Lawyering Beyond Without Leaving Individual Clients Behind

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"LAWYERING BEYOND" WITHOUT LEAVING INDIVIDUAL CLIENTS BEHIND

APRIL LAND *

As clinical teachers answer the exciting call to move beyond the traditional model of individual client representation, we should not leave behind the vital lessons that law students learn from individual clients. Individual representation is ideal for teaching law students lawyering skills and values in a human context. Representing individual clients gives students the opportunity to experience full ownership over representation, to experience the role of the attorney, and to feel the profound weight of professional responsibility. Representation of individual clients also grounds the social justice objectives that clinical programs seek to achieve. As clinical programs and other areas of law school curricula move forward by providing more opportunities for experiential learning, we should not leave behind our individual clients' voices and concerns.

INTRODUCTION

Clients teach law students. The immediacy of the human needs that individual clients bring to clinical programs inspires our students, and us, to learn to be better lawyers and better human beings. The vision of a father holding a child as he faces termination of his parental rights, the fear in the tearful eye of a domestic violence survivor, the anguish of a person facing incarceration, or the confusion of a non-English speaking client with papers threatening his home: these visions, voices, and faces provide our students with a compelling call to the highest privilege of the legal profession, to serve our clients in their pursuit of justice. The powerful impact of the opportunity to serve individual clients compels clinical teachers to remain vigilant in creating and preserving the one client, one student, one supervisor model within clinical programs across the nation.

The call to "lawyer beyond the individual client,"1 inspires

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1 "Complex Clinical Clients: Lawyering Beyond the Individual Client" was the title of
clinical teachers to explore ways that clinical legal education can continue to build on the traditional one client, one law student, one supervisor model. In the context of renewed calls for legal education to integrate more experiential learning throughout law school curricula, this exploration takes on a new dimension, providing an opportunity to envision how legal education, within and beyond the clinic, can be transformed.\textsuperscript{2}

The transformation should be towards a three-year law school curriculum offering law students real-life experiences with clients and communities. But as we answer the important call to move forward and envision new experiential and service learning opportunities, we must not leave behind the concerns, voices, faces, and invaluable teachings of our individual clients. The role that clients, as individuals, play in law school education, and in the identification of solutions to the issues facing their communities, must be respected, valued, and maintained as we develop new approaches to legal education.

Exposing the complexity of problems faced by individuals, exploring the legal context of the individual client within his or her community, and teaching our students to be leaders in the development of policy and law are important goals of clinical legal education. However, the lessons of decades of clinical teaching suggest that the connection with individual client experiences must guide our actions when we reach for student lawyering experiences beyond the representation of individual clients in the communities we serve.

As we press the rest of our law school curricula further into experiments with client service and experiential learning opportunities, and as we develop new clinical models that address issues “beyond the individual client,” the challenge for law school-clinics will be to remain vigilant that the core mission of clinical legal education—the representation of clients in need—is not lost in the other exciting learning opportunities that arise across law school curricula.

I. The Core Mission of Clinical Legal Education Facilitates the Transformation of Law Students and Law Schools

A. The Roots of Clinical Legal Education

The core mission and values of clinical legal education are rooted in the representation of individuals living in poverty. From the early
critiques of the Langdell case method in the early 1900s, to the development of the first wave of clinical programs, the clinical education movement sought to shift the focus of legal education from appellate cases toward the representation of real clients in a "legal aid" type of model.3 The demise of apprenticeships, the development of bar associations seeking to improve the level of practice, and the need to provide legal assistance to the poor were at the root of clinical legal education efforts.4 The early clinic at Duke University in the 1930s reported that legal aid clinics in law school served "a double purpose of legal aid to the poor as a public service and legal education by the clinical method."5 One realist scholar asked, "Why not a Clinical Lawyer School?"6

Spurred by these early proponents, the clinical movement made significant progress toward giving law students opportunities to undertake live client representation as part of their law school experience. While these clinical programs took various shapes and sizes, the focus was on allowing law students to experience law in action, mostly in legal aid models.

As William Pincus remarked at the 2009 celebration of the fortieth anniversary of the founding of the Council on Legal Education for Professional Responsibility (CLEPR):

The purpose of clinical legal education at its inception, as it is today, is to extract the educational benefits only available in the service relationship between lawyer and client. This requires real service to a client. By providing service of the highest caliber in the educational process and by being responsible to the clients being served, clinical teaching drives home for students a sense of responsibility to the client as one of the educational objectives of law school.7

Other scholars have also described and celebrated the rich history

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of the last 40 years of clinical legal education. Firm roots in the direct representation of individual clients are clear from that history. In describing the initial Ford Foundation grant to the National Legal Aid and Defender Association's Council on Legal Clinics (CLC), William Pincus explained that:

CLC was dedicated to and concerned about the social conditions of the poor and the working classes. It wanted direct exposure for law students to the miseries that overwhelmed others and lay behind the legal situations of individuals against whom the law seems to operate.  

The representation of individual clients in poverty has been at the core of clinical legal education since its inception. This theme continues throughout the development of clinical methodology. At the 1987 conference of the Section of Legal Education and Admissions to the Bar of the American Bar Association (ABA), Robert Macerate, Chair of the ABA Task Force on Law Schools and the Profession, urged the clinical movement to embrace and develop these roots. In his keynote address, Macerate observed:

The clinical movement has brought the emphasis of the law to its proper focus, on the individual. Now we must strive to train lawyers how to deal with the individual on the complex of law today. Lawyers have been taught by rule and by value-free inductive principles. Can we train them to operate as agents of justice within the community?  

The Macerate Report calls upon law schools to train students in the core skills and values of the profession. The Carnegie Report focuses on legal education as a set of apprenticeships to practice. Best Practices for Legal Education focuses on improving the preparation

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10 MacCrate, supra note 4, at 1125.


12 ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION
of students for the practice of law. These works support the assertion that the representation of individual clients provides an ideal context for the professional development of law students. As articulated in Best Practices:

The process of providing services to under-represented segments of society helps to develop positive professional characteristics. . . . “Compassion and concern about injustice become much more intense when students develop personal connections with those who have experienced hardship or injustice.”

