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LAW SCHOOL INITIATIVES IN HOUSING AND COMMUNITY DEVELOPMENT

PETER PITEGOFF*

The beauty of Benedict House — the ornate wooden trim, the elegant dining room, the stained glass windows — tempers the harsh reality for its residents.

"Fifty of our residents have died," explained a staff member, suggesting an ironic benchmark of progress in this home for people with advanced cases of AIDS and nowhere else to live.¹ So began a brief tour of special needs housing in Buffalo, New York, and a glimpse at the role of one law school in affordable housing development.

Across town on Emslie Street, in one of the poorest census tracts in the Western New York region, workers were renovating a century old Jesuit rectory. St. Ann's rectory was soon to reopen with nineteen units of subsidized housing for elderly residents.² Two blocks away was the Precious Jewels Day Care Center, operating in a renovated house and an adjacent new play area in the midst of its inner-city neighborhood.³

Precious Jewels, Benedict House, and St. Ann's are among a wide range of community-based clients of the Legal Assistance Program at the State University of New York at Buffalo.⁴ In October 1993, SUNY Buffalo and the

* Professor of Law, State University of New York at Buffalo. I thank the Interuniversity Consortium on Poverty Law for supporting this research, with special thanks to Louise Trubek, Lois Lupica, Stephen Wizner, Robert Solomon, Thomas Disare, George Hezel, Nils Olsen, Lauren Breen, Philip Halpern, and Janet Stearns.

¹ Phil Fairbanks, *City Approves Benedict House Plans*, THE BUFF. NEWS, July 1, 1994, at C1; Phil Fairbanks, *Some Petitioners Recant Opposition To Benedict House Expansion*, THE BUFF. NEWS, June 2, 1994, at C1; Henry L. Davis, *Benedict House Presses County For Funds To Expand AIDS Care*, THE BUFF. NEWS, Dec. 6, 1993, at C1. Deborah Ellis, the chief financial officer of Benedict House, hosted a visit there on October 28, 1993, by the peer exchange participants. See *infra* note 5 and accompanying text (describing the "peer exchange" and listing its participants).

² By early 1994, all nineteen units at St. Ann's were occupied. *Reaching Out: UB Law School's Development Clinics, Making A Difference for Those with Least*, U. BUFF. L.F. Spring-Summer 1992, at 22-24; Dave Condren, *Ex-Parish Rectory Makes Bow As Low-Income Project*, THE BUFF. NEWS, April 28, 1994, at C4.

³ Peter Pitegoff, *Child Care Enterprise, Community Development, and Work*, 81 GEO. L.J. 1897, 1899-1901 (1993).

⁴ Peter Pitegoff, *Community Economic Development in the Law School Context*, Plenary Presentation at AALS Conference on Clinical Legal Education, (June 5, 1994), in CHALLENGES FOR THE NINETIES: EXPANDING PEDAGOGY, SCHOLARSHIP AND SOCIAL JUSTICE, at 67-73; see also Peter Pitegoff, *Buffalo Change and Community*, 39 BUFF. L. REV. 313, 335 n.99 (1991) (describing the SUNY Buffalo Legal Assistance

Interuniversity Consortium on Poverty Law co-sponsored a "peer exchange," including visits to these inner-city clients. Law professors from Yale Law School, Seton Hall University School of Law, and SUNY Buffalo School of Law gathered for two days to discuss their respective schools' initiatives in affordable housing and community economic development.⁵

This article sketches critical elements required for a successful law school clinic in housing and economic development. It also places development clinics in a broader institutional and strategic context. It describes the three clinical programs represented at the peer exchange to illustrate the recent emergence of law school initiatives in affordable housing and community development.⁶

I. THE PEER EXCHANGE PROGRAM

This section presents a brief introduction to the three development clinics involved in the October 1993 peer exchange.⁷ The origin of each program is particular to the faculty involved, the law school's culture and operation, and the surrounding community and clientele. The differences among these development clinics underscore the need to tailor a housing and community development program to particular circumstances.

A. Seton Hall School of Law's Development Clinic

Lois Lupica arrived at Seton Hall University School of Law in 1992 and discovered a network of sophisticated community development corporations in Newark and throughout New Jersey. Her initial assessment was that signifi-

Program as a wide ranging clinical law school program); *Id.* at 336, n.100 (describing the SUNY Buffalo affordable housing and community economic development law clinics in particular); Peter Pitegoff, *Community Development Clinic in Buffalo*, 1 CON-SORTING 6 (1991) (also describing the SUNY Buffalo affordable housing and community economic development law clinics in particular).

