S. NAVY JAG CORPS, http://www.jag.navy.mil/legal_services/legal_services_faq.htm#lq2 (last visited Jan. 30, 2011). JAG staff often try to find referrals for cases they cannot take. The CJC has taken referrals directly from local JAG lawyers and cases local JAG lawyers have referred to the ABA’s Military Pro Bono Project. A.B.A. MILITARY PRO BONO PROJECT, <http://www.militaryprobono.org/> (last visited July 12, 2010). This project requires servicemembers to be at or below an E6 pay grade to use this service. *Id.*

⁸¹ See, e.g., A.B.A., REPORT OF THE WORKING GROUP ON PROTECTING THE RIGHTS OF SERVICE MEMBERS (2004), <http://www.abanet.org/legalservices/downloads/lamp/wgpr-smreport.pdf> (last visited July 12, 2010).

work.⁸² Working at G-FLAC, I saw the benefits of training law students in policy advocacy, including legislative and regulatory work. Since moving to Arizona, however, I have been asked regularly whether it makes sense to teach legislative lawyering outside of DC. My answer is always the same: *absolutely*. Local and state regulatory and legislative work happens across the country. Regardless of where it is located, lawyers play key roles in the drafting, revising, negotiation, and advocacy related to legislation, regulation, and interpretations of both. Of course, it helps that the CJC is located in the same region as the state capitol, where a fair amount of this work necessarily takes place. But, even if it were not located in close proximity to a policy hub, there is a critical role for effective policy lawyers outside of DC.⁸³ The federal legislative and regulatory processes are enhanced by the participation of trained legislative lawyers representing clients across the country. In fact, this “outside the beltway” perspective is regularly sought from key stakeholders in DC. Moreover, members of Congress actually do want to hear from their constituents — including clinic clients. Having lawyers (or in our case, student lawyers) provide the legal arguments and support for a client’s position on pending legislation or regulations may persuade the member or rulemaking staff to vote a particular way or revise regulatory language or issue a favorable interpretation. Further, performing these legal and policy tasks fills a void created by the Congressional restrictions on organizations funded by the Legal Services Corporation that has prevented many in the direct legal service community from performing these tasks since 1996.⁸⁴

In addition, some of the key skills of this work include learning how to understand and articulate the specific legal and political needs of a client, how to plan and implement a research strategy, locate, analyze, and apply relevant legal and policy data, draft clear, effective, and explain issues relevant to a client orally and in plain English pol-

⁸² See *infra* Part III.F.1.

⁸³ In WF2010’s words, CJC students “have made a real difference by engaging in federal policy discussions from far outside the beltway. Their work allowed us to become experts on some of the most difficult legal and policy issues facing American workers and their families. We are small shop — but ASU’s Civil Justice Clinic helped us make a big impact in Washington and beyond.” Letter from Katie Corrigan, Director, Workplace Flexibility 2010, available at <http://www.law.asu.edu/justiceclinic/CivilJusticeClinic/ClientTestimonials.aspx>.

⁸⁴ Omnibus Consolidated Rescissions and Appropriations Act, Pub. L. No. 104-134, § 504(a), 110 Stat. 1321, 53 (1996); see Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 22 (2004) (describing the impact this shift away from services-led law reform had on institutionalization of pro bono); Cummings & Rhode, *supra* note 17; Melissa Hart & Paul M. Secunda, *A Matter of Context: Social Framework Evidence in Employment Discrimination Class Actions*, 78 FORDHAM L. REV. 37 (2009).

icy documents.⁸⁵ These are important skills on which to train law students, regardless of the type of post-graduation practice or location a student intends.

In fact, many of the skills involved in legislative lawyering are the same as those used in the direct services context – e.g., researching, writing, oral advocacy – but the contexts in which they are applied are different.⁸⁶ Instead of focusing primarily on cases, students focus on interpreting statutes, regulations, bills or ideas for any of these (although legislative lawyers need to understand cases and litigators need to understand statutes, regulations, and bills).⁸⁷ Instead of making appearances in front of judges and administrative law officers, students advocate before members of the legislature, executive, or administrative staff.⁸⁸ Instead of representing an individual client with individual needs, the client is often an organization that serves the needs of a large group of individuals.⁸⁹ Finally, instead of heading to probate, justice and superior court, students find themselves in the halls of the State Capitol or at meetings with members of like-minded public interest organizations.⁹⁰ In addition, combining the representation of individuals with other types of legal work allows students to explore an expanded understanding of social justice – how you use one person’s situation to help lift others out of similar ones.⁹¹

Given the importance of this work, our students learn how to be legislative lawyers, litigators, negotiators, educators, and socially conscious community members. They also learn how all of these stake-

⁸⁵ Feldblum, *supra* note 23, at 805-14, 826.

⁸⁶ *Id.*; 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, 393 (2008) (observing that “[t]o some extent, community lawyering clinical faculty are teaching the same skills that are being taught in other clinics”); Shiela R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CAL. L. REV. 1999, n.205-12 (2007) (listing the various overlapping and “mutually supportive” roles that lawyers working with the West Harlem Environment Action organization, including Fordham Law School students and faculty, must be able to switch between the following roles: “litigator and litigation analyst, transactional lawyer, political strategist, negotiator, community educator, broker, writer, lobbyist, and staff member”).

⁸⁷ Feldblum, *supra* note 23, at 805-14, 826.

⁸⁸ *Id.*; see also Tokarz et al., *supra* note 86, at 393 (noting legal skills can be taught “in many places outside of the courts: at local community education events, in government buildings. . . .”).

⁸⁹ Feldblum, *supra* note 23, at 805-14, 826.

⁹⁰ *Id.*

⁹¹ 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, 206, 254-55 (2006) (describing the work of the Neighborhood Law Project of the University of Wisconsin Law School that combines wage and hour cases for low-income workers with legislative lawyering on a paid sick days campaign in Madison).

holders and processes in which law is utilized for the public good interact and intersect with each other.

B. The University of North Dakota School of Law's Housing and Employment Law Clinic – Working Toward An Integrated Clinic that Meets the Needs of a Rural Community

The Clinical Education Program at UND School of Law has provided learning opportunities for law students and legal services for underserved populations in North Dakota for over 30 years. In that time period, it has had a number of different law clinics. The Clinical Education Program currently consists of one law clinic, the Housing and Employment Law Clinic (UND Law Clinic). For the past several years, the UND Law Clinic has focused on helping law students develop lawyering skills and professional values by engaging in legal advocacy in fair access to housing and employment discrimination cases, unemployment insurance benefits appeals, workers' compensation appeals, and landlord-tenant cases.⁹²

The development of the Clinical Law Program at the University of North Dakota School of Law reflects the unique role of the law school in a rural state where there are limited public interest legal resources.⁹³ The University of North Dakota School of Law is the only law school in North Dakota and the UND Law Clinic is the only law clinic in North Dakota. UND Law School is one of the smallest law schools in the country, with a graduating class of 62 in May 2010. Until recently, the vast majority of the students enrolled at UND School of Law were from North Dakota, and many of them plan to stay in North Dakota upon graduation, working for one of several small firms or starting their own practice out of law school.

The State of North Dakota has the third smallest population of any state, with approximately 650,000 inhabitants⁹⁴ and the majority of its residents live in small towns. The bar in North Dakota had only 1,345 active members in 2009, the vast majority of whom graduated from the University of North Dakota School of Law.⁹⁵ North Dakota

⁹² See *Clinical Legal Education*, UNIV. OF N.D. SCHOOL OF LAW, <http://web.law.und.edu/Clinics/> (last visited Jan. 22, 2011). For the purpose of this paper, I am focusing exclusively on the legal advocacy in the UND Law Clinic related to fair housing access.

⁹³ See Diane E. Couselle, *When Clinics Are "Necessities, Not Luxuries": Special Challenges of Running a Criminal Appeals Clinic in a Rural State*, 75 MISS. L.J. 721, 731-38 (2006) (describing the special circumstances facing law clinics in rural states, often where they are the only law clinic, including unique teaching and legal reform opportunities and expectations to address the legal needs of the poor throughout the state).

⁹⁴ *State & County Quick Facts: North Dakota*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/38000.html> (last visited June 26, 2010).

⁹⁵ A.B.A., NATIONAL LAWYER POPULATION BY STATE (2009), <http://new.abanet.org/>

is the 19th largest state in the country with 70,762 square miles.⁹⁶ Grand Forks, North Dakota, where the University of North Dakota School of Law is located, is on the state's border with Minnesota and approximately one hour from the Canadian border. Grand Forks has a population of approximately 50,000, and is the third largest community in North Dakota behind Fargo and Bismarck.⁹⁷ Eighty-nine percent of the population identifies as white, non-Hispanic and 5.6% of the population identifies as American Indian.⁹⁸ The largest industry in North Dakota is agriculture, but oil is also a significant and growing industry in the western part of the state. There are two air force bases, including Grand Forks Air Force Base, that historically employed a large percentage of the employment-age population in North Dakota, however, the percentage has decreased as the bases' populations have become increasingly civilian.⁹⁹ The small population and the rural nature of the state necessarily impact the structure, pedagogy, and legal advocacy strategies that the UND Law Clinic undertakes.