B. The One Client, One Student, One Supervisor Model Is Ideal for Teaching Core Elements of Lawyering

Efforts to break down legal practice into essential skills and values have achieved varying degrees of success. Rather than selecting from the many different lists of outcomes set forth in any of the ambitious efforts to comprehensively identify lawyering skills, values, competencies or apprenticeships, this discussion focuses on aspects of student learning for which the traditional one client, one student, one supervisor method of clinical teaching is an ideal model. A description of the University of New Mexico School of Law's clinical programs will provide context for the discussion.

The University of New Mexico is both a state law school and the only law school in the state. While rich in the beauty of its desert landscape and diverse cultures, New Mexico is a poor state, often ranking at the top (or bottom) of lists measuring poverty, children's health indicators, drug related deaths, and other problems that...
plague communities in poverty. With large rural areas, 19 different pueblos, and several other land-based tribes and nations, the legal needs of the state are vast and varied. Most graduates of the law school stay in-state, and a large percentage enter small or solo law firms.\(^\text{19}\)

Recognizing the value of clinical methodology and the need to make legal education relevant to its students, the University of New Mexico made clinical participation a mandatory graduation requirement in 1971.\(^\text{20}\) Over the last 40 years, New Mexico's clinical program has evolved based on the demands of the community, the teaching interests of the faculty, and the evolution of clinical methodology.\(^\text{21}\)

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\(^{18}\) N.M. Dep't of Health, *New Mexico Substance Abuse Epidemiology Profile* viii (Oct. 2010), available at http://nmhealth.org/ERD/HealthData/SubstanceAbuse/2010 New Mexico Substance Abuse Epidemiology Profile.pdf (last visited Sept. 6, 2011) (reporting that “New Mexico has the highest drug-induced death rate in the nation, and it continues to increase”).

\(^{19}\) Nat'l Ass'n of Legal Career Prof's, *University of New Mexico School of Law, Salary Summary Report for Year 2010* (on file with author) (reporting that 92.8% of UNMSOL graduates stay in-state and 66.7% join firms of 2-10 attorneys).


Yet the New Mexico legal clinics remain mandatory, six-hour, live-client experiences taught primarily by full-time tenured and tenure-track faculty who teach both “in and out” of the clinic on a regular basis. Some faculty who teach primarily in the non-clinical curriculum also rotate through the clinic, helping to infuse both traditional classroom teaching and clinical teaching with the “excitement of reality.”

Currently, the mandatory, integrated clinic has five sections per semester, including a Business and Tax section, two Community Lawyering/Child Advocacy sections, a Law Practice section, and a Southwest Indian Law section. While each clinical section has different intake sites and serves different communities, all provide the opportunity for students to represent individual clients.

For example, the Community Lawyering/Child Advocacy sections focus on matters affecting children and families. Seeking to respond to community needs, and taking “little cases in the middle ground” through our Medical Legal Alliance for Children, we partner with doctors at university health clinics and PB&J Family Services, a community organization serving at-risk children and incarcerated parents. Through this partnership, we represent clients facing legal issues in a wide range of areas, including family law, domestic violence,

clinical programs on low-income racial minorities); Andrea M. Scielstad, Unwritten Laws and Customs, Local Legal Cultures, and Clinical Legal Education, 6 CLIN. L. REV. 127 (1999) (describing some of the “legal culture” issues students must address); Renee Taylor, All My Relationships, 26 N.M. L. REV. 191 (1996) (comparing the UNM clinical programs with the clinical program at the Vancouver Aboriginal Justice Centre); Nancy Cook, Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories, 1 CLIN. L. REV. 41 (1994) (revealing the underlying story and important lessons learned from a woman client whom the clinic defended against criminal charges).

22 Nathalie Martin, Poverty, Culture, and the Bankruptcy Code: Narratives from the Money Law Clinic, 12 CLIN. L. REV. 203, 203 (2005) (describing her experience teaching in the clinical program at the University of New Mexico School of Law and the rotation system). See also infra note 40.


25 See Antoinette Sedillo Lopez, Learning Through Service, supra note 21; Christine Zuni Cruz, Road Back In, supra note 21; J. Michael Norwood, supra note 20.

26 See generally 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) (advocating for seeking the middle ground between individual representation and impact work through neighborhood-based clinics serving a high volume of individual clients facing legal issues that arise in their communities).


kinship guardianships, immigration, property disputes, and other legal matters commonly faced by people in poverty. In addition, in collaboration with the juvenile division of the local Public Defender’s office, almost all of our clinical sections will take cases representing individual children in the juvenile delinquency system.

Students also work on projects that arise out of individual case work, including legislative drafting and advocacy, information gathering and advocacy regarding systemic issues, and educating community groups and other service professionals. While the projects play an important role in our clinical training, some of them illustrate the danger points of “going beyond” lawyering. Therefore, this call for retention of the one client, one student, one supervisor model emerges from a clinical program that does “go beyond” the traditional model in important ways, but maintains individual client representation as an important tenet.

1. Lawyering Skills and Values in the Context of the Human Enterprise of Providing Legal Care

Attorneys are human beings striving to be of service to other human beings, and there are many different models for client service. Depending on the model, lawyers serve, collaborate with, advise, inform and/or partner with clients to meet their needs or address community problems. As the law and our global society become more complex, the calls for legal specialization are increasing. Yet, at its root, the legal profession remains a human enterprise with people providing service to other people. Even groups and “complex clients” are almost always groups of human beings. Therefore, as law professors, we have a duty to provide an opportunity for students to take on the role of lawyer in a human context.

Clinical legal education provides a rich and demanding opportunity to focus on the “human relations role in lawyering.” An important element of the human relations role in lawyering is the concept of providing legal “care.” This does not mean that the lawyer has to become an “expert” on the client’s life or community, nor does the

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30 MacCrate, supra note 4, at 1120 (citing Erwin N. Griswold, Law Schools and Human Relations, 1955 Wash. U. L.Q. 217 (1955)).

31 Stephen Ellmann, The Ethic of Care as an Ethic for Lawyers, 81 Geo. L.J. 2665 (1993) (exploring the tenets and implications of the ethic of care for lawyers and stressing the importance of developing empathy for, and emotional ties with, clients).
concept of providing legal care necessarily entail a helpless client who must defer to a "caring" professional. Rather, it suggests that students in a clinical program should have the opportunity to experience the privilege of helping human beings address their problems.