⁵ The Peer Exchange on law school initiatives in affordable housing development took place in Buffalo, New York, on October 28-29, 1993. Primary participants were Lois Lupica (Seton Hall University School of Law), Robert Solomon and Stephen Wizner (Yale Law School), and George Hezel, Tom Disare, Lauren Breen, Nils Olsen, and Peter Pitegoff (SUNY Buffalo School of Law). All are involved in affordable housing and community economic development clinics at their respective law schools.

⁶ See *infra* note 23 (listing law schools with community development clinics). This article is an accounting of the themes discussed at the October 1993 peer exchange at SUNY Buffalo. It presents guidelines for law schools starting or operating development clinics and outlines a rationale supporting these clinical initiatives.

⁷ The focus here on the programs at Yale, Buffalo, and Seton Hall is designed to draw themes and lessons to use in any law school development clinic and other non-litigation clinics. Yale and Buffalo have the largest and oldest development clinics. Seton Hall's program was among the newest and operated only for the 1992-93 and 1993-94 academic years. See *infra* note 11 (describing the suspension of the Seton Hall program). Other law schools also have several years of experience with development clinics. See Newman, *infra* note 23; see also Lehman, *infra* note 24.

cant projects already underway could provide an entry point for a dozen student attorneys in the school's new development clinic.

Ms. Lupica served as the only clinical professor in Seton Hall's Affordable Housing Initiative. She assigned law students to work primarily with attorneys at three existing organizations. Ms. Lupica selected assignments and supervised students in their ongoing work. She also taught a substantive course in business transactions and affordable housing development as a component of the program. The students participated in contract analysis and drafting, preparation of legal memoranda, and negotiations in the context of business and housing transactions.

The New Community Corporation ("NCC") was one of the clinic's most active clients. It is the oldest nonprofit housing and economic development organization in New Jersey, and has proved instrumental in revitalizing the central ward of Newark. Its activities include: the development of affordable housing; day care centers for children and senior citizens; a nursing home facility; a transitional shelter for homeless families; a supermarket; and other services and enterprises.⁸ Seton Hall students worked with NCC's development director or general counsel on three projects.

First, students assisted in a 48-unit townhouse project. They reviewed architectural plans, revised the site plan application, researched zoning and tax abatement issues, drafted deeds, and crafted the financing package. Second, law students assisted in negotiations with the City of Newark in a joint venture for a new recreation center. Third, they joined in NCC's sponsorship of a limited partnership equity fund for targeted use of low income housing tax credits, which touched on legal issues in corporate, tax, securities, and partnership matters.⁹

Other clients of the Seton Hall housing initiative included: the Monmouth Housing Alliance, developing housing for people with mental disabilities; Corinthian Housing Development Corporation, a new organization, planning construction of 70 rental townhouses for low and moderate income residents; the Rural Development Corporation, working on acquisition of government-owned properties with the goal of rehabilitation and sale as affordable housing; and the Affordable Housing Network of New Jersey, a statewide group dedicated to providing and developing housing policy and information exchange.

Engagement with a handful of experienced and active community development corporations, most of them already with other legal counsel, facilitated the rapid start-up of the Seton Hall program.¹⁰ The clinic structured limited relationships with these sophisticated clients. Essentially, it acted in the role of counsel to corporations' in-house or outside attorneys, with the clinic taking on discrete but meaningful tasks.

⁸ Memorandum from Lois Lupica to the Faculty and Administration at Seton Hall University School of Law, 4 (Dec. 15, 1992) (on file with author).

⁹ *Id.* at 2.

¹⁰ Substantial federal funding that the faculty earmarked for the housing initiative also facilitated start-up of the Seton Hall program.

The success of this model was due in large part to the experience that Lois Lupica brought to the program. During her five years of large law firm practice in New York City, her practice included complex financial and real estate transactions as well as related matters in business law. Prior to law school, she worked in a number of housing and economic development projects. These experiences, along with a willing and sophisticated client pool, helped her quickly identify opportunities which, in turn, enabled her to craft an appropriate role for the Seton Hall Affordable Housing Initiative in Newark and around the state. Unfortunately, success of the Seton Hall program thus far has been shortlived, as the Law School suspended the program after two years of operation.¹¹

B. *Yale Law School's Development Clinic*

The Yale Law School development clinic, in contrast, grew organically over a number of years and sunk its roots deeply in the community and the university. The clinic functioned in an entrepreneurial manner, playing an active role in creating a key client organization. Its other clients generally were less established than those of Seton Hall. Moreover, an evolving policy agenda drove the clinic as much as particular client needs.