Not surprisingly, given the small population and the limited number of attorneys, the non-profit civil legal advocacy community in North Dakota is remarkably small and the tradition of social justice lawyering is limited. During my first year teaching in the UND Law Clinic, I attempted to identify legal advocacy groups for collaboration that were similar to those I had worked with in other communities such as legal services, the American Civil Liberties Union, workers' rights centers, women's rights organizations, or housing rights law centers. The few non-profit organizations that I was able to find in North Dakota do not undertake litigation or legal advocacy as a part of their mission. Organizations such as the North Dakota Human Rights Coalition, the North Dakota Council on Abused Women's Services, North Dakota Women's Network and Fair Housing of the Dakotas are largely volunteer organizations. None of the agencies has a lawyer on staff, although they all conduct some policy advocacy.¹⁰⁰

Legal Services of North Dakota struggles mightily to serve the legal needs of poor, vulnerable populations throughout the state, with a particular focus on Native Americans, the elderly, victims of domes-

marketresearch/publicdocuments/2009_natl_lawyer_by_state.pdf.

⁹⁶ See *North Dakota*, WIKIPEDIA, http://en.wikipedia.org/wiki/North_Dakota (last visited Aug. 19, 2010).

⁹⁷ *Id.*

⁹⁸ *Supra* note 94.

⁹⁹ See GRAND FORKS AIR FORCE BASE, <http://www.grandforks.af.mil/> (last visited Aug. 19, 2010); MINOT AIR FORCE BASE, <http://www.minot.af.mil/> (last visited Aug. 19, 2010).

¹⁰⁰ See NDHRC, <http://www.ndhrc.org/wp-publish/> (last visited July 12, 2010); N.D. COUNCIL ON ABUSED WOMEN'S SERVICES, <http://www.ndcaaws.org/> (last visited July 12, 2010); N.D. WOMEN'S NETWORK, <http://www.ndwomen.org/> (last visited July 12, 2010).

tic violence, and immigrants.¹⁰¹ However, their funding and mission limits them almost entirely to individual representation and legal advice.¹⁰² In addition, the State Bar Association of North Dakota, in conjunction with Legal Services of North Dakota, run a Volunteer Lawyers Program to provide access to attorneys for low-income individuals, however it does not include a policy advocacy or impact litigation component.¹⁰³ Combined, these programs represent the public interest legal advocacy community in North Dakota.

With limited resources and so few existing legal advocacy structures in North Dakota, it is critical for the UND Law Clinic to provide models of and opportunities for law students to engage in social justice advocacy to develop the skills to become social change legal advocates. Since the UND Law Clinic is the only law clinic in the state and a high percentage of graduates from UND School of Law remain in North Dakota, it is arguably even more important to implement an integrated advocacy model in the law clinic to enable the students to develop relationships with the few social change organizations that exist, to identify social justice problems in their communities, and to develop the ability to implement legal strategies to address them.

The Housing and Employment Law Clinic at UND School of Law is a 7-credit, one semester clinic that incorporates different legal advocacy strategies and pedagogical approaches, enabling law students to experience and evaluate the myriad of ways in which attorneys may create greater equal access to employment and housing in North Dakota.¹⁰⁴ The UND Law Clinic retains a student-driven, client-centered approach in all of the legal advocacy strategies that it utilizes, however, the scope and implementation of these approaches differs in the litigation and non-litigation components of the clinic as described in more detail in section III(A)(3).

Through the integrated model at UND Law Clinic, law students provide individual and organization representation simultaneously while conducting community education presentations that lead into engaging in policy advocacy, enabling them to develop an understanding of community legal needs, the role of attorneys, and the skills necessary to apply their legal education to address them. First, law clinic students represent individuals who have been denied access to hous-

¹⁰¹ See LEGAL SERVICES OF N.D., <http://www.legalassist.org/> (last visited July 12, 2010).

¹⁰² *Id.*

¹⁰³ See *State Bar Association of North Dakota Volunteer Lawyers Program*, STATE BAR ASS'N OF N.D., <http://www.sband.org/Volunteer/> (last visited on Aug. 9, 2010) (note that individuals are required to pay a deposit for some attorneys obtained through this program).

¹⁰⁴ See UND HOUSING AND EMPLOYMENT LAW CLINIC SYLLABUS AND CLINIC MANUAL SPRING 2010 (on file with authors).

ing in violation of state and federal anti-discrimination in housing laws in long-term, complex civil litigation. Second, clinic law students represent the interests of a community-based organization in long-term, complex litigation to enforce North Dakota and federal fair housing laws. Third, clinic law students are required to develop and to provide a community education presentation about fair housing laws to a community group. Through seminars twice a week, weekly team supervision meetings, weekly journaling, case rounds, and one-on-one supervision, these three distinct legal advocacy strategies are integrated and are linked to the overarching learning goals for the law students. The purposes of and the connections between the different types of legal advocacy strategies employed by the law clinic are also explored throughout each semester. This combination of opportunities provides students with a spectrum of experiences and perspectives on the legal system and the different roles that attorneys play, enabling students to develop and to utilize a broad range of skills to ensure equal access to justice.

1. Access to Housing: Representation of Individuals in Fair Housing Cases

In the UND Law Clinic, second-semester second and third year law students are assigned to cases in teams for the duration of the semester-long clinic.¹⁰⁵ Each semester, the law students practice law pursuant to the North Dakota Supreme Court Rules for Limited Practice of Law by Law Students.¹⁰⁶ Law clinic students are responsible for driving all aspects of their cases under supervision of clinic faculty, including: communicating with opposing counsel, drafting letters, pleadings, and motions; interviewing and counseling clients; conducting discovery; negotiating with other parties; representing clients in hearings, mediations and trials in state and federal court. Because our cases involve allegations of housing discrimination, the litigation often continues for several semesters, so our students may only be involved in some aspects of the litigation – filing a complaint, serving and responding to discovery, taking or defending depositions, settlement negotiations or trial. Although they may not have the opportunity to participate in every aspect of each case, they do have time and are expected to develop a relationship with their clients. They are

¹⁰⁵ Students have the option of enrolling in the clinic for a second semester, allowing for the opportunity to participate in the clinic for up to one year.

¹⁰⁶ N.D. SUP. CT. R. LTD. PRACTICE OF LAW BY LAW STUDENTS, available at <http://www.ndcourts.com/rules/Limited/frameset.htm> (last visited Aug. 19, 2010). Pursuant to their certification, second-semester, second-year law students and third-year law students enrolled in the UND Law Clinic practice law under the supervision of the co-directors of the UND Law Clinic, both of whom are members of the North Dakota bar.

also expected to take ownership of their cases and their trajectory, including exploring and evaluating litigation strategies such as their discovery plan or whether to file summary judgment. They also research and write legal memoranda to inform their decision-making process and evaluate claims and strategies. Finally, through supervised case team meetings with faculty, weekly journal entries, case rounds, and one on one interaction with the faculty in the clinic, the students are encouraged to reflect upon their case management and litigation-related skills.

Individual representation is one of the more traditional approaches used in law school clinics, with good reason.¹⁰⁷ The opportunity to represent a client under the supervision of law school faculty while still in law school is invaluable.¹⁰⁸ From the initial client interview to client counseling, to deposition preparation, to settlement negotiations and court hearings, the law student is able to develop a set of tangible legal skills while simultaneously discovering an enormous amount about themselves and their effectiveness as attorneys. Much has been written about how client-centered legal services is one of the most effective structures for achieving the goal of having law students develop a commitment to social justice.¹⁰⁹

Similarly, the struggle not to impose their own values and judgment on their client is revealing for many students and helps them determine their strengths and weaknesses as advocates. For example, a student may provide a client with information regarding the impact certain actions or decisions that the client makes may have on their case. Then, the client takes that information and may make a decision that the law student believes will have a negative impact on their case and moreover that the student thinks is wrong. In this way a student is faced with recognizing that a client may not take the advice that they propose, and develop skills to handle those situations. Moreover, the student learns to inquire as to why their client is making their decisions and understand that they may have made some assumptions about their client's needs or values.

In addition, while researching the law and applying it to the facts presented in a specific case, students sometimes become frustrated because of the limits of what the law can do. Exploration of the differ-

¹⁰⁷ See David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLIN. L. REV. 191, 194-97 (2003) ("The case-centered approach is arguably the dominant one in the United States today.").

¹⁰⁸ See Aiken, *supra* note 16 (discussing how law clinics in which students represent low income clients provide "disorienting moments" through which faculty may help students explore and develop their ideas of justice, fairness and morality).

¹⁰⁹ See Wizner, *supra* note 9 (discussing how legal services work is an effective way to teach students to reflect on and recognize their responsibility to seek social justice).

ence between “unfair” and “illegal” is often one of the most rewarding and difficult conversations to have with students as they reflect upon their experience representing a client. Often these conversations lead law students to question the limits of the law as written or implemented and to begin to identify a larger social issue to be addressed. Law students question the efficacy of individual representation in solving the larger social and legal issues that their clients are facing. This can lead to their desire to advocate for legislative change or participate in community education and awareness.

Although it is often rewarding for a student to be able to help a client “win” her housing discrimination case, the lawsuit may go on for years, during which time the client’s life continues and the connection between the wrong that the individual experienced and the lawsuit starts to become fuzzy for the student and the client. The passage of time results in changing perspectives, making it less clear what “winning” means and also blurring the connection between prevailing in the case and achieving justice for the client. For example, it may no longer be clear that the individual is experiencing the negative consequences of housing discrimination if she has been able to obtain an apartment that she likes and can afford in a nearby neighborhood since the lawsuit was filed. Nonetheless, the discrimination that this individual experienced is more widespread than this one person and a successful outcome of this litigation will likely impact a large number of residents of North Dakota given the limited number of landlords. This leads the law students to question the efficacy of individual litigation in achieving justice and whether there might be more effective ways to ensure that individual rights are not violated in housing and employment law, or better ways to resolve disputes if they are.