Individual case representation is ideally suited to help students experience and practice the duty of providing legal care to clients. Each client presents vivid personal and emotional issues. Sitting in a courtroom next to a bewildered 10-year-old facing commercial burglary charges; searching apartment complexes for a 17-year-old client who probably has no notice of legal proceedings, but for whom a bench warrant will issue if he is not found before the court date; looking into the eyes of a father who has no contact with his child but is scared to exercise his legal rights for fear of being reported to ICE and then deported: the immediacy of these human needs compels students to care.

While not all students find all of their clients compelling, hopefully at least one of the several clients a student serves each semester will call upon the student’s humanity. Under skilled supervision, law students internalize an awareness that they are members of a profession that provides legal care to clients. The emotional content of this caring cannot be taught through books, articles, or lectures. The law student must find herself in a room with a living, breathing person who needs help solving a problem.

As eloquently stated by Judge Clay Campbell of the New Mexico District Court, “I am a lawyer, and I am here to help,” is a powerful statement with immediate human impact upon both the law student and the potential client. Providing an opportunity for students to experience and understand the caring and human service aspects of the profession is an invaluable part of clinical legal education. The one client, one student, one supervisor model is particularly well suited to teach this important and powerful aspect of lawyering.

Using the medical profession as an analogy, the romantic notion of a caring professional with a bag and a stethoscope may be outdated in the age of specialization and the growing complexities of the medical field. However, as a patient, I certainly hope that all doctors and nurses who go through medical training at some point have to address patients as human beings to whom they are providing medical care.

Just as the Hippocratic Oath is an essential part of the medical profession's training and ethic, the concept of legal care is embedded

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32 Judge Clayton Campbell described the power of this statement in his remarks to new clinical law students at a swearing-in ceremony on August 23, 2010.

33 Gardiner Harris, New for Aspiring Doctors, the People Skills Test, N.Y. TIMES, July 11, 2011, at A1.
in the duties and loyalties of the legal profession, and remains an essential element of legal education. As Stephen Ellmann explains, "building a caring professional relationship will help the lawyer to understand the client better." This, in turn, inspires law students to engage with more commitment to the study and the practices of client-centered counseling, problem-solving, and cultural literacy, all of which, as important lawyering skills, are subjects of clinical teaching. Clinical programs in which students have individual clients are particularly well suited to help students understand and develop these skills.

2. Student “Ownership”

The one client, one student, one supervisor model is ideal for clinical teaching as it provides an opportunity for students to undertake, in full, the weight of professional responsibility for a client’s legal matter. As countless clinical teachers have observed, “students benefit most from a model in which they can take responsibility for a matter from beginning to end, and in which they and their clients can work through major decisions without intervention.” Student ownership is a critical element of effective clinical legal education. As Professors Wizner and Aiken have written:

It is the sense of responsibility that they feel, the fear, the vulnerability when representing real clients, that inspires students to strive to be effective lawyers with excellent skills. . . . Unlike second chairing, having direct responsibility for cases means that students must establish independent relationships with clients, must think ahead, and must shoulder the responsibility for the choices they make. We cannot afford to lose those lessons by taking the real clients out of the mix.

By taking direct responsibility, students feel the weight that the duty of loyalty places on the shoulders of lawyers. Fidelity to clients demands that lawyers “advocate with heart, soul and zeal,” and that they act with “passion and not restraint.” Faced with an actual child

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34 Ellmann, supra note 31, at 2698.
35 See Sedillo Lopez, supra note 21, Learning Through Service, at 322 (explaining that by providing general representation to individuals in poverty, students learn “the skills to suspend judgment, to communicate and listen across differences, and explore solutions creatively.”).
36 David F. Chavkin, Spinning Straw into Gold: Exploring the Legacy of Bellow and Moulton, 10 CLIN. L. REV. 245, 262 (2003).
38 MODEL RULES OF PROF'L CONDUCT R. 1.7 cmt. 1 (2010) (“Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client.”).
39 MONROE H. FREEDMAN & ABBE SMITH, UNDERSTANDING LAWYER’S ETHICS 71
who will have a juvenile record at the age of 10, or a 17-year-old who will be hauled off to jail at 18 for a bench warrant on a delinquency case that would not have resulted in jail had he known to come to court, or a father suffering the pain of separation from his child as the court system slowly winds toward the resolution of cases, students experience the profound responsibility that comes with the privilege of the license to practice law.

As law students take responsibility for a juvenile defense, or the search for a client, or a paternity case, the students experience the magnitude of the undertaking. This experience often inspires students to learn more about the law, their clients, and their clients’ communities, as well as the skills that they will need to more effectively understand the problems facing their clients, and the prospects for resolving them.

3. The Role of the Attorney

Individual cases are excellent vehicles for teaching the role of the attorney, from the critical case acceptance decision through the closing of a client matter. In New Mexico’s Community Lawyering/Child Advocacy clinical sections, students meet with individuals at intake sites or through referrals. The students interview the clients and then make recommendations to the Case Selection Committee, which is composed of all the teachers in the clinic that semester. The Committee often refers a case back to a student for further exploration of the client’s circumstances, or authorizes limited representation or service, helping the student understand the critical nature of an attorney’s decision to take a case. With the enormity of the weight of the attorney-client relationship becoming real to the student, he or she can understand the importance of the case acceptance decision, and its implications for access to justice.

Volumes have been written extolling the virtues of the client-centered model of representation. Others, including the University
of New Mexico’s clinical law programs, have attempted to add a community-oriented dimension to the representation, focusing on helping students to understand each individual within the context of his or her community. In either model, once a student has taken on representation of an individual client, the heart of the individual attorney-client work becomes evident to the student: the lawyer serves the client.43

As the representation continues, law students get the opportunity to experience first-hand that lawyers must help their clients to make decisions, without perfect knowledge, in a developing context. In the one client, one student, one supervisor model, students and clients must make judgment calls in the face of uncertainty, and then struggle to help clients address the consequences of those decisions.