In the mid 1980s, a number of initiatives at Yale Law School gave rise to the Yale Shelter Project. The experience of students who represented clients in emergency shelters, soup kitchens, and the street, dramatized the need for affordable housing in New Haven. The experience of students in Yale's mental disability clinic underscored the failures of deinstitutionalization without available housing. Some faculty members, meanwhile, wanted to add transactional lawyering skills to the clinical curriculum, to involve business oriented students in public interest work, and to bridge the gap between the clinic and the academic curriculum. They envisioned a greater policy component in clinical legal education and hoped to use law constructively for poor clients, without resort to litigation. These activities and perspectives coalesced in 1986 to form the Yale Shelter Project.¹²

Today, Yale's Housing and Community Development Clinic has expanded to encompass a diversity of students and disciplines. The clinic includes graduate students in law, management, public health, and architecture and planning. Their activities range from affordable housing development to housing management assistance, from policy analysis for job creation in health care to

¹¹ The Seton Hall Affordable Housing Initiative hopefully will resume after a one-year suspension. Nonetheless, an apparent lack of integration with the core law school enterprise weakened the Seton Hall clinical experiment. When Lois Lupica left to teach at another law school, Seton Hall Law School neither hired nor reassigned someone in her place to maintain the operation. Whether or not it resumes, the two-year experience at Seton Hall underscores the need for a long-term institutional commitment if a development clinic is to thrive. See Part II.C, *infra* (discussing institutional stability).

¹² A. BERGER ET AL HOMES FOR THE HOMELESS at vii (1990).

increasing availability of financing for community economic development.

The Yale clinic initially devoted substantial energy to forming and nurturing one of its primary organizational clients, the Housing Operations Management Enterprises, Inc. (HOME). Robert Solomon, one of the development clinic founders, recalls that the gap in effective management of low-income housing led to the formation of HOME, the clinic's first housing development client, in 1987.¹³ In collaboration with a coalition of community groups and government officials, the Yale project formed three related nonprofit corporations: HOME Management, for property management and provision of social services; HOME Development, for construction and rehabilitation of housing; and HOME, for fundraising, policy matters, and property acquisition. The Yale clinic and its clients designed the multiple corporate structure to strike a careful balance among the different activities and interests involved, and to ensure an ongoing focus on effective management.¹⁴ The Yale clinic continues to provide legal counsel to the HOME corporations, although somewhat less intensively than during the start-up period.

Since its inception, the clinic has assisted in numerous other projects, including the following: the Branford Interfaith Housing Corporation, a nonprofit developer of affordable housing and related services north of New Haven; the New Haven Health Care Employment Research Project, an effort to examine opportunities for local job creation in the growing health care industry; Streets, Inc., a group of homeless women and advocates for the homeless formed to address issues faced by women on the streets; and the Connecticut Urban Reinvestment Endowment, Inc. (CURE), an organization that advocates more community investment and elimination of discriminatory lending practices by local banks. Stephen Wizner, also among the clinic's founders, currently works with students in assisting the Elm Haven Residents Council as they prepare for tenant management of the largest public housing project in New Haven, and for effective deployment of funding from the federal Department of Housing and Urban Development for economic development.¹⁵

As with Lupica at Seton Hall, the range of abilities and experience of Solomon, Wizner,¹⁶ and other supervising attorneys has enabled the Yale clinic to

¹³ Robert Solomon, Law School Initiatives in Affordable Housing Development, Panel Discussion at the State University of New York at Buffalo School of Law (Oct. 29, 1993) (audiotape on file with author).

¹⁴ BERGER ET AL., *supra* note 12, at 11.

¹⁵ Stephen Wizner, Law School Initiatives in Affordable Housing Development, Panel Discussion at State University of New York at the Buffalo School of Law (Oct. 29, 1993) (audiotape on file with author). *Cf. infra* note 28 (describing an alternative model advocated by Janet Stearns at the University of Washington).

¹⁶ Robert Solomon, Clinical Professor of Law at Yale, formerly managed legal services offices in Bucks County, PA, and in New Haven, CT, and was a partner in a New Haven law firm. Stephen Wizner, the William O. Douglas Clinical Professor at Yale, also managed a legal services office (MFY in New York City), worked as a trial attor-

conduct a complex array of projects. Their experience, moreover, demonstrates the potential for law student initiative and for interdisciplinary clinical approaches to social and economic problems. Many of the twenty-seven students in the housing and community development clinic in Fall 1993 were non-law students, including graduate students in architecture and planning, management, and public health. This innovation underscores the need and opportunity for collaboration beyond the legal community, both in a university-based development program and in practice outside the academy.