At the UND Law Clinic, law students are representing individuals who have been denied their basic right to housing free from discrimination. Although they are able to help the one person that they are representing, because of the structure of the clinic, they recognize that the experiences of their clients are part of a larger, more systemic legal problem. In some cases, our clients didn’t even know that it was illegal for them to be denied housing because of their disability or need for a reasonable accommodation, they just thought it was “wrong.” Empowering individuals with knowledge of their rights under the law enables the students to see the role of community education and awareness in social change lawyering and the reality that a law does not provide rights if the target audience does not know that it exists. Similarly, some of our students are hearing about discriminatory behavior for the first time themselves, and their growing awareness of what is happening in their community spurs them on to take

action. In Part IV, we explore some of the different pedagogical benefits and challenges that stem from integrating individual representation with other forms of legal advocacy in the clinic, including how to maintain the necessary flexibility to respond to and channel our students' interests in pursuing legal advocacy, while maintaining our focus on teaching goals, in a one semester clinic.

2. *Intervening to Enforce North Dakota and Federal Fair Housing Laws*

Prior to my arrival, Professor Margaret Moore Jackson had integrated one of the more creative methods for collaboration with non-profit advocacy organizations into the UND Law Clinic structure: representing a non-profit advocacy organization as a plaintiff-intervenor in litigation.¹¹⁰ Representing community-based organizations in litigation as plaintiff-intervenors is arguably an under-utilized legal advocacy strategy in integrated law school clinics and one that may be particularly useful in rural states such as North Dakota, which lacks a non-profit legal advocacy structure, but has a few vibrant non-profits advocating on behalf of underrepresented groups.

The concept of intervention is one that is often foreign to our students when they begin in the UND Law Clinic, and they are provided an opportunity to evaluate whether it is an effective social change advocacy tool. Intervention may be a subject that was briefly mentioned in their civil procedure class in their first year of law school, but what it is and how it is utilized in social justice practice are often new ideas. Having law students represent an advocacy organization as a plaintiff-intervenor in fair housing litigation brought by the state against a landlord provides a wonderful opportunity to discuss the role of advocacy organizations, the state, and individuals in ensuring access to justice, in this instance access to housing. For example, we discuss and analyze the possible reasons that the fair housing organization felt it was necessary to intervene in the case, and how that informs the litigation. For example, what is the role of the plaintiff-intervenor in a lawsuit and what is the relationship between the plaintiff and the plaintiff-intervenor. Are communications between the plaintiff and the plaintiff-intervenor confidential or privileged? How are strategy decisions in the litigation made? What is the goal of in-

¹¹⁰ North Dakota's Rule 24 of Civil Procedure governing intervention is almost identical to the federal rule of civil procedure, in that it allows a judge to permit a party to intervene in a case that has already been filed by granting a motion to intervene. N.D. R. CIV. PRO. 24(a)(2010). The intervening party must claim an interest relating to the subject of the action and be able to demonstrate that the outcome of the action may "impair or impede the applicant's ability to protect that interest." *Id.*

tervention for our client and how does that differ from the plaintiff's goals? We regularly discuss intervention as a legal strategy and question when it is appropriate or effective in case team supervision and case rounds.

Having the students represent an organization as a plaintiff-intervenor in complex fair housing case at the same time that they are providing representation to an individual who has experienced housing discrimination enables the students to compare their experiences and consider which is more effective, how they are different and similar, and what is unique to each experience. Organizational representation leads to an exploration of ethical communication with staff members, the executive director, and with board members.¹¹¹ Students have the opportunity to reflect upon the difference contours of an attorney-client relationship, for example, when the organization is the client rather than an individual, bringing focus to the "issue" represented by the organization's mission rather than an individual client's needs.¹¹² Similarly, factual investigation, case theory development, and forms of communication may be very different when representing a non-profit advocacy organization whose mission is to safeguard the rights of a larger population.¹¹³

As we discuss the mission of the organization we are representing, and how their work relates to the individual cases we handle in the law clinic, the need for the community education presentations the students provide on housing rights issues becomes more apparent to them. In these ways, the students explore the different possible relationships between lawyers and non-lawyer allies, and the benefit of a collaborative approach to the practice of law.

3. Identifying Collaborative Opportunities For Community Education On a New Equal Access to Housing Law for Victims of Domestic Violence

The UND Law Clinic has had an agreement with a statewide human rights, non-legal, non-profit to provide presentations in small communities throughout the state regarding human rights, specifically focusing on access to housing and access to employment as human rights. Working in teams each semester, the law students identify communities to contact and reach out to either groups of high school

¹¹¹ See Paul R. Tremblay, *Counseling Community Groups*, 17 CLIN. L. REV. 389, 390 (2010) (discussing the unique ethical issues that arise for students representing community organizations).

¹¹² *Id.*; see Paul D. Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLIN. L. REV. 545, 569-70 (1996) (describing how "hard" cases in which clients take a back seat to the issue raise questions of client-centeredness and the role of the public interest lawyer).

¹¹³ *Id.*

students or other community groups and offer to provide a presentation to raise awareness about human rights in North Dakota. Then they develop the presentation as a team, incorporating a mixture of audio-visual tools.

The connection between these community-based presentations on housing rights and the housing discrimination casework in the clinic is made explicit in several ways, including through in a seminar class where a representative from the statewide organization presents about their work toward advocating for human rights in North Dakota. Then, students are encouraged to reflect on their experiences through journaling throughout the semester, in class discussion, and informal conversations when developing their presentations and providing them, while at the same time representing individual and organizational clients addressing the same legal issues – fair access to housing.

The UND Law Clinic's relationship with the human rights organization ended in 2009, providing an opportunity to reevaluate continuation of the community education component of the law clinic. We decided that the community education component was an important aspect of the law clinic experience for law students based upon feedback that we had received from the students, and our own interests in modeling community education as an effective legal advocacy tool. I particularly felt strongly about retaining this component of the law clinic because of my growing awareness of the lack of community education and awareness in North Dakota about individuals' rights to fair housing and a desire for the students to learn another way to use their legal education to increase equal access to housing in North Dakota.

In my effort to become familiar with the local and statewide social change advocacy efforts in North Dakota and to model ways for attorneys to contribute to social change advocacy for our law students, I became a member of the board of the state coalition against domestic violence in North Dakota, the North Dakota Council on Abused Women's Services.¹¹⁴ Through my work with these organizations, I learned that a huge barrier to escaping a violent relationship in North Dakota is access to affordable, safe housing. I was familiar with this issue and the need in the urban communities in which I had previously practiced, but the need is more acute in rural areas such as North Dakota: low income housing is extremely limited, the temperatures drop below freezing for more than a month each year, many waitlists for public housing are closed, and there is a dearth of lawyers with train-

¹¹⁴ We encourage professors new to teaching in a law clinic to explore opportunities to join a board of a local non-profit organization. Both of us have found this networking opportunity invaluable to the redesign of our clinics.

ing, awareness and an ability to represent victims of domestic violence who experience housing discrimination.

In particular, victims of domestic violence in North Dakota are evicted from rental housing because of their victimization – either because the police are called to the apartment, causing community embarrassment and disruption or because of abuse taking place in the residence being deemed inappropriate – or being denied housing because of their status as victims of domestic violence.¹¹⁵ In an effort to address some of these issues, in 2009, North Dakota adopted a law that permits victims to vacate an apartment without paying the remainder of the months on the lease because of domestic violence, and that prohibits landlords from discriminating against a victim because of her decision to break a previous lease for this reason.¹¹⁶ In talking with advocates in the state, it was clear that victims and their service providers were unaware of these new rights, as well as existing protections under state and federal fair housing laws.

To address the need to raise awareness about this much needed new housing protections for victims of domestic violence, the UND Law Clinic collaborated with the state coalition against domestic violence, the North Dakota Council on Abused Women's Services, to develop, to schedule and to provide “know your rights” presentations on the housing rights of victims of domestic violence for staff members of domestic violence organizations in north east and south east North Dakota during the spring of 2010. These presentations and the accompanying seminar classes on domestic violence and the housing needs of victims, enabled the students to become familiar with the laws prohibiting discrimination in housing in their communities and particular groups who experience discrimination and the organizations working to assist them. The students were surprised to learn how few lawyers were providing assistance to victims of domestic violence in North Dakota and about the experiences of victims seeking housing in their communities.

Through process of developing and providing these presentations, the students articulated, through reflection in their journals and discussions in class, their growing awareness of the knowledge and authority that they have in their community as educators about the law.¹¹⁷ In addition, several students expressed their increased under-

¹¹⁵ See FAIR HOUSING OF THE DAKOTAS, FAIR HOUSING & DOMESTIC VIOLENCE & ASSAULT FACT SHEET No. 7 (on file with authors); see generally Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 AM. U. J. GENDER SOC. POL'Y & L. 377 (2003).

¹¹⁶ N.D. CENT. CODE § 47-16-17.1 (2010).