With primary responsibility for an individual client, students also have the opportunity to internalize the obligations that the profession imposes on the attorney-client relationship. The duty to preserve confidences becomes real as students listen and hold their clients’ stories.44 With supervision, they grow to understand what it means in context for the clients to determine the “objectives” of the representation, and the lawyer to determine the “means.”45

What if the 10-year-old client does not seem to be fully competent to understand the process, but the prosecutor is offering a plea that the student lawyer believes to be in the client’s best interest? Should the student recommend that the client accept the offer? If so, how strongly? In what words? What is the role of the parent or caretaker of the child when the child is only 10 years old?

What if the student finds out that the 17-year-old client facing a bench warrant actually knows that the proceedings are pending and is actively avoiding contact with the system? What if the 17-year-old tells the law student that he did not commit the act, but that he is willing to have the charges pending against him because he is protecting his cousin who has a long criminal record? What impact does any of this information have on representations the law student will make to the court on behalf of the absent client?46

43 Model Rules of Prof’l Conduct R. 1.2 cmt. 1 (2010) (Rule 1.2 “confers upon the client the ultimate authority to determine the purposes to be served by legal representation”).

44 Model Rules of Prof’l Conduct R. 1.6 (2010) (provides guidance on when a lawyer is prohibited from disclosing client information and when it is permissible to reveal client information).

45 Model Rules of Prof’l Conduct R. 1.2 (2010) (“a lawyer shall abide by a client’s decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued.”).

46 The Model Rules provide a starting point for addressing this challenging hypotheti-
How will the father's residency status affect the pleadings and negotiations of the family law case? What impact will the client's statements on required child support worksheets have on a potential future immigration matter? Who has the responsibility to research, inform and make decisions about that potential future matter? How can a student counsel a client about the benefits of settlement in the visitation matter without assessment of the immigration risks? 47

Individual cases are replete with ethical issues involving the Code of Professional Responsibility, the student's own morality and value judgments, and conflicts between the values of the client and the student's professional duties. Through the representation of individuals and with the aid of a supervisor, students can begin to appreciate the difficulties that arise in seeking to serve their clients' objectives. 48 In struggling with the challenges of a client-centered model, students are motivated to deepen their skills in interviewing and counseling, effective communication, and cross-cultural competency, all of which can be taught well through the one-on-one-on-one model.

4. Social Justice Mission

The social justice mission of law clinics is woven into the fabric of clinical legal education. In the words of Stephen Wizner:

It is not enough for clinicians to provide students the opportunity to look at the real world through the representation of clients. Clinical teachers must sensitize students to what they are seeing, guide them to a deeper understanding of their clients' lives and their relationship to the social, economic and political forces that affect their lives, and help students develop a critical consciousness imbued with a concern for social justice. 49

The one client, one student, one supervisor model also provides an opportunity for students to cultivate insights and learn the skills


48 For elaboration of some of the difficulties that can arise in interviewing and counseling clients, see Stephen Ellumann, Robert D. Dinerstein, Isabelle R. Gunning, Katherine R. Kruise, & Ann C. Shalleck, Lawyers and Clients: Critical Issues in Interviewing and Counseling (2010).

needed to fulfill their service obligation to indigent clients throughout their careers. The skills that students learn in an individual representation clinic transfer directly to the representation of indigent clients in their subsequent law practices. The confidence that their supervised clinical experiences generate, and the rewards of the relationships that they develop with their clinic clients, may inspire them to undertake similar cases following their graduation from law school.50

Individual client representation is only one of the many ways to serve the social justice mission of clinical legal education.51 But it is an ideal way to provide a window into clients’ lives and the problems in their communities.52 It also helps clinical teachers and law students maintain awareness of the fact that clients must define and inform the social justice mission.53

There are some formidable critiques of the traditional one client, one student, one supervisor model as a vehicle for achieving long-term social change. In particular, Sameer Ashar offers the strong critique that “the focus on individual client empowerment, skills transfer, and lawyer-led social reform cumulatively undermines the aspirations of law clinics.”54 Ashar argues that clinics expend scarce legal resources in the name of pedagogy and in service of advocacy methods with limited impact.55

As this critique implies, the problems of unequal access to justice and resources pervade our society. Any attempts to achieve social justice through law will be inadequate. Yet even the collective

50 The 2006 Law School Survey of Student Engagement provides data strongly indicating that students who engage in clinic are far more likely to do pro bono client service following law school than those who do not. Given the small number of schools in which clinic is mandatory, it may be that this data simply reflects the practices of a self-selected group of students. Therefore, further study of the implications of this data would be useful. LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, 2006 ANNUAL SURVEY RESULTS 2 (2006). The conclusion that students who engage in clinic are more likely to do pro bono work is also supported by the 2009 version of the study which focused even more attention on the importance (and lack) of opportunity for feedback. LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, 2009 ANNUAL SURVEY RESULTS 12-14 (2009).


52 Andrea M. Seielstad, Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education, 8 CLIN. L. REV. 445 (2002) (describing the pedagogical benefits of stressing the importance of working with community members to identify and solve problems around community needs).

53 Brodie, supra note 26, at 343-44.


55 Ashar, supra note 54, at 358.
mobilization model that Ashar proposes requires law students to represent individual clients as part of the larger effort to achieve social change. Moreover, efforts to achieve social justice through models like collective mobilization can have unintended adverse consequences on individuals and communities, as well as on the educational mission of clinical programs. Lawyering in accord with such models must proceed cautiously and mindfully in an effort to avoid such counterproductive results.

For most law students, taking on professional responsibility for the representation of individual clients living in poverty is challenging. Students experience the weight of responsibility that comes from the duty to provide legal care. The nuances of the attorney-client relationship that they are navigating can be complex. While individual cases provide ideal opportunities for students to learn the basic tools of lawyering—from problem-solving, to client interviewing and counseling, to filing pleadings and motions—excellent clinical teaching also exposes their complexity in context.