C. SUNY Buffalo School of Law Development Clinics

The development clinics at SUNY Buffalo—the Low Income Housing Development Clinic and the Community Economic Development Clinic—combine the entrepreneurial and policy approach of the Yale model with the limited counsel model at Seton Hall.¹⁷ These two clinics at Buffalo work together, linked by an open enrollment prerequisite course in Community Development Law, a joint intake process, and overlapping faculty and clientele. The housing component represents nonprofit corporations in the development and management of housing for homeless, elderly, disabled and low-income families in the western New York region. The economic development component concentrates more on employment and enterprise development, assisting community development corporations, and advising locally-owned enterprises and labor unions in a range of corporate and business law matters. Both development clinics work on policy issues from time to time.

The housing development clinic works collaboratively with a wide range of community institutions, from the Catholic Diocese of Buffalo to neighborhood development organizations in the distressed east side of Buffalo. The clinic played an active role in the formation and ongoing operation of Development of Western New York, Inc., "Delta," the nonprofit development corporation sponsored in large part by Catholic Charities and the Diocese. Now, after six years, Delta is more self-sufficient and the clinic works with a number of other clients, although Delta continues to generate a large portion of the clinic work.

Two major projects undertaken by the housing development clinic, as noted in the introduction, are: (1) legal counsel in the creation and operation of Benedict House, which provides housing for people with AIDS; and (2) the renovation and related financing of historic St. Ann's Rectory on Buffalo's east side. This latter project includes tax credit financing through a limited partnership structure and multiple layers of public and private loan capital, to

ney in the U.S. Justice Department, and has undertaken a range of teaching and clinical supervision at Yale Law School since 1970.

¹⁷ All three clinical programs, to some degree, combine limited counsel to some clients and more intensive involvement with others, along with a policy component. Classification of Seton Hall as one model and Yale as another is a reflection of emphasis rather than exclusive focus. The particular approach varies with circumstances and, in our experience, evolves over time within a particular program.

create nineteen units of affordable housing for elderly and disabled people. Since the clinic's inception, it has been involved with close to twenty other organizational clients and projects: legal counsel in development of new affordable housing in nearby Hamburg and Lackawanna; representation of Transitional Services, Inc., a nonprofit corporation, in financing and renovating a building to house and provide critical services to homeless persons suffering from mental illness; and collaboration with public housing tenants and the Buffalo Municipal Housing Authority in developing tenant participation in management and related services.

The Community Economic Development Clinic has counseled over twenty organizational clients in its first six years, including: Precious Jewels Day Care Center, Inc., a new child-care enterprise in a low income neighborhood in inner city Buffalo; the Niagara Frontier Growers Cooperative Market, Inc., a large wholesale and retail produce market in Buffalo, owned and operated by about a hundred regional farmers; the Office of Urban Initiatives, Inc., a multi-racial planning and economic development group with a neighborhood focus, engaged in both grassroots entrepreneurial development and policy level planning for distressed communities; and Jubilee Community Loan Fund Inc., a vehicle for socially responsible investment and for financing community based enterprises and affordable housing development.

The development clinics also provide policy assistance to public agencies, such as the Minority Business Enterprise Project sponsored by the Western New York Economic Development Corporation (a state agency), and the Greater Buffalo Housing Partnership, a regional task force representing public and private institutions that support affordable housing development. Clinic faculty have been sought statewide for their expertise in housing policy, including the implementation of complex tax credit financing for low income housing development. The economic development clinic has joined the debate over statewide child care policies, particularly with respect to financing day care centers, and continues to evaluate state and federal policies affecting industrial retention and renewal.

In SUNY Buffalo's development clinics, the blend of providing limited counsel to established organizations, organizing and empowering new institutions, and developing policy for broader impact arose from the ingredients in the Buffalo mix. The infrastructure of community organizations in Buffalo, weakened by deindustrialization and years of economic decline, showed little capacity for sophisticated economic development when these clinics began in 1987,¹⁸ giving rise to an entrepreneurial approach that resembles the Yale model. Since then, some of the client groups have matured and require less attention from the clinic. The SUNY Buffalo clinics work selectively with established organizations and government agencies, similar to the Seton Hall

¹⁸ George Hezel, *Building a Community Base for Housing Development in the 1990s: A Modest Proposal for Buffalo, New York*, 39 BUFF. L. REV. 511, 512-520 (1991); Peter Pitegoff, *Buffalo Change and Community*, 39 BUFF. L. REV. 313, 319-21, 326-27 (1991).

model. Finally, policy work becomes more compelling with time, as accumulated clinical experience with a range of clients gives rise to broader strategies and coalitions.