¹¹⁷ See Aiken, *supra* note 9, at 7 (discussing how helping students realize that they are sources of knowledge and authority is a developmental step toward “justice readiness”);

standing of the housing law and the housing needs of victims of domestic violence as a result of developing the presentations and desire to continue to support victims in their communities as a result of their involvement in the community outreach component of the clinic. Moreover, the students developed their public speaking skills and their ability to translate legalese into language that is accessible to non-lawyers. These presentations also led to discussion among the domestic violence service providers about the need to amend the new law so that it is more responsive to the experiences of their clients and to create an enforcement mechanism when violations occur. In response to those concerns, the law clinic may provide research assistance to the anti-domestic violence and sexual assault state coalition in their efforts to amend the legislation in the future.

III. INITIAL OBSERVATIONS FROM THE INTEGRATION OF DIFFERENT FORMS OF LEGAL ADVOCACY IN OUR CLINICS: BENEFITS, CHALLENGES, PROPOSED SOLUTIONS AND MORE QUESTIONS

Integration of the different legal advocacy strategies employed by these law clinic programs is challenging from both structural and pedagogical perspectives. In this section, we highlight some of the components these clinics have developed to facilitate integration. This integration enables them to draw connections between the different legal advocacy strategies, reflect on their efficacy and develop the skills to implement each of them effectively individually and collectively.

A. *Redesigning the Class Component to Develop “New” Skills Without Shortchanging “Traditional” Skills*

How professors choose to design the classroom component of their clinic (if they have one) is a difficult course design challenge.¹¹⁸ This is particularly true given the time limitations of our one semester clinics. When we add new types of legal practice to our clinic’s core competencies, we necessarily need to negotiate with our colleagues about what stays, what goes, and what is added. This is a work in progress for both of our clinics.

Kimberlee K. Kovach, *The Lawyer as Teacher: The Role of Educating In Lawyering*, 4 CLIN. L. REV. 359 (1998) (arguing for the integration of the experience of educating the community about the law in law schools).

¹¹⁸ See Philip G. Schrag, *Constructing a Clinic*, 3 CLIN. L. REV. 175, 238-41 (1996) (exploring the role of the syllabus in designing a clinic); see, e.g., Johnson, *supra* note 15, at 172-75, 184 (describing the process of experimenting with and revising the seminar component of the Women and the Law Clinic at American University in 2003-2004).

1. *Making Room for Seminars and Simulations on New Substantive Areas of Law and Skills Processes*

In addition to client work, the CJC includes five hours of class time a week. This mandatory seminar focuses on the basic substantive areas of law relevant to our client work and skills training. Traditionally, the skills training has taken place primarily in the form of simulation exercises in such matters as: interviewing, client counseling, fact investigation, civil discovery, depositions, negotiation, alternative dispute resolution, drafting settlement agreements, and courtroom advocacy. The existing substantive law classes and simulations fit for what was a primarily litigation clinic.

Tradeoffs, however, have been made since the CJC changed its primary substantive focus to employment law, and began taking non-litigation matters for new client populations. Every semester, the CJC reevaluates the topics and simulations for the seminar component and revises the syllabus accordingly. In fall 2009, a substantive class on the key federal and state employment laws and recent policy conversations was added. In spring 2010, we added a class on servicemember law and policy that covers the unique protections for these groups and utilizes a simulation that allows students to explore whether servicemembers and their families should be granted these special protections. In summer 2010, in response to student requests, we added classes on legislative lawyering, and an optional legislative research training session. These classes include a primer on how a bill becomes a law,¹¹⁹ how regulations are made and changed, and simulations designed to explore these processes.¹²⁰

In these new classes, students have the opportunity to recognize the policy choices that were made in creating laws specific for servicemembers. For example, in addition to covering the substantive provisions, we discuss the legislative intent behind the credit and housing protections of the Servicemember Civil Relief Act in class. Later during an in-class simulation, students “meet” with rulemaking staff at the Department of Labor to apply these and explore other policy rationales in a new context. Here, students advocate on behalf of a client for an expansion of the Family and Medical Leave Act’s regulatory definition of “qualifying exigency” to provide for additional access to job-protected time off for servicemembers, veterans,

¹¹⁹ This class starts with a viewing of the School House Rock!’s pivotal “I’m Just a Bill” video and distribution of Arizona’s chart equivalent that pictorially shows a bill (in a cowboy hat, spurs, and boots) make its way through the state legislative process. See ROB RICHARDS, ARIZONA BILL (1977), <http://www.azleg.gov/alisPDFs/hbillaw.pdf>.

¹²⁰ Students must take evidence before or concurrently with the CJC, however, we do not require administrative law or lawmaking courses as a prerequisite to enrollment.

and military families. Students are challenged to articulate why military families are treated differently than other client populations we serve, and pushed to question whether this is the right choice for a society to make. Similarly, students explore whether and how advancing new policies for this population helps others. Specific examples from and application to our representation for individual clients – those that are military families and those that are not – pepper these classroom discussions.

Like many clinics, the CJC revises its syllabus every semester to ensure it reflects the proper combination of training for the types of matters the clinic is handling that semester and for the students' future development. So far, student feedback has been overwhelmingly positive to the inclusion of these new classes and simulations.

2. The Use of Seminars to Connect Legal Advocacy Components of the Integrated Clinic at UND and to Encourage Analysis of Legal Strategies

In conjunction with the students' casework and community education projects, the entire UND law clinic meets twice a week in seminar classes. The topics explored in these seminars are a combination of skills-related and substantive law linked to the cases the students are handling in the clinic and the community education projects they are undertaking. For example, seminar class topics include development of case-related skills such as effective client counseling, negotiations, and motions practice. In these classes we explore the practical application of each of these skills in individual representation, organizational representation, and community education. In addition, we have integrated classes titled "Access to Justice" or "Public Interest Lawyering" that are designed to have the students analyze the benefits and limitations of individual representation and an exploration of the meaning of achieving "justice" for our clients and for the larger community.

In addition, toward the beginning of the semester we had a local attorney employed by a local anti-domestic violence advocacy organization and who is a UND Law School alumnae present to the class. This presentation includes an overview of the dynamics domestic violence, its impacts, and her work as an attorney representing victims. She also discusses the dire need for safe, affordable housing for victims of domestic violence and the discrimination that many of her clients experienced in attempting to keep their housing, or obtain new housing as victims of domestic violence. This presentation is followed by a seminar class in which the students are assigned readings that include cases that have been brought successfully on behalf of victims

of domestic violence who have been evicted from their housing because of their status as victims and a description of legislative advocacy to expand the housing rights of victims. Early introduction to the students of real life cases connecting to policy helps them appreciate the natural linkage between distinct advocacy methods.

3. *Accepting that the Students' Role in Selecting Policy and Community Education Projects May Be Different*

In addition to skills training and substantive classes on the relevant laws, the CJC has a weekly all staff meeting during which potential cases are discussed and either accepted or declined by "the firm". Time permitting, the intake/staffing process is supplemented with case rounds and exploration of issues from pending matters.¹²¹

The Friday staffings exist because students traditionally have had a large role in selecting the matters and clients the CJC accepts. The CJC uses a staffing procedure that assigns a student to conduct an intake for a potential new client. Students then "staff" the matter, meaning they speak with the potential client, perform an initial factual investigation, and conduct legal research. Students next prepare a memo that is distributed to the rest of the CJC (other students, faculty members, and staff), along with a recommendation about whether the CJC should take the case. During the Friday all firm meetings, any new intakes from the week are discussed, and students analyze what makes a case ripe, whether it is attractive for pro bono representation, any weaknesses of the initial factual investigations, whether (and what) additional information is needed, and potential theories of a case. These meetings are full of teaching moments that include heated discussions of class, social justice, and the need for systemic changes.¹²²

This staffing process has not translated well to our non-litigation work. After using it to staff potential legislative lawyering and community education projects for a year, with varying degrees of success, we have decided not to give clinic students the main vote on whether to accept this work in the future. Many of the challenges others have analyzed with respect to student work for complex advocacy projects have rung true for us.¹²³ The reality is that students rarely have the

¹²¹ See Susan Bryant & Elliott S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLIN. L. REV. 195 (2007); Srikantiah & Koh, *supra* note 8, at 470-71; Carolyn Grose, *Flies on the Wall or in the Ointment? Some Thoughts on the Role of Clinic Supervisors at Initial Client Interviews*, 14 CLIN. L. REV. 415, 418, 429, 432-33, 438 (2008).

¹²² For pedagogical and practical reasons, faculty has always retained a veto option to overrule the students' decision to take or deny representation in a particular matter.

¹²³ See, e.g., Srikantiah & Koh, *supra* note 8, at 474, 486-87; Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355, 390 (2008); Seielstad, *supra* note

background information necessary to understand why the advocacy issue is so important. Nor do they always have the knowledge necessary to understand how useful talking points, a white paper, a side-by-side, or a response to a NPRM may be (if they have even heard these terms used before; in our experience, the majority have not yet been exposed to them).¹²⁴ In addition, new non-profit clients need to be cultivated so they understand the role of students and that working with the clinic means they too have to buy into our pedagogical goals. This requires managing student and client expectations, as well as the community's understanding of what a law clinic does (and does not do) well, and it has not worked (yet) to have students do the intake and staffing recommendations on these matters.¹²⁵

At the UND Law Clinic, several factors that have limited the involvement of clinic students in the identification of the community education projects that the clinic chooses to undertake as well as their participation in the decision-making regarding which cases the clinic takes.

The type and number of cases and projects that the UND Law Clinic chooses to take is driven by several factors including the pedagogical opportunities they provide for clinic students. Because of the type of cases we focus on in the clinic – complex, long-term housing and employment discrimination cases – we are not regularly conducting intake and thus there is not an opportunity for the students to participate in the process of deciding when and what cases the clinic should take.