Representation of individual clients also serves important traditional goals by “imparting the obligation for service to indigent clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people.” For this reason, clinic teaching is “a rigorous intellectual activity that requires constant challenging of assumptions and testing through experimentation of different and better models for helping students become responsible and effective practitioners.” Wizner and Aiken observe that there is an art to clinical teaching:

> It is not enough to provide the students the experience. We need to help them reflect on that experience, to learn the larger lessons. We do not want our students just to learn how to handle a domestic violence case; we want them to reflect on how the justice system responds, or fails to respond, to domestic violence.

Further skills are required to “nurture students’ capacity for moral indignation at injustice in the world.”

The complex questions that arise—not just in the law, but in approaching clients with a wide range of abilities and disabilities—pose challenges not only for the design of curricula, but for how best to

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56 Id. at 355.
57 See infra notes 77-78 and accompanying text.
58 The articulation of this aspect of the social justice mission of clinical teaching is taken directly from a category of learning set forth in the Report of the Committee on the Future of the In-House Clinic, 42 J. LEGAL EDUC. 508, 515 (1992).
59 Chavkin, supra note 36, at 274.
60 Wizner & Aiken, supra note 37, at 1008-09.
teach clinic students and serve clinic clients. For example, how does a lawyer effectively work with a client who appears to have mental health issues that may impact her legal case? The experience of clinical teachers who have worked with these issues has led not only to improved representation of clients, but to thoughtful scholarship about how some of these challenges can be addressed. The representation of individual clients grounded the development of these important insights, improving the quality of clinical teaching. This, in turn, serves our social justice mission by improving the quality of legal representation for people in poverty.

II. BEYOND INDIVIDUAL REPRESENTATION IN CLINICAL PROGRAMS

Individual representation often leads to work “beyond” the traditional model of one client, one student, one supervisor. A contextual understanding of clients’ lives can lead to problem-solving approaches in particular cases that operate outside the boundaries of traditional legal advocacy. A contextual understanding of the systems that clients face can lead to an understanding of other routes beyond individual representation that offer hope of broad systemic reform.

A. The Context: Community Lawyering and Other Models

Working with multidisciplinary teams on individual cases, identifying community legal needs for welfare or criminal justice reform, drafting and lobbying legislation, and working on class action litigation can all provide rich educational opportunities for law students. Expansion beyond individual representation can enrich the vital work of helping law students to develop the human and professional skills necessary to serve individual clients, and to put a human face on the suffering caused by poverty in our society.

For example, in the clinical law programs at the University of New Mexico School of Law, attorney-client relationships with young children and teenagers in our local juvenile justice system have led to student participation in the revision of the New Mexico Children’s Code. Law students have played an active role in almost every set of revisions to the code over the last decade. Students have also been

involved in related advocacy efforts. For example, in the Fall 2009 semester, a group of students was very surprised by the nature and number of referrals to the juvenile system from the public schools. They began to inquire about the reasons for the referrals of so many 10-, 11-, and 12-year-olds from the public school system. Finding no adequate answers, some students on our Juvenile Justice Team began their own investigation, resulting in a sophisticated request for information submitted to the public school system. Current students are pursuing that information and analyzing how to refine it to build a greater understanding of the roots of the problems facing youth in our community.

In addition to the revisions of the Children's Code, law students have also played a critical role in achieving reforms that have benefited the larger community of at-risk and incarcerated youth. Those reforms include improvements in the conditions of confinement of incarcerated youth, the removal of juvenile delinquency cases from the public internet, the implementation of a bench warrant process that allows children to be released rather than incarcerated in some circumstances, and limitations on the use of shackles and other restraints in courtrooms.

These examples are just a few of the opportunities for systemic reform that our clients have provided to our students. Each systemic project has grown naturally out of longstanding community partnerships, or through needs identified by groups of students handling individual cases. Recent articles have thoroughly described similar models.63 All of these examples provide a starting point for examining both the possibilities and the potential pitfalls of "lawyering beyond" the individual client.

B. Potential Pitfalls of Teaching "Lawyering Beyond"

There is no question that clinical programs across the nation have transformed laws and institutions through lawyering efforts that have transcended individual cases. Criminal justice practices have been reformed.64 Environmental degradation of low-income communities has been prevented.65 City ordinances, as well as state, tribal and

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63 See, e.g., Brodie, supra note 26; Seielstad, supra note 52, at 445.
65 See, e.g., Recent Accomplishments, TULANE ENVTL. LAW CLINIC, http://www.tulane.edu/~tele/assets/pdfs/accomp.pdf (last visited Sept. 17, 2011) (listing recent accomplish-
federal laws, have been changed as a result of the efforts of clinical programs. This article is not intended to diminish the importance or educational value of that work. It is to reaffirm, however, that as clinical opportunities expand, it is important that the founding values of the early clinical models are not undermined. As the array of clinical models continues to grow, legal educators must remain aware of the problems of lawyering beyond individual clients and construct opportunities for student engagement and reflection about these problems. The pitfalls of “lawyering beyond” mirror the benefits of the one client, one student, one supervisor model discussed above.

Thanks to the success of the clinical movement, the types of clinical programs operating across the nation defy simple categorization. Within this variety are programs that are frequently called specialty clinics, cause clinics, and group representation clinics. In general, specialty clinics are programs in which law students learn how to handle one particular kind of case—for example, a domestic violence clinic that seeks Temporary Restraining Orders (or Orders of Protection) for individual survivors of domestic violence. Cause clinics are programs where law students focus on cases and projects which seek to “alter[ ] some aspect of the social, economic and political status quo.” Civil rights clinics and economic justice clinics are examples of “cause” clinics. Group clinics, perhaps most often business or housing clinics, represent associations, corporations or other entities. One of the risks posed by such clinics is that they can operate on the program director or faculty's sense of justice, which may be different from the expressed needs and understandings of the people who might be the intended beneficiaries of the clinic's work.

I. The Potential for Overlooking the Value of the Individual Relationship: Humanity and Legal Care

If we fail to safeguard, and then build upon, our students’ opportunities to represent individual clients, students may lose the immediacy of working with clients who have a face, a voice, and an individual story. In the process, they may also lose the opportunity to understand in a vivid and nuanced way the client’s lived experience, and the sorts of client needs that an attorney can address. As clinics move ments such as holding companies liable for wetlands destruction and Clean Water Act violations, and protecting Louisiana streams designated as Outstanding Natural Resource Waters and Orleans Parish Wetlands).