The experiences and inclinations of the faculty involved have formed and influenced the blended Buffalo model. George Hezel brought an entrepreneurial perspective when he founded the SUNY Buffalo Low Income Housing Development Clinic in 1987, after fourteen years of representing individuals in a legal services context.¹⁹ As a result, one of the clinic's first initiatives was the formation of Delta Development of Western New York, Inc., a nonprofit housing developer and still one of the clinic's primary clients. I was appointed at SUNY Buffalo the following year and established the Community Economic Development Clinic, complementing the housing clinic with more of an emphasis on enterprise development. My prior experience in community economic development and worker ownership transactions was well suited to the blended clinical approach.²⁰

Tom Disare joined SUNY Buffalo's clinical faculty in 1989, after a decade of experience in banking law and corporate transactions at a large law firm.²¹ Disare served as a bridge between both development clinics in their formative years, and brought a perspective more akin to the Seton Hall model of a limited counsel role with established clients. He also brought law firm management expertise that helped shape our systems and operation. Lauren Breen joined the clinic faculty in 1993, working with both development clinics after several years in neighborhood legal services and in private practice.²² The collaboration of four supervising attorneys with different backgrounds, as well as other faculty, has enhanced Buffalo's blended approach.

¹⁹ George Hezel, prior to his arrival at SUNY Buffalo Law School, had been the managing attorney in the housing unit of Neighborhood Legal Services and in the Division of Housing at Catholic Charities of Buffalo, in addition to earlier legal services work in Lackawanna, NY, and for prisoners in the Attica and Albion Correctional Facilities.

²⁰ I formerly was legal counsel to the Industrial Cooperative Association (now the ICA Group) in Boston, Massachusetts. The practice involved corporate transactions, worker-owned businesses, community development projects, and related policy work throughout the U.S. Before becoming a lawyer, I was a community organizer in rural North Carolina and inner-city Oakland, California.

²¹ Thomas Disare was a partner and administrator of the corporate department at the Buffalo law firm of Jaekle, Fleischmann & Mugel prior to working at SUNY Buffalo. He practiced banking, finance, and corporate law during ten years there, and remains of counsel to the firm.

²² Lauren Breen, an early participant in the development clinics as a student, returned to SUNY Buffalo as a Clinical Instructor after several years of practice at Neighborhood Legal Services in Buffalo and at the law firm of Hiscock and Barclay, where she continues to work on a part-time basis. At Buffalo, as at Yale, other faculty participate from time to time in the development clinics and further enrich the mix. Philip Halpern and Nils Olsen, for instance, have played active roles with the Buffalo development clinics.

II. EMERGING DEVELOPMENT CLINICS

In the past decade over a dozen law schools have started housing and community development clinics. Many others have introduced related classroom programs.²³ These "development clinics" bring university resources and expertise to community based efforts at dealing with housing and economic development in inner city neighborhoods and other distressed areas. Law students and faculty provide legal counsel to community organizations in order to create subsidized housing, craft and implement enterprise strategies and retain local jobs.

The clients are groups committed to forms of economic development accountable to and for the benefit of disadvantaged or underrepresented populations. These client groups include: community development corporations, nonprofit organizations, labor unions, tenant councils, and selected enterprises. This direct client work also gives rise to broader policy initiatives, when recurring problems or obstacles faced by client groups suggest systemic solutions. These initiatives may involve governmental policies, as in improving the regulatory environment for child care centers, or they may influence private sector policies, as in crafting programs for community development finance by banks.

In contrast to many traditional clinics, development clinics emphasize non-litigation approaches to public interest law and problem solving. The work often involves long-term and complex transactions that demand an interdisciplinary approach, engaging law students in legal work outside the courtroom rather than in litigation or administrative proceedings.²⁴ Students in development clinics ordinarily represent groups, not individuals. The substantive legal work involves corporate, tax, finance, real estate, labor, contract, and regulatory matters. Students and faculty must also pay attention to practical questions of ethical representation, organizational dynamics, and community context. With a new spin on "business law in the public interest," development clinics bring together students and faculty interested in business with those involved with community, labor, or public policy. These clinics can also create links to other parts of a university and to a variety of expert consultants and community leaders, lawyers and nonlawyers alike.

No single formula exists for a successful development clinic. The description

²³ Law schools that have conducted affordable housing or community economic development clinics or related classroom programs in recent years include: Cardozo, Columbia, George Washington, Georgetown, Harvard, Michigan, St. Louis, SUNY Buffalo, CUNY at Queens, Seton Hall, Stanford, Syracuse, Washington, and Yale. See LESLIE NEWMAN, NATIONAL ECONOMIC DEVELOPMENT AND LAW CTR., *LAW SCHOOLS AND COMMUNITY ECONOMIC DEVELOPMENT* (1993)(examining community economic development clinics and courses in nine of these law schools).