Similarly, the dearth of public interest legal organizations, and the limited social justice tradition impacts our ability to employ the same student-driven approach to the community education presentations. For example, it would be unrealistic for the students to develop relationships with the state domestic violence or human rights organization that led to the decision to provide community education presentations on aspects of access to housing for underserved populations within one or two semesters. In order to incorporate these op-

24, at 498-99; Kruse, *supra* note 8, at 431-33, 439-40 (describing the related “problem of turnover” and, later, “[c]ontinuity Strategies”); Brodie, *supra* note 14, at 352-53 (making a similar observation with respect to community lawyering).

¹²⁴ For example, most students understand the concept of litigation before you explain the particular steps or local process that needs to be followed in court to them. The same has not been true of legislative lawyering. Most students are also unfamiliar with the rules governing lobbying registration and any potential impact on tax-exempt status of the university or client. *See infra* Part III.F.3.

¹²⁵ *See infra* Part III.F.1. Of course, this may evolve over time, particularly once the community starts to understand that there is a greater role that student attorneys in the CJC may play in terms of community education and legislative lawyering. *See* Seielstad, *supra* note 24, at 510-12.

portunities, faculty develops and maintains relationships with the few non-profit organizations engaged in social change advocacy, looking for opportunities for the UND Law Clinic to formally collaborate through community education or legislative advocacy efforts as described in Section II(B)(3). However, once the opportunity is identified, the students take the lead on how to execute the project and manage the relationship with the community-based organization where the education presentation will be made.

B. Integrating the Client-Driven Model of Counseling into Other Types of Legal Advocacy

One opportunity and challenge that integrating more than one model of legal advocacy into a clinical program presents is the exploration of the concept of client-focused legal advocacy. In individual representation, this concept is often referred to as client-centered counseling, or client-driven litigation.¹²⁶ In the context of community education or in representing a community-based advocacy organization, applying the same philosophy to other forms of legal advocacy can be challenging. Students explore whether there is a client when providing “know your rights” presentations, who the target audience is for the information, and how to evaluate the efficacy of such presentations.¹²⁷ This leads to discussions about how to ensure that the information being provided is appropriate. For example, we discuss what the appropriate tone and language to use in the presentation to make it most accessible to the target audience. Similarly, we role play with the students, having them give their presentation in class, including role playing answering questions that community members may raise. As a part of this, students develop the ability to identify the difference between providing legal information and providing legal advice and consider the legal and ethical implications of this form of legal advocacy.

The UND Law Clinic integrates the client-driven or client centered approach into organizational representation. Most of the literature about teaching the client-driven approach to attorney-client

¹²⁶ See DAVID CHAVKIN, *CLINICAL LEGAL EDUCATION: A TEXT FOR LAW SCHOOL CLINICS* 51-52 (2002); Bob Dinerstein, *Client-Centered Counseling*, 32 ARIZ. L. REV. 501, 506-9 (1990) (describing the model of client-centered lawyering put forth in David A. Binder, Paul Bergman & Susan C. Price, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991)).

¹²⁷ See Tokarz et al., *supra* note 86, at 386-87 (discussing the challenges in collaborations with communities including clarifying who is the client, the client’s wishes, and how to best address them); Stephen Ellmann, *Client-Centeredness Multiplied*, 78 VA. L. REV. 1103 (1992) (articulating “guidelines for group client-centeredness” and four frameworks for group representation).

relationships is based upon the assumption that the client is an individual.¹²⁸ Transferring those skills to an organizational client has challenged our thinking about the approach. Often the individual who is the representative of a non-profit organization is the executive director. As the representative of the organization during the course of litigation, their interest and commitment to driving the litigation may be different than if they were the individual who experienced the denial of housing. For example, the executive director may have different expectations regarding the attorney-client relationship than an individual client, requiring the students to communicate with the representative about their expectations for the representation. Guiding students through the process of identifying their client's needs and interests in this context is particularly challenging, and yet critical, as it is a skill that they will likely be called upon to utilize again in the future if they ever represent a company in either the for profit or non-profit setting.¹²⁹

Utilization of the client-driven approach to lawyering into cases where we represent both an organizational client and an individual client as plaintiff-intervenors has also raised issues that may arise in impact litigation or class action litigation. For example, students explore whether we communicate with the clients together, or separately. This leads to a discussion about whether they have overlapping interests, but separate facts that give rise to their cases. The students make decisions through guided discussion regarding whether the same student should communicate with and develop relationships with more than one client. As a part of this process we explore the thoughts behind those decisions. For example, we address the different types of issues that may be raised by different forms of representation, such as what to do if two clients who are plaintiff-intervenors in the same case have different thoughts about strategies and steps to take in litigation. In addition, as counsel for plaintiff-intervenor in litigation, the representation provides an opportunity to explore the relationship between our client and the plaintiff. Finally, this litigation raises complex issues related to attorney-client privilege. For example, what should the student say to staff of the organization we are representing when attempting to reach the representative of the client? How the students handle these interactions is challenging and intricate, and requires careful discussion and reflection with the stu-

¹²⁸ See Srikantiah & Koh, *supra* note 8, at 460-61 (describing the selection of individual cases that provides students with the opportunity to engage in client-centered lawyering); Ashar, *supra* note 123, at 368-69 (describing the individual case-centered model of clinical legal education as including client-centered practice).

¹²⁹ See, e.g., Seielstad, *supra* note 24, at 505-06.

dents throughout the semester.

C. Modeling and Practicing the Benefits of Collaboration

Our experiences have taught us that multi-disciplinary collaboration is key for effective legal advocacy.¹³⁰ This is elevated when the clinic is located in a rural area such as the UND Law Clinic, where there are very few resources and legal advocacy structures. Integration of different forms of legal advocacy into the law clinic provides opportunities to discuss the importance and challenges of collaborating in different forms of legal advocacy. Being able to think creatively and expansively about the ways that lawyers can integrate their legal training into collaborative efforts to effect social change is a critical skill for law students to develop. Some of the challenges of collaboration involving legal advocacy include ensuring client confidentiality and defining the attorney-client relationship, to clarify when the privilege attaches.

The collaboration between the UND Law Clinic and several non-profit advocacy organizations to advocate for fair housing and specifically the housing rights of victims of domestic violence provides the law students with multiple examples of the efficacy of simultaneous multi-disciplinary collaboration to achieve social change. The law clinic's collaboration with the statewide human rights advocacy organization and then the statewide anti-domestic violence coalition to provide community education presentation on housing rights reflects the analysis that there is a need to raise awareness of existing rights and protections for vulnerable populations in North Dakota. As described above, the collaboration with the state coalition has led to discussions about referring cases where victims have been denied housing or otherwise experienced illegal discrimination. It has also led to opportunities for collaboration on legislative efforts as domestic violence victim advocates share the challenges that victims face in obtaining low income housing.

The need for collaboration is not limited to the rural experience. All law clinics and lawyers may benefit from multi-disciplinary collaboration. Being located in a large capital city may make finding potential collaborators easier than being located in North Dakota, nonetheless, training law students on the benefits and challenges of collaboration is still important. Learning to recognize the key roles other parties and professionals play, as well as how to work well with others is a particular benefit of law clinics affiliated with a university.

¹³⁰ See also Schrag, *supra* note 118, at 181-82 (discussing collaboration as a goal of clinical legal education).

Student attorneys enrolled in the CJC spend time learning about and practicing collaboration in class and client work. In class, students learn about Professor Feldblum's Six Circles of Advocacy theory, which fosters multi-disciplinary collaborations.¹³¹ Under this theory, legislative lawyers necessarily intersect with people in the other five circles (communications, lobbyists, policy researchers, strategists, and outreach), and it allows students to practice working with other professionals to address client problems.¹³²

Students begin learning about the other circles during the first week of class when they are asked to draft a client press release. The press releases are then used to kick-off the semester's first set of case rounds. In addition to ensuring students dig into their cases quickly, this exercise leads to a robust conversation about the role of media, communications, and outreach in client representation. For example, the students representing military families almost always heavily highlight that fact in their press releases. This sparks a conversation about the powerful image of a client in uniform when negotiating with other parties. This in turn leads to questions about whether, when, and how lawyers can use the media to advance a client's goals. A related discussion point is whether students can inform other parties that they will call the media if the issue involving their client is not resolved. Students' then explore what ethical obligations exist when you deal with the press and question related confidentiality issues. This is often the first time that students describe what they are working on without divulging confidential information. Some explore whether to name their clients in a media story or how (and whether to) control what clients say to the media directly. Others question whether to seek a client's permission before sharing information with a reporter, members of a client's organization or community, or other stakeholders. Finally, other students wonder if they should have explored some of these issues while drafting the press release, and realize just how much work goes into every aspect of effective and ethical client representation.

The roles of the other circles are also explored in class. There is an administrative advocacy simulation that requires students to persuade rulemaking staff to promulgate a regulation based on their cli-

¹³¹ Feldblum, *supra* note 23.

¹³² *Id.*; see also Barry, *supra* note 1, at 150 (noting Stanford's principle that "students must learn to collaborate with the client and other professionals"); Foster & Glick, *supra* note 86, at 2057-58 (listing the various overlapping and "mutually supportive" roles that lawyers working with the West Harlem Environment Action, including Fordham Law School students and faculty, must be able to move between as: "litigator and litigation analyst, transactional lawyer, political strategist, negotiator, community educator, broker, writer, lobbyist, and staff member").

ent's recommendation. During the preparation for and debrief of this simulation, the strategist's decision to send a legislative lawyer to this meeting and how best to collaborate with the other circles on this task are explored. Has the student lawyer incorporated the policy research into the handout for the meeting in a way that is persuasive? Has the student lawyer prepared talking points about how the grassroots community is behind the client's proposal? Is the student lawyer prepared to advocate for the client's proposal using the frame created by the outreach and media circles? And finally, has the student lawyer done the necessary research to answer questions based on the law *and* the work of these collaborators?