66 See, e.g., supra note 64; infra note 78 and accompanying text.
towards specialization, "causes," and group representation, the concept of client relationships, and the care that they entail, become more complicated, remote, and difficult to teach.

Specialty clinics have the unfortunate potential to "stamp on the client's forehead the words 'disability law case' or 'civil rights law case' or 'family law case.'" By contrast, in the Community Lawyering/Child Advocacy sections of the University of New Mexico clinic, we encourage students to identify the range of potential legal tools available to provide legal care to our clients. Specialization can undermine those efforts, because the tools used in specialty clinics are often already narrowly defined, thereby increasing the challenges of teaching a range of methods by which attorneys can provide legal care to clients.

For example, a client came to our clinic recently seeking representation in defending against a child support action that had been filed by the caretaker of her oldest daughter. We successfully defended that action on her behalf, but we did not close the case. During the course of the representation, it became clear to the student that the client and her family were in a dire financial situation. Her husband was unable to work, yet he was not receiving disability benefits. A substantial portion of the family's income was going towards exorbitant interest payments on the family car. The children were often running out of expensive, but necessary, medications that Medicaid would not cover. After discussing these issues with the client, she authorized us to expand the scope of representation. We hope that our service will lead to more financial and medical stability for our client and her family, and to more learning for our students about the need for a creative, problem-solving approach to providing legal care.

We also have clients in the juvenile delinquency system who are clearly in need of special education services. Some of our clients are in school only two hours a day due to alleged behavioral problems. Thus, we encourage our students to explore and address, where possible, the educational, behavioral, and health issues that our clients are facing. This exploration, which goes beyond the specialty of defending against a juvenile delinquency charge, helps our students to engage more fully with their clients and to appreciate more deeply the context of the legal dispute and the struggles that children in poverty face in securing basic educational and medical services.

68 Chavkin, *supra* note 36, at 268.

69 Sedillo Lopez, *Learning Through Service, supra* note 21, at 307 (arguing against specialization in clinical programs in part because students will not learn to understand the full complexity and challenges their clients face).

70 As recent scholarship by Camille Carey has suggested, the provision of legal services
"Cause" clinics pose an even more serious set of challenges for teaching the importance of the human needs and the value of client care. Cause clinics seeking out clients with perfect impact cases are likely to focus primarily on particular legal aspects of their clients' lives, and may even decline representation if the issues of applicants for legal services do not fit the mold. In addition, some cause clinics function without the students meeting their clients. In the absence of a client, a student will not have a chance to experience the human nature of the representation and the challenges and rewards that it brings.

In group representation, the dynamics of a group can significantly complicate the human relationships. Typically, groups are composed of individuals with differing voices and interests. Adding this complicated dynamic to the representation creates challenges for teaching the concepts of legal care. It is helpful for law students to have the experience of representing an individual client before taking on the added complexity of these dynamics. Moreover, needs of individuals within a group must sometimes be sacrificed in the course of providing legal care to the group or entity. For example, tenants with extremely low incomes and poor credit may not qualify to remain in housing under the terms of an agreement that the tenants' association has determined to be in the best interest of the entity. While there are certainly important lessons here about a lawyer's struggle with competing duties, group representation is not ideally suited for providing students with an introduction to the experience of legal care.

This is not to say that students in specialty clinics, cause clinics, or group representation clinics do not learn to care for their clients, or that the challenges posed by these clinical models cannot be addressed through thoughtful teaching. It is to say, however, that these challenges provide a tall order for teachers. In any given clinical setting, there is some risk that these challenges will not be overcome and that,
as a result, the students' experience will fail to meet important educational goals.

This risk is at least somewhat reduced when students represent individual clients, because the essence of a duty of care is most easily taught in the context of a one-on-one relationship between a law student and a client. At our best, attorneys help to reduce the human suffering of our clients by bringing to bear all the tools we have to address their needs, as the clients identify them.\(^73\) A one-on-one relationship is not absolutely necessary for an attorney to achieve this aspiration, but outside of such a relationship, other models work best when they make efforts to remain connected with the client relationship that is at the core of clinical law teaching.

2. Diminished Responsibility of Law Students

Recent literature thoughtfully supports the mixed or "combined" approach of giving students some individual cases and some broader projects.\(^74\) This literature suggests that faculty generally have to play a greater role in long-term projects and more difficult cases.\(^75\) As illustrated by the description of the University of New Mexico clinical programs, the combined model allows for students to have the experience of full ownership, while also playing a part in larger group efforts.

Without any individual cases however, it is more of a challenge for students to fully understand how the broader projects emerged, to what particular individual problems they may be responsive, how they may affect individuals' lives, and how, as attorneys, the students can fully internalize the great weight that professional responsibility places on their shoulders. This is not to say that these clinic students would care less about the outcome of an important impact case, or that students engaged in legislative advocacy would not feel professionally responsible for doing excellent work. Nevertheless, caring about the passage of a statute is different from caring for a client's well-being. Being primarily responsible for working with, and on behalf of, another person, and helping that person to make important

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\(^{75}\) See, e.g., Srikanthiah & Koh, supra note 74, at 476; Kruse, supra note 74, at 440-42; May, *supra* note 74, at 125-27.
decisions, encompasses a relationship that has a powerful psychological dimension. The psychological dimension not only bolsters students’ motivation, but also heightens the quality of their attention, potentially enabling students to develop strategies and insights that otherwise they might not have seen.

Specialty clinics focusing on individual cases in a certain area of law can, and often do, provide opportunities for students to take full professional responsibility for clients. In fact, clinical programs that focus on a particular kind of case can help students develop expertise and confidence in a certain area of the law that will enable them to move to a new level of professionalism. Thus, if clinics take cases that are straightforward enough for law students to handle successfully, then those clinics can effectively teach students about the responsibilities imposed by the profession. However, clinics that specialize in complex litigation, or in other sorts of cases or transactions that are beyond the competency of individual students, must take special care to design experiences for students that impress upon them, through experience, a vivid awareness that their roles, or the failure to play their roles, will impact the lives of other people in a dramatic way.

