

Back to the Future: Twenty-Five years after the Inspiration for the Future of the In-House Clinic Report, What Have we Learned about In-House Clinics?

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Introduction

A. *The Future is Now*

In 2010, the world of clinical legal education is an expansive place, with room for many constructs. We urge each other to “let many flowers bloom”¹ as outside voices are calling for more integrated knowledge, skills and ethics instruction in law schools, during a time of economic recession.² In-house clinics, which I define to be any clinic in which full time faculty supervise students in the direct representation of clients,³ have developed primarily as separate, upper level, small-scale learning environments.⁴ Many

¹ E-mail from Robert Solomon posted on lawclinic listerv, dated March 18, 2010, urging that clinicians as a group not support one model of clinical legal education over another; Solomon writes: “We still have to figure out what works for our students, and that will change from student to student.

² William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, & Lee S. Shulman, EDUCATING LAWYERS ((2007), hereafter “Carnegie Report”; Roy Stuckey, et al, BEST PRACTICES FOR LEGAL EDUCATION (2007) hereafter “Best Practices.”

³ This definition comports with the definition of an in-house clinic contained in the Future of the In-House Clinic Report, 42 J.Legal Educ. 505, 511 (1992), (hereafter referred to as *Future Report*), in which the authors define an in-house clinic thusly:

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

If these characteristics define clinical teaching, then the live-client clinic adds to the definition the requirement that at least some of the interaction in role be in real situations rather than in make-believe ones. That is, the interaction with others in role occurs with real clients and participants in the legal system rather than with other students and actors. The nature of the real issues and cases in the live-client clinic provides both concreteness and complexity to the student's learning experience.

The in-house clinic further supplements the definition of clinical education by adding the requirement that the supervision and review of the student's actual case (or matter) experience be undertaken by clinical teachers rather than by practitioners outside the law school.

I have been urged to drop the label “in-house” and simply refer to such programs as “clinics” or “direct representation clinics.” I am convinced, however, that as we struggle to determine what types of programs to offer in a world of limited resources, the in-house clinic is a label that has meaning among law school educators and that the entire package – clinical method plus representation of real matters plus full time faculty – are essential components of the experience worth preserving. That belief, in essence, forms the basis for this article.

⁴ Most in-house clinics have a student-teacher ratio of 8:1. Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for this Millenium: The Third Wave*, 7 CLINICAL L. REV. 1 (2000), 109. In the earliest days of law school clinics, some programs had very large student-teacher ratios; some were large-

law professors, especially those who teach in clinical settings, are asking that we reject labels such as “in-house,” “externship,” “blended,” “hybrid,” or “simulation,”⁵ thinking those labels are too limiting in a time that asks us to be inclusive.

For over twenty years, my primary work has been in teaching, designing, developing and directing law school clinics where students provide direct client representation under the supervision of law school faculty; I have done this at three different law schools in three different communities. I am not quite ready to dismiss the

scale legal services offices with large caseloads; some were all-volunteer and offered no credit to students; some had no faculty supervision at all. This era is what Barry, Dubin & Joy refer to as the “first phase” of clinical legal education. *Id.*, 5-12. The *Future Report*, supra note 3, was in part commissioned to examine the wisdom of these sorts of practices and came out squarely against them. From the mid-1980s-on, in-house clinics have almost exclusively been programs that offer credit to students, have a student-teacher ratio of between 8 and 10 to 1, have full-time faculty supervision of students and asks students to maintain relatively small caseloads.