²⁴ See Jeffrey S. Lehman & Rochelle E. Lento, *Law School Support For Community-Based Economic Development in Low-Income Urban Neighborhoods*, 42 WASH. U. J. URB. & CONTEMP. L. 65, 66 (1992) (contrasting litigation and non-litigation roles for lawyers, and explaining why the latter is the focus of the Program in Legal Assistance for Urban Communities at the University of Michigan).

of programs at Seton Hall, Yale, and Buffalo underscores the ad hoc origins of each and the degree to which each program emerged from particular circumstances, such as common interests among faculty, prior experience of the lead attorneys, community capacity, and institutional commitment. The following themes, nonetheless, can be helpful in assessing the feasibility of a law school community development initiative, in guiding an ongoing program, or in understanding the value of a transactional clinic that integrates the core curriculum and scholarship.

A. *Balancing Effective Development and Teaching*

Persistent tension between educational focus and community or client needs arises from the multiple goals of these development clinics. Building stable neighborhood-based institutions and structuring complex financial transactions often requires the judgment of an experienced practitioner and continuity of counsel over several years. Yet, student attorneys typically participate in the development clinics for only a year along with their other coursework responsibilities. Additionally, they usually possess little experience in development law. While the best learning experience for the student is not always consistent with client or project goals, a careful balance of teaching and effective practice is crucial for credibility and long term viability of a clinical program in development.

Clearly, the law school clinics can serve as a catalyst for constructive change in a given community or region and as a participant in wider policy analysis. Their very existence demonstrates the constructive role that a law school and a university can play outside the academy. While driven by client and community needs, however, legal education remains the essential purpose of these development clinics.

The clinic setting provides an opportunity to decompose the concept of "legal advocacy" and reflect upon the rich dynamic of lawyer-client relations. Faculty and students can pause to teach and learn the many elements of legal doctrine and theory that comprise a lawyer's activity. They can examine the context of the political economy and community change—a luxury seldom available in the practice of law. With the motivation and high stakes of representing clients, this learning by students can prove as effective as, and at times more meaningful than, learning in the conventional classroom. Beyond teaching legal skills narrowly defined, the law school clinic provides students with a safe space to begin meshing their analytical and technical competence with their personal traits and experience base in order to influence people and institutions.²⁵

²⁵ See Thomas Disare, A Lawyer's Education, 12 (Nov. 15, 1992) (unpublished manuscript on file with author) (describing the "art of lawyering" and the wide array of attributes and skills required of an attorney in practice). Cf. Robert B. McKay, *What Law Schools Can and Should Do (And Sometimes Do)*, 30 N.Y.L. SCH. L. REV. 491, 510-11 (1985) (describing the concept of lawyering more broadly and deeply than

If the central goal of a development clinic were local community change and development, a lawyer would be well advised to pursue that goal instead through a public interest law firm, a consulting practice, or a community-based developer. A law school clinic does not serve as the most efficient institution for advocacy and economic development. Supervision of often inexperienced student attorneys proves more time-consuming and labor intensive, requiring attention to education, mentoring, and reflection. With motivated students and effective supervision, however, excellence in legal counsel and constructive community impact is both possible and crucial. That external result, though, is achieved more slowly in the clinic setting than in an undiluted pursuit of client or community objectives, of which we certainly inform our clients in advance of engagement.

Ultimately, many of the limitations of a law school clinic are the limits of lawyering itself. In creating affordable housing, jobs, democratic enterprise, and community capacity for development, the law is not typically central. Rather, the law and the lawyer's role are part of a broader multi-disciplinary approach. This approach demands creative collaboration among client organizations and their participants, lawyers, other technical advisors, and a wide array of public and private institutions that support or impede community-based development. This, too, is part of the educational content in a development clinic and related interdisciplinary courses in the classroom.

An important rationale, then, for community development in a law school clinical setting concerns effective education. Development clinics are vehicles for teaching the art of lawyering in the context of reflective practice²⁶—from legal research and analysis to subtle relationships with organizational clients and their participants, from interdisciplinary and collaborative problem-solving to the application of legal theory, from ethical discretion to the crafting of nascent lawyerly identities that build on the unique character of each law student. This approach values the multiple demands of non-litigation lawyering and demonstrates a private consensual side of legal practice to which many lawyers are inclined.