Further, client work has provided students with the opportunity to be a part of the development of new community relationships and participate in collaborative work. Students have presented about CJC programs and substantive areas of expertise throughout the university¹³³ and Arizona communities.¹³⁴ The CJC has also become a core partner of the Family Justice Bus program. This program brings law school faculty, students, and community partners to underserved communities throughout Arizona to offer free self-help information about laws and limited consultations on topics like mortgage fraud, debt collection, unemployment insurance benefits, domestic violence, and income tax preparation to those who do not otherwise have access to it.¹³⁵ Through this partnership, students have run self-help legal information sessions to provide community education, and performed intakes for people who have participated in the information sessions, but are seeking legal representation in addition to information. During a post-Family Justice Bus event debrief, four CJC students who participated expressed a strong desire for the law clinic to continue

¹³³ For example, the CJC was invited to participate in ASU's *Community Connects* series when the Office of University Initiatives learned of our work for military families. Rather than have faculty speak, a student presented on the CJC's mission, and his perspective of its role in the community. See *Communities Connect Dialogues*, ASU COMMUNITY CONNECT, <http://community.asu.edu/exchange/category/communities-connect-dialogues/> (last visited Jan. 30, 2011). Students have also joined faculty as presenters on work-life law and policy at sessions for Masters and PhD students in ASU's Hugh Downs School of Communications.

¹³⁴ For example, students worked with the Hugh Downs School of Communication's Project on Wellness and Work-Life to educate the community about work-life issues, including some CJC client work. Press Release, Ariz. State Univ., College to host work/life meeting for network of Valley employers (Mar. 12, 2010), <http://www.law.asu.edu/News/CollegeofLawNews.aspx?NewsId=2699> (last visited July 12, 2010).

¹³⁵ The Diane Halle Center for Family Justice, www.law.asu.edu/dhc (last visited Aug. 19, 2010); see also "Justice Bus" Rolls On, Helping Low-Income Arizonans, ABC NEWS, April 22, 2010, <http://blogs.abcnews.com/campuschatter/2010/04/justice-bus-helping-low-income-arizonans.html>; *Justice Bus provides mobile, free legal services*, ASU NEWS, March 19, 2010, http://asunews.asu.edu/20100312_justicebus.

with this partnership, in part because they were exposed to new issues, in real time, and learned from interacting with other community stakeholders that participated.¹³⁶ This work has given our students additional experiences with public speaking, working with the policy and academic researcher and advocacy communities, the opportunity to interact with the media, and generally partnering with non-lawyer community stakeholders.¹³⁷

These collaborative experiences train our students about the proper and useful role a lawyer can play to help our clients meet their goals. They also help our students recognize that lawyers do not always have to be the lead speakers in an effort, but rather can support clients and their partners strategically behind the scenes.

D. Training and Empowering Social Justice Legal Advocates

Law clinics that implement an integrated approach provide a critical opportunity for law students to develop the skills to become effective social change lawyers.¹³⁸ As described above, this structure enables law students to identify the broader legal problem to be addressed, analyze the different legal strategies that may be applied to address it, and to engage in more than one form of legal advocacy concurrently, so that they can see the impact of the law on social change. In this section, we describe additional ways the integrated model enables these specific learning opportunities.

First, integrated clinics teach students about a range of civic engagement, of which pro bono representation including litigation work is a part, but broader government service is another.¹³⁹ Integrated law

¹³⁶ See also Fran Ansley & Cathy Cochran, *Going On-Line with Justice Pedagogy: Four Ways of Looking at a Website*, 50 VILL. L. REV. 875, 876-77 (2005) (describing a University of Tennessee class with a community education component during which “education about law ends up flowing both ways” between students and the community participants); Jane Harris Aiken, *Clients as Teachers*, 16 WASH. U. J.L. & POL’Y 81, 83-84 (2004) (“[W]e can have a deep effect on how [students] think about problems and solutions to those problems. . . .if lawyers have the power to shape the social fabric, they must be aware of their responsibility to shape it in positive ways. Lawyers can do this better and it will be clients who lead the way.”).

¹³⁷ See, e.g., *Leading by Example: Workplace Flexibility*, NEW AMERICA FOUNDATION, http://asp.newamerica.net/events/2010/leading_by_example (last visited Jan. 30, 2011); <http://www.law.asu.edu/justiceclinic/CivilJusticeClinic/NewsandEvents/2010VetsDayCLE.aspx>; see also *Veterans Day CLE – Serving Those Who Serve*, SANDRA DAY O’CONNOR COLLEGE OF LAW, http://community.law.asu.edu/events/event_details.asp?alias=VetsCLE (last visited Jan. 30, 2011).

¹³⁸ See also Wizner & Aiken, *supra* note 16, at 1010 (teaching about roles to challenge the system “to make society and the legal system more just . . . will have an even greater impact on promoting social justice than if we handle more cases. And to do that, we must all be both effective teachers and effective doers.”).

¹³⁹ James H. Backman, *Law Schools, Law Students, Civic Engagement, and Community-Based Research as Resources for Improving Access to Justice in Utah*, 2006 UTAH L. REV.

clinics help train students to be public servants by: helping them develop skills useful for government lawyers to have; and demonstrating how to be effective non-governmental lawyers working for the public interest.¹⁴⁰ For example, one unanticipated benefit to the CJC's servicemember work has been the encouragement and exploration of public service broadly defined. While staffing potential matters and preparing for "know your rights" presentations and policy work for military families, students have explored whether representing servicemembers is itself a form of public service.¹⁴¹

In addition, even though all of our students do not become "legislative lawyers" for Congress, for state and local legislative bodies, or for administrative rulemaking purposes, we believe that the skills student attorneys learn are transferable to any legal job, but especially the growing number of legal positions that involve understanding and applying statutory and regulatory text to create social change. Through class and client work, students learn how the legislative and regulatory processes can be vehicles for meaningful change. And since the reality of today's world is that clients do not always approach lawyers with a single issue that can be solved in one way. Creative – and effective – lawyering and problem-solving requires a lawyer to be well-versed in more than one skill set and (at least somewhat) knowledgeable on other processes. Knowing when to enter into policy discussions to effect change, and being able to represent clients in these interacting processes in hopes of influencing, developing, or drafting policy are forms of public service.

Second, students consider the purpose of community education and their roles as legal advocates in providing this information. For example, in providing community-education presentations to advocates for victims of domestic violence throughout North Dakota in collaboration with the state coalition against domestic violence, students explored the distinction between legal advice and legal information when responding to questions. Several of the students were surprised to learn that landlords would evict a victim of domestic violence or deny housing to an individual because she is a victim of do-

953, 955 (2006) (exposing law students in the generation that many have commented lack civic engagement is an important educational objective); W. Warren H. Binford, *Reconstructing a Clinic*, 15 CLIN. L. REV. 283, 311 (2009) (students in Williamette's Law and Government Clinic "participate in legislative advocacy and a facilitation project involving a local government entity [these opportunities] provide students with a diverse introduction to the myriad roles [of government] attorneys").

¹⁴⁰ See Sandefur & Selbin, *supra* note 6, at 90-93.

¹⁴¹ See, e.g., Legal Clinic: Clinic for Legal Assistance to Servicemembers, <http://www.law.gmu.edu/academics/clinics/clas> (one part of "[t]he mission of CLAS is to provide: . . . law students with practical educational experience, the opportunity to make a patriotic contribution, and encouragement to public service as a habit of mind.").

mestic violence. Similarly, through this process several students disclosed their personal experiences with domestic violence, and reflected on their lack of understanding of the challenges facing friends or family members and the need for legal services. CJC students with connections to the military have realized similar insights when helping other military families. These same students recognized that their increased awareness and legal skills provide them with an opportunity to better assist their friends and colleagues and themselves in the future.

E. Privilege “Plus” (Another Name for Confidentiality)

Student practice rules require law students to be familiar with the ethical obligations imposed on lawyers in the jurisdiction in which their clinic operates.¹⁴² Reading the rules to gain certification and understanding how to apply them are, of course, two different things. As a result, most law clinics are designed to incorporate professional responsibility in course and client work.¹⁴³ Indeed, the CJC and the UND Law Clinic both educate students about legal ethics, including the importance of and practicalities surrounding the evidentiary attorney-client privilege and broader requirements of attorney-client confidentiality.

Student feedback has made us realize that the integration of our law clinics – especially the combination of litigation and policy work – helps provide an understanding of the difference between these concepts.¹⁴⁴ Typically, when asked about confidentiality, students first respond with information about the attorney-client privilege. In Arizona, this privilege protects communications made by a client to a lawyer in confidence to obtain legal advice.¹⁴⁵ Communications not for the purpose of legal advice, “the fact of consultation, the identity

¹⁴² See, e.g., ARIZ. R. SUP. CT. 38(d)(5)(E) (students must “certify in writing that the student has read and is familiar with the Arizona Rules of Professional Conduct and the rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of attorneys.”); D.C. APP. COURT R. 48(b)(7).