⁵All of these labels describe programs in which law students engage in experiential education, meaning they are asked to assume the role of a lawyer either in a real-life setting or in a simulated one. In a recent article, “externship” was defined as follows: “An externship is a type of clinical experience in which a student works for academic credit in a legal setting outside the law school under the supervision of an attorney and also attends a related seminar class at the law school.” Kelly S. Terry, *Externships: A Signature Pedagogy*, 59 J. LEGAL EDUC. 240, 243 (2009) citing to J.P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZ. L. REV. 155, 179 (2002-03); Ogilvy defines externships as “The program of study in which a law student earns academic credit for engaging in authentic lawyering tasks under the guidance and supervision of an experienced supervisor in an institution outside of the law school. Also called an Internship.” *Id.* Not all externships require a seminar class, however. See, e.g., Anahid Gharakhanian, *ABA Standard 305’s Guided Reflections: A Perfect Fit for Guided Fieldwork*, 14 CLINICAL L. REV. 61 (2007) (describing an externship program where web-based “guided reflection” assignments replaced a classroom component). A “hybrid” clinic has been defined as an academic experience where “the students are in placements with legal service and government law offices away from the law school. Although hybrid clinics involve a faculty member, the day-to-day work of the students is generally supervised by an attorney or judge, perhaps characterized as adjunct faculty, at the placement site away from the law school.” James H. Backman, *Practical Examples for Establishing an Externship Program Available to Every Student*, 14 CLINICAL L. REV. 1, 7 (2007); see also Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic’s Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23 (2006) (“There is no single definition of what constitutes a hybrid clinic, although it typically contains components of both in-house clinics and externship programs. In many hybrid clinics, both the clinic faculty member and the on-site supervisor share the responsibility to supervise students.”) *Id.*, at fn 11. Norman Fell referred to something similar, which he called a “blended approach”, describing a program whereby students work in a Public Defender office outside the law school but participate in a class consisting solely of students in that site, taught by a full-time faculty member with clinical teaching expertise. Norman Fell, *Development of a Criminal Law Clinic: A Blended Approach*, 44 CLEV. ST. L. REV. 275 (1996); Fell’s description of a “blended” approach seems very similar to definitions of “hybrid” clinics. A “simulation” course is one in which “a significant part of the learning relied on students assuming the roles of lawyers and performing law-related tasks in hypothetical situations under supervision and with opportunities for feedback and reflection.” Stuckey et al supra note 2, 179.

value of maintaining the distinctive value of in-house clinics. I have also taught externship classes and supervised many remote externs; I have taught, written about and developed ideas for a simulation-based course on Interviewing and Counseling; and I occasionally teach a seminar on Elder Law. While I enjoy all of these activities, my work supervising students in in-house clinics is by far the more satisfying to me. It is when I am working with students in the in-house clinic that I feel most alive as a teacher and as a lawyer. It is also the work I find most exhausting and frustrating, where I constantly feel as if I am stretching my own abilities to their limits. My own perception that students learn by leaps and bounds in such a clinic aligns with research that indicates that when adult learners apply concepts, in role, to solving real-life problems -coupled with careful mentored reflection on those experiences by trained professionals- they learn quickly and well.⁶

Advocates of more of these types of clinical programs describe them as superior learning environments worth preserving. In this respect, I agree with a clinician far more experienced than I, Wally Mlyniec, who wrote on the lawclinic listserv in May, 2010:

There are many methods of instruction and all have some value and some purpose. As our methods of instruction have become more sophisticated, we who teach clinically have come to understand the value of various types of instruction and can defend even the role of the Socratic method in an academic setting. If we can do that, how can we not place value on various form of experiential learning? But to equate the experiences that students gain from each form of experiential learning suggests a potentially uncritical analysis of what we teach, why we teach, or how we teach.

Few clinicians will fail to recognize the intensity of a well-structured in-house clinical experience taught by a seasoned clinical teacher. We do not just practice law; we do not just teach skills; we do not just pay lip-service to the merger of theory and practice. We, as academic lawyers, strive to expose students to those parts of the lawyering process that are likely to be

⁶ Sullivan et al, supra note 2; Stuckey et al, supra note 2.

invisible to them or at least difficult to observe in practice. For example, some aspects of client interviews, legal counseling, strategic decision-making, theory development, case planning and the like often take place outside of the student's presence when conducted in externships or hybrids. Moreover, by investing students with the responsibility for clients' lives as we do within the pedagogical structures of an in-house clinic, we help them develop not just the capacity to act on behalf of another, but to make complex judgments that have enormous consequences for people's lives.