If successful, a housing and economic development clinic can help shape the perspective of numerous law school graduates to see opportunities for community empowerment in their subsequent practice. This can occur in a variety of practice settings, whether in neighborhood legal services or a private law firm, in a union or a public interest practice, in government or business. This clinical enterprise, moreover, can provide an engine for scholarship, policy, and broader curricular innovations that help drive the justice mission of law schools.²⁷

the exercise of legal skills).

²⁶ See generally DONALD A. SCHON, *EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS* (1987); DONALD A. SCHON, *THE REFLECTIVE TURN: CASE STUDIES IN AND ON EDUCATIONAL PRACTICE* (1991).

²⁷ See generally David Barnhizer, *The Justice Mission of American Law Schools*,

B. *Project Mix and Requisite Expertise*

Criteria for selection of clients and projects, again, remains a function of the particular program goals and circumstances. If sophisticated community development groups will consider engaging law school clinic counsel, as at Seton Hall, then a meaningful educational experience can be crafted for clinic students. If not, then the clinic might take a more entrepreneurial posture and, in collaboration with others, create nonprofit development organizations that become active clients, as at Yale and Buffalo.²⁸

This entrepreneurial approach might also be driven, affirmatively, by a broader social and economic policy agenda. By drawing general lessons from practical experience, and further informing the enterprise through research and policy analysis, a law school program is a natural and credible base from which to envision a better government role in housing and economic development and to influence private institutional initiatives.

The law school, as an educational institution, has the opportunity and presumably the competence for careful assessment of economic development needs and patient pursuit of clients and projects, in contrast to private practitioners in pursuit of fee-generating work. Client intake should be framed by clinic goals and constrained by a formal group process for initial assessment. It should be flexible enough, however, to capture opportunities and adjust with the evolving clinical program.

Long-term development projects, such as tax credit financing for low-income housing, maximize community impact, and are the most interesting for faculty. However, they provide only a minor role for students in the larger scheme of the project. Smaller projects such as incorporation, corporate formalities, and tax exemption applications might give students the satisfaction of a lead role and a completed project. Nevertheless, they lack the subtlety and challenge of larger projects. Most development clinics appear to build a diversified portfolio of projects. They include faculty-directed projects with student "associates" and discrete projects that students can complete with limited supervision. Some projects involve technical analysis of complex legal puzzles while others consist of hands-on negotiation of bureaucratic mazes. Most development clinics add broader policy initiatives to the mix as well.

Requisite expertise will often frame the choice of projects. For instance, a supervising attorney with a commercial litigation or a corporate practice back-

40 CLEV. ST. L. REV. 285 (1992) (arguing, *inter alia*, for an ideal of justice as a defining principle among law faculty in their work).

²⁸ Janet Stearns, who directs the Affordable Housing Development Clinic at the University of Washington School of Law, advocates a third option. Rather than forming new clients or working with experienced client organizations, she has found that providing needed legal services to existing grassroots groups that are relatively small and inexperienced gives students a degree of control over the work and has had a constructive impact in Seattle. Letter from Janet Stearns, Director of the Affordable Housing Development Clinic at the University of Washington School of Law, to Peter Pitegoff (May 18, 1994) (on file with author).

ground might select a different array of projects than a former legal services attorney or union lawyer. A group of supervising attorneys with wide-ranging experience increases the potential for a variety of projects. Capturing that range within the law school faculty provides for flexibility. Further, strategic alliances with outside experts such as securities counsel, neighborhood legal services, accountants, business analysts, and so on can serve to maximize that flexibility.

C. *Institutional Stability*

A law school or university that houses a development clinic can provide an institutional anchor and a modicum of stability elusive to many community practitioners and activists. Only with that stability is the clinic able to build and nurture an infrastructure of community organizations and gain the understanding for an effective role in the housing and economic development arena. Only with a long-term commitment can the clinic engage responsibly and credibly in lengthy and complex development projects.

Housing development, job creation, and community based enterprise development requires substantial time and resources. A clinical program in this arena thus should be patient and realistic in its expectations. Finance transactions in low-income housing development could be years in the making.²⁹ The failure rate of small businesses is high, and a clinic is likely to work in marginal economic projects and be called upon to respond to economic crises. Moreover, while a law school clinic can provide technical assistance and spearhead community development efforts, the primary organizing and momentum must come from community-based institutions.

Despite budget constraints, many universities are resource rich in the context of inner-city community development or rural initiatives,³⁰ and have the capacity for long-term commitment to program and staff. Unfortunately, many clinics rely on federal or philanthropic grants and hence have insecure funding. Even if initially supported with such "soft" seed money, the challenge for law school transactional clinics is to bring university resources and capacity to bear on community development initiatives.³¹

²⁹ Structuring the transaction to finance and renovate the St. Ann's rectory in Buffalo took five years, including delays and costs imposed by the State Historic Preservation Office. Similarly, Precious Jewels Day Care Center took over four years to start its business. Much work lies ahead for the clinics on both projects.