Cause clinics can create similar challenges in educating students about the obligations of the attorney-client relationship. Complex cases are often necessary to achieve the broad social justice objectives of cause clinics. While law students may play an important or key role in a certain aspect of a larger case or project, the opportunities for students to independently experience the full weight of a professional matter may be diminished. Also, because the “cause” itself can take on its own weight in these situations, it may be easier for the student to lose touch with the professional duty to serve a client’s needs.

In group representation clinics, students are often working to empower community groups and help them define themselves. Progress can be hard to measure, and the sense of urgency and the immediacy of need must be deferred while the group develops and proceeds according to its own processes. While the lawyering skills and values involved can be considerable, it can also be harder for law students to experience the same weight of professional duties, loyalties, and demands as they would in the context of individual representation of a client with immediate legal needs.

3. The Role of the Attorney

Lawyers with experience can, and do, choose what clients, and perhaps what causes, they serve. One of the greater challenges of

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76 See, e.g., Debra S. Katz & Lynne Bernabei, Practicing Public Interest Law in a Pri-
lawyering and, correspondingly, of legal clinic design, is the determination of which clients an attorney will accept. This is an area where clinics that "go beyond" individual cases face great challenges in helping students understand the skills and values that go into the determination of whether or not an attorney should accept a case.

Moreover, it is important that law students understand the duty to provide legal services in general. While many lawyers specialize in practice, law students benefit from exposure to a wide range of legal matters. Hopefully, they can be trained to see the legal tools that they can use to address a potential client's problems, rather than being limited by the confines of a specialty clinic. Impact clinics pose even more challenges for training law students about the intake decision. Do we want law students to be looking for the perfect impact client without ever having had the privilege of providing legal services to anyone? The intake decision in group representation settings is even more complex, especially in the important moments of group formation before an entity exists.

Potential harms lurk behind these difficult issues. Lawyers serve clients. When students in clinics become lawyers for communities or "causes," without an individual client to guide them, the students' learning about the nature of the attorney-client relationship is potentially distorted. Without grounding in the community, "cause" or group lawyering has the potential to harm community members—sometimes the members whom the lawyers were intending to protect.77

For example, over the course of a few years of working with our multi-disciplinary teams treating at-risk babies, our clinic represented many grandparents and other non-parent caregivers of children. Under New Mexico law, all contested guardianships of children had to be pursued under the Children's Code that required the Children, Youth, and Families Department to file, or at least consent to the filing, of guardianship petitions. The Children, Youth, and Families Department would not participate in cases where the children were safe with our clients. Therefore, our clients could not secure guardianship...
of the children in their care. Our clients sought to protect children by providing some stability in their lives.

Seeing this issue in several of our cases and addressing what we thought was a pressing community need, law students and faculty participated in a long process of creating the New Mexico Kinship Guardianship Act. It became law in 2001. The statute, which contained words protective of parental rights, appeared to accomplish some good, bringing the relief sought by our clients, while protecting the fundamental rights of parents.

Since the passage of the statute, however, we have represented many parents who have had their children taken from them in what we perceive to be a misuse, or misinterpretation, of the law by the courts. We are currently litigating cases in which the law has been used to deprive parents of their children, and children of their parents, under circumstances we did not anticipate. Although our law reform efforts grew out of our individual representation of clients, they have had unintended consequences that have not served the children in our client community as well as we had hoped. But because we remained in touch with the concerns of our individual clients, we learned of these unintended consequences and are taking steps to correct them. Had we not combined our law reform efforts with a continued broad spectrum of individual clients, we might not have learned of these consequences. As this example reveals, without the continuing direction and feedback of individual members of communities, "lawyering beyond" can cause harm.

4. Social Justice Mission

Several years ago, clinic students expressed interest in carrying out legislative projects for clinical credit. That semester, on behalf of community groups with which they had contact, students drafted and successfully lobbied for the right of nursing mothers to breast feed in public places and a Pain Relief Act. Another student worked with a group that sought to legalize the carrying of concealed weapons. Obviously, these students had very different ideas about the meaning of "social justice," raising a question about how far the social justice mission in clinics should stray from the roots of the clinical legal education movement, which called for the provision of legal services to people in poverty.

Although this article does not delve into the meaning of "social justice" or "public interest," it is my contention that working on indi-

78 N.M. STAT. ANN. §§ 40-10B-1 to -15 (West Supp. 2010).
80 N.M. STAT. ANN. §§ 24-2D-1 to -6 (2011).
individual cases—or even on combined advocacy rooted in, and informed by, individual clients and community members—imparts the service obligation of the profession. It also shows students in a manageable way how they can make a difference in their future practice.

Another issue concerns the process for identifying community interests. Most people would agree that turning apartment complexes from deplorable conditions into newly renovated, affordable low-income housing is a laudable goal. But what if most of the tenants do not have legal status in the United States and would not benefit from the long-term rehabilitation because of the likelihood of eventual deportation? What if the renovation efforts will require long-term relocation of the tenants? Does the creation of the affordable housing qualify in this circumstance as serving a “social justice mission”? Who decides?

The lawyer’s personal views of social justice can inform, but must not covertly or overtly guide client representation. We can be misled by the voices in our heads calling for a world that reflects our own sense of justice. In an inspiring discussion, our former Associate Dean for Clinical Affairs, Mike Norwood, likened the lawyer’s own sense of social justice to the song of the Sirens who sought to steer Ulysses off course during his epic voyage.81 As public interest attorneys and clinical teachers who see our “calling” as the pursuit of social justice,82 we must remain ever vigilant in our efforts to serve our clients. Our vision of a renovated neighborhood with access to affordable housing cannot override our client service, or impede our ability to see the adverse impact of this vision when it harms another marginalized community. Clients determine the goals of representation,83 driving and informing the social justice mission of our clinical programs and the teaching of our law students. The call of the Sirens’ song is difficult for some experienced attorneys and clinicians to resist. Thus, that resistance must be experientially learned by law students as they begin their journeys through the legal profession. They must tune their ears to their clients’ voices, and learn to question and resist the Sirens’ song of their own vision of justice, if it tempts them to steer away from their duty to serve their clients.