Perhaps most importantly, we also seek to explore questions that are often hidden within the various actions we take as lawyers. At the risk of showing my exposure to Jesuit teaching and learning, I believe we are engaged in the "formation" of soon-to-be lawyers, as well as in their socialization into the profession and in their preparation for participation in a profession that exists at the heart of democratic institutions. Having now participated in an in-house clinic and in a program that sometimes looks like either an externship or a hybrid, I believe that my notion of "formation" thrives best and perhaps only in an in-house clinic. Neither externships nor hybrids can provide the same pedagogical richness as that of an in-house clinic. The press of an outside supervisor's other work and the absence of a clinical professor and student at each stage of the case or project plan and execution create an uncoordinated system of instruction that places a premium on skills separated from the exercise of judgment and prevents an exploration of the larger questions of justice that unite theory, practice, and true democratic ideals. As Sue Bryant and Elliott Milstein have written, "we want to expose students to critical perspectives on the activities of lawyers and the legal system that will enable them to question and challenge practices that entrench injustice."⁷

That comment sparked a heated debate on the lawclinic discussion list, both supporting the position and opposing it.⁸ From that discussion it became clear that there

⁷ Excerpt from e-mail from Wallace Mlyniec to the lawclinic listerv, March 17, 2010. The first part of his e-mail stated:

Throughout the years, many clinicians have heard my objections to hybrid clinics and externships. I no longer engage in that rant because the bases for my opposition are not justified by today's pedagogical understanding or academic environment. So rather than voice outright opposition, let me offer some caution to those who appear ready to provide justification for the alternatives to in-house clinics. I violate my no-comment policy because several clinicians have asked me to do so. I do so with some humility since I am aware that I work at a large school with a large budget that enables us to allocate resources more easily than other schools. With all this as a preface, let me state my position of caution. *Id.*

⁸ Professors who posted publically between March 17 and March 20, 2010 included Jay Pottenger, Ken Kowalski, Mary Geer, Danny Greenberg, Mary Lynch, Kimberly O'Leary, Bob Seibel, Cathryn Miller-

are quality learning environments that use models other than the in-house clinic; it also became clear (at least to me) that the discussed initiatives to improve quality in those teaching models all involved more structured supervision of law students and more involvement by full time law faculty, both of which frequently create challenges in increasing in-house clinics. Externships are offered in most law schools, using a fraction of full time equivalent law professor positions,⁹ with other models using full time faculty positions somewhere in between. Thus, in 2010, the debate is: are in-house clinics better enough to justify their use of full time (potentially fully stused) professors? What (if anything) do they offer students and institutions that make them worth that resource allocation? Should every student be required to enroll in an in-house clinic, as some have suggested? If we accept the premise that a law school should have an in-house clinic, what have we learned about what we strive to do in those programs and what should we strive to avoid?

B. Twenty-five years ago

To address this question, let's first go back in time 25 years – to 1985. In 1985 clinical programs were fighting for their place in the academy. Most clinical instruction took place in in-house clinics, and in those clinics students were learning a variety of trial skills, learning about professional identity and learning to engage in client-centered

Wilson, Cynthia Batt, Harriet Katz, Robert Solomon, Alex Scherr, Jeff Selbin, Susan Rutberg, and Laurie Shanks.