¹⁴³ Schrag, *supra* note 118, at 5; Ashar, *supra* note 123, at 404-05; Peter A. Joy, *The Law School Clinic as a Model Ethical Law Office*, 30 WM. MITCHELL L. REV. 35, 42-50 (2003); see also Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLIN. L. REV. 807, 832 (2007) (describing the need to teach students about “the central importance of avoiding conflicts of interests and maintaining confidences” as a “predetermined and unavoidable” goal of clinics; further noting that teaching legal ethics is an important lesson from clinics); The MacCrate Report, *supra* note 2, at ch. 7.

¹⁴⁴ See, e.g., Mary Helen McNeal, *Unbundling and Law School Clinics: Where’s the Pedagogy?*, 7 CLIN. L. REV. 341, 376 (2001) (including pedagogical value of unbundled clinic by noting they “expose students to an untraditional model of attorney-client relationships.”).

¹⁴⁵ A.R.S. § 12-2234.

of the client, . . . the dates and places of consultation, and similar matters” are not privileged.¹⁴⁶ As a result, this privilege has much less practical relevance to our policy work. For this work, the fact or date of a meeting with someone can significantly impact representation of a policy client or have a large impact on strategy and coalition building for a non-profit’s efforts on an issue. By contrast, the general confidentiality requirement of ER 1.6 has a significant role in this work. ER 1.6’s confidentiality rule applies “to all information relating to the representation, whatever its source.”¹⁴⁷ This is where the “plus” comes in – by characterizing the confidentiality requirements of ER 1.6 as attorney-client privilege “plus” all the other stuff regardless of where it comes from, the broad scope of the confidentiality becomes more apparent.

F. Some Practical Challenges We Uncovered During Our First Year of Integrating our Clinics

1. The Need to Educate Constituencies (Colleagues, Clients, Students, and Communities) about the Value of Integrated Legal Education

Despite efforts demonstrating that policy and community education work is legal work, some law professors, lawyers, students and others need to be (re)trained and pushed to expand their understanding of legal work.¹⁴⁸ The fundamental premise of what it means to practice law needs to move beyond just litigation work. This is especially true when constituencies have pre-formed ideas about the “practice of law” in legal clinics in terms of the types of class and client work undertaken. One way in which these pre-formed ideas take shape is student practice rules. These rules define the practice of law for the relevant jurisdiction. In Arizona, students need to get written consent from a client to “appear in any court or before any administrative tribunal.”¹⁴⁹ The client’s written consent to the student’s representation must be filed in the court or administrative tribunal hearing the case. Following these rules, students are allowed to “practice” law as litigators.¹⁵⁰ It is unclear, however, that or how to

¹⁴⁶ *Id.*; 1 Ariz. Prac., Law Of Evidence § 501:5 (Rev. 4th ed.)

¹⁴⁷ ARIZ. ETHICS R. 1.6 cmt. 3, available at <http://www.myazbar.org/Ethics/ruleview.cfm?id=26>.

¹⁴⁸ While the perception is certainly changing, even some of the giants in our fields and key pedagogy pieces have recognized that clinics that are not entirely litigation based are not yet fully accepted or accepted on the same terms. *See, e.g.*, Schrag, *supra* note 118, at n.8 (describing those clinics that do work other than “handle ‘cases’” as “less orthodox”).

¹⁴⁹ ARIZ. R. SUP. CT. 38(d)3.

¹⁵⁰ *See* Carey, *supra* note 70, at 516; Paul R. Tremblay, *Shadow Lawyering: Nonlawyer Practice Within Law Firms*, 85 IND. L.J. 653, 658, 695-96, n.19 (2010) (exploring a “nearly

apply the rules to legal work outside the context of a pending matter in a court or tribunal. The student practice rules also state that students may “render[] legal advice and perform[] other appropriate legal services.”¹⁵¹ In theory, this applies to the other advocacy processes in which our students are serving as lawyers in our integrated law clinics. However, it is unclear how to comply with the other requirements of the student practice rules when these tasks are being performed.¹⁵² For example, often, there is no court or administrative tribunal in which students could file the client’s consent as required under the rules. Nonetheless, students are operating as student attorneys both in and out of the courts and tribunals.

We also need to educate students that the skills training inherent with an integrated law clinic are important to learn. As described above, the integration of our clinics has brought new: (1) client bases; (2) subject matters; and (3) types of representation. Particularly when a clinic is new to this work, students do not expect these changes and may not recognize that this training is important or that clinics should be supporting these client populations, on these substantive matters in contexts in and out of court.¹⁵³ One clear lesson we observed was that our clinic and course materials needed to be updated, fast. When students first learned they would be doing work outside the litigation context, it was met with some healthy skepticism and mixed feelings. Over time, the initial skepticism against non-litigation work disappeared and students began to understand the value of this work, and the impact it has on a particular issue for their clients and communities.

To help change student and community expectations about what our clinic does, the CJC updated its course description and website to reflect the new work, developed a logo for the Work-Life Policy Unit, and enlisted the law school’s communications staff to draft a series of press releases that describe and rebrand the new integrated clinical program. Initially, this appears to have worked and students have a

uniform” litigation focus in student practice rules); Nina W. Tarr, *Ethics, Internal Law School Clinics, and Training the Next Generation of Poverty Lawyers*, 35 WM. MITCHELL L. REV. 1011, 1047 (2009) (discussing an obligation to follow the model rules of professional responsibility while performing “law-related activities” even if faculty and students are not deemed practicing law under state practice rules).

¹⁵¹ ARIZ. R. SUP. CT. 38(d)4(iv).

¹⁵² See also Tremblay, *supra* note 150, at 658 (positing that the failure of practice rules to address transactional lawyering means that students in transactional clinics are in effect “nonlawyers” who must be aware of the confidentiality rules applicable to nonlawyers).

¹⁵³ See also Ingrid V. Eagly, *Community Education: Creating A New Vision Of Legal Services Practice*, 4 CLIN. L. REV. 433, 472 (1998) (explaining need to share prior stories with students so they understand that even if there is no winner or loser in public education campaigns (as opposed to litigation) there are still ways to evaluate success).

better understanding of the multiple types of training they will be exposed to in the clinic.

Involving clients and other partners in changing expectations has helped educate colleagues and the greater community about new clinic experiences. For example, about a week before the fall 2010 semester began, Working Mother media published stories by Corporate Voices for Working Families, for which CJC students conducted research.¹⁵⁴ The stories involving this client work attracted attention about the CJC's legislative lawyering training with other clients, members of the community, and colleagues throughout the university. At the law school, the Dean sent a message to all faculty, staff, and students specifically recognizing the students' efforts for their client.¹⁵⁵ This support from people and institutions outside of the clinic itself helped demonstrate that this work was important in terms of helping a client meet its goals, but also that this type of legal training was something for which the law school administration and broader community was paying attention and interested.

We hope that integrating our clinics helps redefine the perception of what constitutes legal work. We also hope incorporating this work into the law school structure will prevent the marginalization of policy training and combat the feeling by some that policy analysis is not a legal skill.¹⁵⁶

2. *Adopting the Concept of Ownership to Non-Litigation Projects*

Law students' development of the ability to take responsibility for their clients and to accept accountability for their actions as professionals is one of the most effective learning opportunities for law students offered in clinical legal education.¹⁵⁷ This process is sometimes described as taking "ownership" over their work in the clinic.¹⁵⁸ By assuming ownership, a student accepts responsibility for the trajec-

¹⁵⁴ Nathan Constable, Rob Jewell & Yvonne Siu, *2010 Best of Congress: Democrats*, WORKING MOTHER, <http://www.workingmother.com/BestCompanies/best-of-congress/2010/07/2010-best-of-congress-member-profiles-democrats> (last visited Sept. 24, 2010); Nathan Constable, Rob Jewell & Yvonne Siu, *2010 Best of Congress: Republicans*, WORKING MOTHER, <http://www.workingmother.com/BestCompanies/2010/07/2010-best-of-congress-member-profiles-republicans> (last visited Sept. 24, 2010).

¹⁵⁵ Email from Paul Berman, Dean, ASU College of Law to multiple ASU Law School distribution lists (Aug. 8, 2010) (on file with authors).

¹⁵⁶ See Peter H. Schuck, *Lawyers and Policymakers in Government*, 61 WTR LAW & CONTEMP. PROBS. 7, 12 (1998); see also *id.* at 13 (describing this "legal parochialism").

¹⁵⁷ STUCKEY & OTHERS, *supra* note 3, at 191 ("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.").

¹⁵⁸ *Id.* ("Assuming responsibility for outcomes that affect clients with whom the student has established a relationship enables the learner to go beyond concepts, to actually becoming a professional in practice.").

tory of the case and the outcomes, seeking and obtaining guidance and input from faculty. At the UND Law Clinic we have found that adopting this framework to community representation and the community education components of the Law Clinic at the University of North Dakota School of Law has resulted in similar, though different pedagogical benefits for law students.

In the context of the community education presentations, once the relationship with the non-profit partner is established, students in the UND Law Clinic drive everything from what town to select for the presentations, to which civic organization to contact about scheduling the presentations, to making the contact and scheduling the presentation to the actual development of the presentation itself and traveling to the location of the presentation. As has been described by Katherine Kruse and others, the application of ownership to projects often means ownership of problem-solving, and is necessarily different than ownership of a case in which the client is involved in providing the context and information upon which the relies.¹⁵⁹ Without a client to provide the context, we provided the information that the students needed in order to understand the purpose of the community education presentations, a description of the topics to be covered in the presentations, and examples of groups that students had previously contacted to provide the presentations. The students are also asked to work in teams to develop the presentations and to schedule their presentations, however, they were provided with no direction regarding the division of labor.¹⁶⁰ Through taking ownership of all of the logistics and the content of the presentation, law students are using and developing their problems solving skills in different contexts, learning about how to be flexible when working in partnership, and how to prepare for possible questions from community members who benefit from their presentations. In these ways, the concept of ownership is effectively transferred to non-litigation work in the clinic.