The one client, one student, one supervisor model is best suited to help students and clinical teachers stay on course. This is not to say that pursuit of an overarching social justice mission is not valuable, or that law students should not pursue and explore their own sense of

81 Homer, The Odyssey 194 (Penguin 1946).
82 Deborah Kenn, Lawyering from the Heart 8 (2009) (describing “a ‘calling’ to help those in our society who otherwise would not have access to our system of justice.”).
justice. The challenge is to help students learn to make these concerns explicit, as they participate in a broad range of lawyering experiences throughout their law school and professional careers.

III. "BEYOND" CLINICS

A. Transforming the General Law School Curriculum

The clinical legal education movement had some success in encouraging legal education to focus more intentionally on preparing law students for practice. Innovations have been encouraged and adopted across law school curricula, many of them led or inspired by clinical programs. In the 1970s, clinical law programs answered the call of the times, making law school more relevant to the practice of law and to the social changes that were occurring across the nation. Since that time, courses such as Poverty Law, Environmental Law, Children's Law, and Consumer Law have become common fare in many law schools. These successes should be acknowledged and celebrated.

As we move toward more integrated law school curricula—the next step in the evolution of reform in legal education—some of the innovations developed in clinical programs may now enjoy use in more traditional classes. For example, in the “systems approach” of the Frank Remington Center at the University of Wisconsin Law School, clinical law students ride with police officers in order to better understand the criminal justice system. While decades ago, the opportunity to learn from experience in the field was provided almost exclusively by the clinical program, it is easy now to envision experiential opportunities across the curriculum, such as first-year law students riding along with police officers as part of their Criminal Law

84 See supra note 21 and accompanying text.


86 Id. at 1637 (listing law teachers of Environmental Law).


88 See AALS DIRECTORY, supra note 85, at 1588 (listing law teachers of Consumer Law).

89 See generally Chavkin, supra note 36, at 255 (“To the extent that we are able to fundamentally alter the nature of legal education through greater use of clinical methodology and through greater consonance between the goals of clinical and non-clinical courses, we may be able to focus on very different educational models and the achievement of very different educational goals for our clinic students.”).

course.

At the University of New Mexico School of Law, we have developed several non-clinical service-learning opportunities. Because these opportunities and courses do not count toward our mandatory six-credit clinic requirement, we refer to them as “hybrid courses.” For example, a Wrongful Convictions course allows students to investigate and litigate claims of factual innocence, an Immigration course allows students to work on immigration cases with a New Mexico alumnus who is a staff attorney in a local immigration community organization, and an Executive Clemency course allows students to work with a professor in preparing petitions on behalf of prisoners seeking relief from their convictions and sentences. We offer a Criminal Law in Practice course and a course on DWI and domestic violence prosecution. We have offered a seminar on Child Development and Legal Systems in which several students interviewed incarcerated children and worked with a local attorney to improve their conditions of confinement. Our Federal Motions Practice course requires students to draft motions on behalf of real parties, and our course on Criminal Appeals has students drafting appellate briefs.

Because our faculty is actively engaged in a variety of areas of practice, students also work with many faculty members to provide invaluable service. For example, Distinguished Professor Jim Ellis has worked with students and faculty over the past decade to prepare over a dozen amicus curiae briefs on behalf of client organizations seeking to protect the rights of persons with mental retardation. Law students traveled to Washington, D.C. to hear oral arguments at the United States Supreme Court, and one lucky group witnessed Professor Ellis presenting the winning argument in Atkins v. Virginia, the case in which the Court held unconstitutional the execution of persons with mental retardation. Other law schools as well have developed impressive innovations that expand the boundaries of traditional legal education.

Against this backdrop, a vision of an integrated law school curriculum emerges where first-year Criminal Law students ride with police officers, observe arraignments, and shadow clinical law students and other attorneys on live-client cases. Business Associations can be taught with a clinical component so that students can grapple with the challenges of advising a group about what sort of entity they should form, providing legal knowledge within a real-world context.

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B. A Caution

This integrated curricular context provides the opportunity to create a “clinic continuum,” which offers service-learning opportunities in the classroom and the clinic, including individual representation and other forms of practice. The clinic continuum offers exciting opportunities for students and professors to learn from practice and to try new teaching techniques. However, just as the move to “lawyer beyond the individual client” is fraught with various perils, so is the road to curricular innovation. As the integrated curriculum emerges, clinical teachers will need to work to preserve the invaluable lessons that one-on-one representation presents, or it is at risk of being lost.

Experienced clinical teachers are fully aware of many of the opportunities and many of the challenges of working with live clients and law students. As innovations involving client representation take off across law school curricula, clinical teachers will play an important role in making sure that our colleagues and their students proceed with full awareness of both. From case file management, to addressing potential conflicts, to student safety issues, the challenges will be many. Where clinical courses move beyond the representation of individual clients, the clinical movement may need to develop a framework for determining which proposed activities serve goals appropriate for clinical law programs. Professors with experience in clinical teaching can provide invaluable assistance and insights in this process of curricular change.

CONCLUSION

As clinical educators move beyond the one client, one student, one supervisor model, we should not abandon individual clients' voices and concerns. The individual representation model that has been at the core of the development of the clinical movement must be safeguarded as we move forward to embrace innovations. While individual representation is not necessarily the best form of advocacy for social justice, the representation of individual clients is potentially transformative for law students. The duty to preserve confidences, the meaning of zealous advocacy, and the profound sense of responsibility that comes from the privilege of providing legal care are all essential elements of clinical legal education. All provide complex challenges

92 MacCrate, supra note 4, at 1099.
93 See Chavkin, supra note 36, at 264 (suggesting the following factors: “Will the student learn something unique about the lawyer-client relationship, about client-centered lawyering (interviewing and counseling), about facts (investigation and discovery), and about case theory (factual and legal) from the experience? Does the expensive clinic infrastructure add something special to the project?”).
for any thoughtful law student.

Legal education will benefit as more opportunities for experiential learning are offered to law students. Social justice must be sought through many different forms of legal advocacy, organizing, and community building. However, as clinics and the broader curriculum move beyond the traditional clinical model of one client, one student, one supervisor, it is vital that we maintain our focus on the importance of the student-client relationship as a tool for teaching the essential human skills that good law practice entails and social justice requires.