⁹ It is hard to find data on student-teacher ratios for externships. Harriet Katz states: “Exact faculty/student ratios in externship programs are hard to discern from available data. Harriet N. Katz, *Counseling Externship Students*, 15 CLINICAL L. REV. 239, fn 17 (2009). Data compiled by Robert Seibel and Linda Morton in 1996 indicated that credit for externships in teaching loads was widely divergent. Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems, and Possibilities*, 2 CLINICAL L. REV. 413 (1996). Some informal polling I did on the lawclinic listserv in March, 2007 appeared to confirm that there is wide variation in how many students enrolled in externship placements a faculty member might supervise. Some faculty supervised only about 15 students in a semester; several supervised about 20 students as a half-time teaching load, and one professor supervised over sixty.

lawyering¹⁰. Scholarship was flourishing describing the theoretical underpinnings of the clinical method.¹¹ The AALS April conference that year was on Litigation Technology and on Litigation Theory and Practice.¹² Susan Bryant was chair of the AALS Section on Clinical Legal Education, and Gary Palm was chair-elect; in 1986 Palm appointed a special committee, chaired by John Elson and Robert Dinerstein, to “examine a broad range of issues related to live-client in-house clinical legal education.”¹³ The issues that committee addressed included: 1) pedagogical justifications for live-client, in-house clinics; 2) what clinicians thought (by survey) about live-client, in-house clinics; 3) working conditions of clinical teachers; 4) minimum guidelines to assess clinical programs; and 5) recommendations to the Section’s leadership.¹⁴ The committee’s directive intentionally left out evaluation of externships and simulation courses.¹⁵

The mid-1980s were a time of steady Title IX funds, which tended to favor funding of in-house clinics. Although the first Title IX funds to subsidize clinical legal education were authorized in 1978,¹⁶ funds increased into the 1980s and many new clinicians were hired as a result of those funds well into the 1980s and early 1990s.¹⁷

¹⁰ Some law schools, for example CUNY and Antioch, required clinic students to engage in policy work broader than individual representation, but based on my own memory of the focus of clinics at that time, and based on a review of clinical workshop topics, these were not widespread foci of these programs.

¹¹ A list of such scholarship can be found in Barry, Dubin, & Joy, *supra* note 9, fn 65. Donald Schoen’s influential book, *THE REFLECTIVE PRACTITIONER* (1987) would be published two years later.

¹² National Archive of Clinical Legal Education, Clinical Legal Education in the United States of America Time Line, located at <http://lib.law.cua.edu/nacle/timeline.html>. By contrast, the first national conference solely about externships was in 1993, and a second did not follow until 1998; after 1998, there has been a national externship conference annually. *Id.*

¹³ Report of the Committee on the Future of the In-House Clinic, 42 J. LEGAL EDUC. 508 (1992), at 508.

¹⁴ *Id.* at 508-09.

¹⁵ *Id.*, at fn2; the report states that “the exclusion of specific references to these programs from this report is not meant to diminish the importance of these types of clinical experiences.” The author notes, however, that the Section has never commissioned a comparable evaluation of either externship or simulation-based courses in the 24 years that have passed since the evaluation of in-house clinics was commissioned.

¹⁶ National Archive of Clinical Legal Education, *supra* note 5.

¹⁷ Department of Education Law School Clinical Experience Program archives, located at <http://www2.ed.gov/pubs/Biennial/95-96/eval/522-97.pdf>, listing funding amounts as follows: 1978

Title IX funds were discontinued in 1997.¹⁸ Title IX funds were used as seed money to start clinical programs, and many schools eventually picked up at least some of those positions in their regular budgets after the funds were discontinued; others put clinical programs in their permanent budgets, but chose models using fewer full time faculty when the Title IX funds were gone. Title IX criteria favored in-house live-client clinics or legal aid hybrids because the programs had to “provide legal experience in the preparation and trial of actual cases (including both administrative cases and out-of-court settlements) and to programs providing service to persons who have difficulty in gaining access to legal representation.”¹⁹

The Case in 2010 for Keeping the In-House Clinic

This piece examines what we have learned about in-house clinics in the past twenty-five years. I draw upon my own experience as well as clinical scholarship since 1985.²⁰ I will examine what we thought about in-house clinics in the 1980s, and what experience, my own and the experience of others as shared in their scholarship, has taught us during this time. After reflecting upon what we have learned, I will venture a guess about the new future of the in-house clinic over the next era.