3. *Faculty and Students Are Not Lobbying (. . . Unless They Are)*

Before adding non-litigation advocacy to our clinics, we reviewed a complex set of federal and state statutes (and regulations) that govern lobbying activities to ensure our activities would not impact our potential clients or our affiliated universities tax exempt status or re-

¹⁵⁹ See Kruse, *supra* note 8, at 440-41 (describing how student ownership in service projects is distinct from ownership a student takes over a case with an individual client, but nonetheless provides valuable experiences for students).

¹⁶⁰ This is similar to the process used by the CJC for students participating in the Family Justice Bus program described in text accompanying note 135 *supra*.

quire us or our students to register as lobbyists.¹⁶¹ A full exploration of these rules and regulations is a subject best left to another article that can examine their nuances and applications to various settings. Nonetheless, we provide a quick summary of the laws faculty experimenting with integrating their clinics may want to consider.

Under the Internal Revenue Code (“IRC”), schools and non-profit organizations are allowed to measure lobbying efforts in terms of staff *activities*.¹⁶² Schools tend to elect to use § 501(h) to measure lobbying efforts in terms of *expenditures*.¹⁶³ This election allows schools to lobby so long as it keeps lobbying and grass roots expenditures below the allowable ceiling amount for each taxable year.¹⁶⁴ If staff activities remain below this ceiling, universities and non-profit organizations will not lose their tax-exempt status.¹⁶⁵

The IRC divides lobbying into two categories: direct lobbying and grassroots lobbying. *Direct Lobbying* is defined as “any attempt to influence any legislation through communication with any member or employee of a legislative body [or a]ny government official or employee who may participate in the formulation of the legislation.”¹⁶⁶ The regulations clarify that “the principal purpose of the communication [must be] to influence legislation.”¹⁶⁷ A communication is direct lobbying if it (1) “[r]efers to a specific piece of legislation [and (2) r]eflects a view on such legislation.”¹⁶⁸ For example, clinic faculty and students may be engaging in direct lobbying if they contact Senate offices to gain support for a specific bill pending in Congress and advocate a client’s position on why that bill must pass (or fail).¹⁶⁹ By

¹⁶¹ Many non-profit organizations have relevant limitations imposed upon them by the private foundations that fund their activities (often via grants). Some private foundations fund organizations that conduct activities that may be deemed lobbying, but the grant may contain restrictions against using funds for those activities.

¹⁶² The Insubstantial Part Test is the default for measuring staff’s lobbying activities. This test requires that “no substantial part” of a 501(c)(3) organizations’ activities be “carrying on propaganda, or otherwise attempting to influence legislation.” 26 U.S.C. § 501(c)(3) (2010).

¹⁶³ The Expenditure Test is an alternate standard used by the Internal Revenue Service to measure lobbying activities. 26 U.S.C. § 501(h).

¹⁶⁴ *Id.*

¹⁶⁵ 26 U.S.C. § 501(c)(3).

¹⁶⁶ 26 U.S.C. § 4911(d)(1)(B).

¹⁶⁷ 26 C.F.R. § 56.4911-2(b)(1)(i) (B) (2010).

¹⁶⁸ 26 C.F.R. § 56.4911-2(b)(1)(ii) (2010). “‘Specific legislation’ includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes. In the case of a referendum, ballot initiative, constitutional amendment, or other measure that is placed on the ballot by petitions signed by a required number or percentage of voters, an item becomes ‘specific legislation’ when the petition is first circulated among voters for signature.” § 56.4911-2(d)(1)(ii).

¹⁶⁹ 26 C.F.R. § 56.4911-2(b)(4). Examples provided mirror examples in the regulation.

contrast, it is not direct lobbying if the clinic shared a copy of the white paper it drafted on the legal frameworks for workplace flexibility in Arizona and Michigan with Senate staff. This is because the paper does not “reflect a view on any specific pending legislation or on any specific legislative proposal that [ASU, the CJC, or its client] supports or opposes.”¹⁷⁰

Grassroots lobbying is any effort to influence “legislation through an attempt to affect the opinions of the general public.”¹⁷¹ A communication is grassroots lobbying if it (1) “[r]efers to [a] specific [piece of] legislation [and (2) reflects] a view on such legislation; and [(3) e]ncourages the recipient of the communication to take action with respect to such legislation.”¹⁷²

There are several exceptions to direct lobbying and grassroots lobbying communications.¹⁷³ The three most relevant to our clinics are: (1) “[n]onpartisan analysis, study or research” that is independent, objective, and available to the general public;¹⁷⁴ (2) “discussions of broad social, economic, and similar problems”;¹⁷⁵ and (3) providing technical advice – meaning “if the communication is the providing of technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either in response to a written request by the body, committee, or subdivision.”¹⁷⁶

While this lobbying definition includes attempting to influence both state and federal legislation, it does not include efforts to influence administrative agencies or executive branch officials – two stakeholder groups that our clinics and many others try to influence.¹⁷⁷

The activities of many law school clinics do not satisfy the three-part test for lobbying or fall within one of the allowable exceptions (nonpartisan analysis, study, or research; technical assistance and discussions of broad social, and economic issues). Nonetheless, professors should think through these rules and regulations – and their potential implications – before accepting new clients or new projects for existing policy clients. Professors in clinics should also consider whether and how their activities impact a school’s reporting require-

¹⁷⁰ *Id.*

¹⁷¹ 26 U.S.C. § 4911(d)(1)(A).

¹⁷² 26 C.F.R. § 56.4911-2(b)(2); *see* 26 C.F.R. § 56.4911-2(b)(4)(ii) (providing illustrative examples). A communication must do all three to be deemed lobbying.

¹⁷³ 26 C.F.R. § 56.4911-2(c).

¹⁷⁴ 26 C.F.R. § 56.4911-2(c)(1).

¹⁷⁵ 26 C.F.R. § 56.4911-2(c)(2).

¹⁷⁶ 26 C.F.R. § 56.4911-2(c)(3).

¹⁷⁷ Advocating for administrative bodies to take actions is not governed by these rules. 26 C.F.R. § 56.4911-2(d)(4); David Vladeck, *Special Considerations for Lobbying for Non-profit Corporations*, in *THE LOBBYING MANUAL* 324 (William V. Luneberg & Thomas M. Susman eds.) (2005).

ments under the Lobbying Disclosure Act, state laws, and funds the university may receive under federal grants.¹⁷⁸

CONCLUSION

Professor Karin was in the process of conducting mid-semester evaluations with students in the CJC's summer clinic while drafting this paper. A conversation during one student's evaluation is worth sharing. This student had spent the bulk of her time in the clinic before her evaluation working for two clients. One of her clients was WF2010, during which she built off our classroom conversation on the history and evolution of workplace flexibility and employment law and policy, and worked on drafting a plain English summary of the Family and Medical Leave Act ("FMLA") for hourly workers and their employers. Through this work, she had a chance to further explore the realities and limitations of the FMLA, recent proposals to expand access to paid time off and clarifications and interpretations being sought via regulation. At the same time, the student was also representing a client who suffered from depression and anxiety in her quest to obtain unemployment insurance benefits. In addition to caring for her own disabilities, the client was caring for her adult son who had been honorably discharged from the Army and recently was diagnosed with Post Traumatic Stress Disorder from multiple tours of duty in Iraq. After exhausting her available short-term disability leave, the employer suggested that our client take additional time off under the FMLA. Unfortunately, she could not afford to take unpaid FMLA leave. She subsequently returned to work and was fired for reasons that likely would not have occurred but for her early return to work. During this student's evaluation, which fell about a week before the hearing challenging a determination that our military mom was ineligible for benefits, the student reminded us of why we are working to create this integrated model.

The student commented about how representing her client in the unemployment insurance matter clarified for her the importance of working with WF2010 to improve related policy. It put a face on the problem for her, and helped her understand how the laws and policies made in the legislative and regulatory processes matter for real people. She saw that our individual clients' experiences needed to be brought to the policy conversations for which our non-profit clients were engaged in shaping. She observed that policy decisions should not be made in a vacuum, but rather policy choices should be made

¹⁷⁸ 2 U.S.C. §§ 1601-1614 (2010); 31 U.S.C. § 1352 (2010); see Vladeck, *supra* note 177; Jack H. Maskell, CRS Report 96-809A: LOBBYING REGULATIONS ON NON-PROFIT ORGANIZATIONS (1996). An example of a state law is A.R.S. § 41-1231 *et seq.*

with information about how words impact real life. She spoke about how the administrative litigation and legislative lawyering she was doing that semester interrelated and acknowledged the role that each played in the other situation. It was a great teaching moment.

We struggle with some of the obstacles of this integrated model of clinical legal education so we can have more of these teaching moments and other students can learn how to be effective, ethical, skilled lawyers who can represent clients in whatever process or processes will help them most. We look forward to continuing this conversation about the best pedagogical choices to make as we constantly (re)design our clinics to meet our dual goals of teaching our students and representing our clients.