³⁰ For instance, the State University of New York at Buffalo, is the fifth largest employer in the western New York region, with 4,981 full-time employees and 5,083 part-time employees in 1993 and with a payroll far exceeding \$200 million per year. See *Business First, The Top 25* 58 (1993).

³¹ Clinics that assist community groups in housing and economic development have the opportunity to generate fees for service as a part of the budget. Too much reliance on fees, however, might undermine certain strengths of the Clinic as an educational endeavor, such as the time and patience required for teaching in the context of practice and the flexibility to choose only those clients and projects that will provide a good

A key to such institutional commitment is to integrate the housing and economic development program into other parts of the law school enterprise. Opportunities for integration vary from school to school and involve inclusion of core faculty, tying in the classroom curriculum, generating scholarship, collaborating with other departments, and advancing the role of the university in regional development and policy planning. This multiple linkage strengthens the institutional anchor and increases the likelihood of a long-term commitment.

Legal practice in development clinics is well suited for integration with a law school's core curriculum. The clinical work touches a large portion of the classroom curriculum, including contracts, corporations, property, land use, finance, state and local government law, labor law, tax, real estate and business transactions, and professional ethics. Opportunities abound for linking these students and their professors in these classes with a development clinic initiative.³²

Transactional clinics also suggest a natural bridge between law schools and the private bar. The American Bar Association's *Journal of Affordable Housing and Community Development* is housed at SUNY Buffalo School of Law. This quarterly journal, published by the ABA Forum on Affordable Housing and Community Development Law, is integrated with the development law curriculum and draws upon the work of clinic students and faculty.

III. CONCLUSION

A modest expectation for housing and community development clinics, in terms of local and regional impact, is to help build an infrastructure of institutions, accountable and of benefit to disadvantaged communities, and then to assist them in building their own capacity for constructive change. In terms of law school curriculum, these initiatives can provide the kind of legal education that instills in law school graduates an expanded notion of reflective lawyering and their potential role in public interest advocacy and community development.

Law school development initiatives present an opportunity to integrate theory and practice. As an engine for reality-based scholarship, their activity can be central to the academy and their posture more institutionally secure. A growing body of scholarship arising from development practice in a law school setting will enrich the experience of students and faculty within the develop-

educational experience.

³² At SUNY Buffalo, for instance, supervising attorneys in the development clinics are actively involved with other faculty in crafting new curricular concentrations in "business transactions" and in "affordable housing and community development," which will include an array of classroom courses, research, and clinical activity. In addition to the survey course in community development law, faculty from the development clinics have taught in a range of classroom courses, including corporation law, housing policy and perspectives, advance real estate finance, Wall Street, worker ownership transactions, and legal profession and ethics.

ment curriculum and beyond,³³ and can hone an emerging discipline in community development law.³⁴

This theoretical and research component is an important ingredient that distinguishes law school development clinics from community economic development outside the university. It provides a strategic model for law school clinics in other legal disciplines. The combination of reflective practice and theoretical scholarship creates a credible foundation for both analysis and advocacy that is on the cutting edge of public policy.

³³ A small slice of this scholarship related to the development clinics is apparent among recent writings of the peer exchange participants: Philip Halpern, *Strategies for Financing Affordable Housing*, 24 REAL ESTATE REV. 47 (1994) (positing an approach to development of low-income housing, with a focus on finance strategies); Hezel, *supra* note 18; Peter Pitegoff, *Child Care Enterprise, Community Development, and Work*, 81 GEO. L.J. 1897 (1993); Robert Solomon, *Teaching Morality*, 40 CLEV. ST. L. REV. 507 (1992); R. Nils Olsen, Jr., *The Concentration of Commercial Hazardous Waste Facilities in the Western New York Community*, 39 BUFF. L. REV. 473 (1991); Stephen Wizner, *Homelessness: Advocacy and Social Policy*, 45 U. MIAMI L. REV. 387 (1990-91); Thomas Disare, *A Lawyer's Education* (Nov. 15, 1992) (unpublished manuscript on file with author).

³⁴ Cf. DAYE ET AL., *HOUSING AND COMMUNITY DEVELOPMENT, CASES, AND MATERIALS* (1989) (a law school text that implicitly defines the legal discipline of housing and community development, but with less emphasis on private transactions and bottom-up initiatives than is prevalent in the emerging discipline).