A. Are In-House Clinics Still a Smart Choice for Achieving the Nine Goals Articulated by the Future of the In-House Clinic Report?

\$1,000,000, 1980 4,000,000, 1985 1,500,000, 1990 4,935,000, 1991 5,855,000, 1992 \$8,000,000, 1993 9,920,000, 1994 14,920,000, 1995 13,222,000, 1996 5,500,000.

¹⁸National Archive of Clinical Legal Education, *supra* note 6.

¹⁹*Id.*

²⁰ I recognize that drawing upon my own experience might seem less scholarly than relying upon outside sources. However, it is my strong belief that we should share more of our observations, based upon years of experience, as one mode of learning from that experience. In that respect I am engaging in the type of learning-in-action we ask our students to engage in, that is, reflecting upon my own teaching experiences to glean lessons for the future. In this piece, if a conclusion is solely the result of my own experience, I say so.

The nine goals articulated by the Future of the In-House Clinic report show that clinics twenty-five years ago were using the in-house model to achieve a wide range of goals.²¹ Those goals were:

- Developing Modes of Planning and Analysis for Dealing with Unstructured Situations
- Providing Professional Skills Instruction
- Teaching Means of Learning from Experience
- Instructing Students in Professional Responsibility
- Exposing Students to the Demands and Methods of Acting in Role
- Providing Opportunities for Collaborative Learning
- 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
- Critiquing the Capacities and Limitations of Lawyers and the Legal System, and
- Conclusion: Integration or, The Whole Is Greater than the Sum of Its Parts.²²

This section explores whether these goals are still relevant to in-house clinics. In some cases, other law school courses have integrated these goals so effectively that in-house clinics no longer devote much, if any, effort to reaching them. In other cases, in-house clinics have proven the best venues for achieving some of the goals. Surprisingly, although legal practice has changed in some important ways in the past 25 years, the goals themselves are still by and large relevant. Important trends have developed to refine some of the goals, however.

In-house clinics still provide an excellent vehicle for learning from experience (Goal C, Teaching Means of Learning From Experience”). This goal is also well-taught in externship programs. Externship faculty have developed a sophisticated pedagogy for

²¹ Future Report *supra* note 3 at 511-17.

²² *Id.*

achieving the goal of teaching ways to learn from experience.²³ One could say that said goal is the signature pedagogy of externships. Certainly it remains a key goal of in-house clinics as well, but no longer is it its exclusive domain.

Although students in in-house clinic programs learn and perfect professional skills, the independent teaching of professional skills has flourished in separate, simulation-based courses in the past 25 years. Thus, “Goal B, Providing Professional Skills Instruction,” is less a focus of in-house clinics than 25 years ago, when in-house clinics used extensive trial and pretrial simulations.²⁴ The “Future” report itself presaged the later trend to move many trial and pretrial simulated experiences into stand alone, all-simulation-based courses,²⁵ which by the mid-1990s had become a staple at most law schools. Skills training in in-house programs became more about analyzing and finessing, rather than learning the basics. Because each semester is a finite number of weeks, professors must choose which skills to emphasize in the course. In a clinical course, the skills taught in a classroom are generally those skills thought to be necessary for students to adequately perform required tasks in client matters. In 1985, students were regularly preparing cases for court in a variety of legal aid or public defender cases and needed to learn basic trial skills. Today, many students learn basic trial and pretrial

²³ See, e.g., J.P. Ogilvy, Leah Wortham, & Lisa G. Lerman, *LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS* (2d ed. 2007) and symposium articles 10 *CLINICAL L. REV.* (2004), consisting of Papers Presented At the Catholic University Law School Symposium on “Externships: Learning From Practice.”

²⁴ When I started teaching in 1988, the clinic students had to engage in a full-blown simulation of a divorce case, from initial interview, discovery, counseling and trial. When I left in 1993 we had pared back the simulation. My new job was directing an in-house clinic at another school, where those clinic students had been required to engage in two complex simulations during one semester. From conversations with professors teaching in clinics nation-wide, this had been a widespread practice – teaching everything from client interviewing counseling, discovery and a wide range of trial skills. When I took over that clinic in 1993, I realized that most of my students were enrolled in a separate course in trial advocacy and thus targeted certain advanced skills in the clinic course.

²⁵ Future Report *supra* note 3, 553.

skills in simulation-based courses. When they enroll in a clinic, typically one of the last semesters in law school, professors in the clinic can focus on more advanced skills, such as how to confront authority, advanced client counseling, or how to incorporate client narrative into case theory.

Many courses, including first-year courses as well as upper level skills courses, have embraced the value embodied in “Goal F, Providing Opportunities for Collaborative Learning.”²⁶ Such teaching methods still sit uncomfortably in the first-year curriculum because of its emphasis on competition. Student exams are still curved; students are still ranked, and selection for important student experiences such as law review are still based on competitive advantage. Students are still forbidden to discuss certain assignments with other students in some courses and competitions. Many students in my in-house clinic tell me that the type of express collaboration required in our program is refreshing and liberating, and allows them to realize their potential as lawyers. While teamwork is encouraged in simulation-based courses, it is often in the context of team-based competition. Students in externships frequently work collaboratively with lawyers or other students, but just as often, in my experience, work mostly alone on assignments for someone else. While collaborative learning is more available elsewhere than it was 25 years ago, it still flourishes most deliberately in an in-house clinic.

“Goal E. Exposing Students to the Demands and Methods of Acting in Role” is a goal shared with in-house clinics by externship and hybrid clinics, but in some cases that role is much more limited than in a typical in-house clinic while in other programs the

²⁶ See, e.g., Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201 (1999), Judith A. Frank, *Lessons and Ideas: Skills Instruction in Large Law School Classes*, 3 T.M. COOLEY J. PRAC. & CLINICAL L. 307 (2000); Justine A. Dunlap, “I’d Just as Soon Flunk You as Look at You?” *The Evolution of Humanizing in a Large Classroom*, 47 WASHBURN L. J. 389 (2008).

role is just as broad. In most in-house clinics, the student fully performs attorney roles throughout the life of a client interaction, from initial interview, to research, option-generation, reaching opinions, counseling, negotiating, drafting and trial and mediation presentations.²⁷ In some externships, such as public defender offices, this is also the case, while in others, students are limited to a very few roles; for example, many law firms do not allow externs to interview and counsel clients, or make ultimate decisions. Hybrid clinics tend to allow more of these lawyer roles than many externships, and in fact providing students with an opportunity to assume most primary lawyer roles is probably the biggest distinction between many externships and hybrid clinics.

In evaluating “G. 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,” in the past twenty-five years alternative methods have been cultivated to teach students about the obligation to provide services to indigent clients. Pro bono programs at law schools have grown considerably.²⁸ After Hurricane Katrina law students took the lead in Louisiana and Mississippi to organize opportunities for volunteer work and many law schools have sent delegations to New Orleans and surrounding areas for several years.²⁹ After the recent earthquake in Haiti,

²⁷ Scholarship advocating more limited roles for students in in-house clinics have been rare; *see, e.g.*, Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N. M. L. REV. 185 (1989), and Kotkin advocates limiting student assumption of lawyer role in limited situations involving complex cases for some students. Role assumption is widely considered the desirable method in clinical teaching. For a comprehensive look at the issue of role assumption, including many cites to professors who advocate it, see Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, 16 CLINICAL L. REV. 451, esp. fn 3, 5, 69 & 70.

²⁸ Robert Granfield, *Institutionalizing Public Service in Law Schools: Results on the Impact of Mandatory Pro Bono Programs*, 54 BUFF. L. REV. 1355, 1356 (2007).

²⁹ For information about the Student Hurricane Network, which organizes assistance by law students to Gulf residents, *see* <http://www.studentjustice.org/>.

several schools also organized volunteers to assist with legal needs.³⁰ *Pro bono* programs in law schools have organized student volunteer opportunities as well.³¹ However, these types of programs only provide limited instruction in how to serve the needs of poor people broadly, or how to address systemic inequalities. Some in-house clinics and externships in legal services offices or public defender sites provide this type of in-depth exploration and analysis of poverty, with curriculum to help reach this goal.³² Historically, law school clinics were created out of interest in social justice education and a need for “relevance” in legal education³³ After the MacCrate Report was published in 1992 and distributed widely in law schools, clinicians began using more “skills” rhetoric to justify clinics,³⁴ and some clinics dropped social justice goals in favor of a value-

³⁰ Law students from Florida Coastal School of law are assisting FCSL faculty and alumni in representing immigrants in detention when they were unable to return to Haiti after the earthquake. See *Haitian Immigrants Assisted by Pro Bono Attorneys*, (August 16, 2010), located at <http://www.prnewswire.com/news-releases/stu-school-of-laws-institute-of-human-rights-at-forefront-of-refugee-advocacy-100643209.html> (last accessed 8/25/10).

http://www.jaxdailyrecord.com/showstory.php?Story_id=531677, last accessed 8/25/10; *STU School of Law's Institute of Human Rights at Forefront of Refugee Advocacy*, August 13, 2010, located at

³¹ The 113 law schools listed in the 2009 Equal Justice Works *Guide to Law Schools* located at <http://www.ejwguide.org/> (last accessed 8/25/10) all indicate that they offer volunteer *pro bono* opportunities for students.

³² See, e.g., Angela Harris, Margaretta Lin, & Jeff Selbin, *From “The Art of War” to “Being Peace”*: *Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CALIF. L. REV. 2073 (2007) (describing practice of transformative lawyering in the East Bay Community Law Center); Michelle S. Jacobs, *Full Legal Representation for the Poor: The Clash Between Lawyer Values and Client Worthiness*, 44 HOW. L. J. 257 (2001) (examining how lawyer bias against poor people can systematically deprive indigent clients of competent representation, and examples of how to explore those issues with law students); Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: the Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307 (2001) (arguing that students should represent a client base in a wide range of issues to learn how to address systemic legal reform); Kimberly E. O’Leary, *Clinical Law Offices and Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics*, 11 CLINICAL L. REV. 335 (2005) (arguing for an overt link between social justice goals and student lawyering in an in-house clinic). Additionally, the Bellow Scholar program, a program of the AALS Section on Clinical Legal Education, highlights and supports work by professors who teach in clinical programs that addresses systemic inequality and reform efforts through clinic student work. The 2010 AALS Conference on Clinical Legal Education incorporated critical theory concepts as part of its theme. The conference program is located at <http://www.aals.org/clinical2010/booklet.pdf> (last accessed 8/25/10).

³³ Barry, Dubin & Joy *supra* note 9 at 12-16.

³⁴ See, e.g., Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 CLINICAL L. REV. 93 (1994) (arguing that clinical education is fundamentally skills education); Ann Jeurgens, *Using the MacCrate*

neutral “skills” vocabulary. Most in-house clinics serve low-income clients, and to some extent lessons about social justice inherently underlie such service. It is unclear to what extent strategies for attacking systemic inequalities are still integrated into clinical courses in a more overt fashion. While many externship placements are located in legal aid, public defender or other public interest settings, many are not. Some attention is paid toward overt instruction in social justice and inequality in externship pedagogy, but at the 2010 national Externships conference, only one concurrent session was devoted to that topic in two and a half days.³⁵ More work should be done to assess whether this goal is still an overt goal of in-house clinic or externship instruction.

Other goals articulated in the “Future” report are still only fully realizable in an in-house clinic. Goal “A. Developing Modes of Planning and Analysis for Dealing with Unstructured Situations,” arguably the greatest skill lawyers need to acquire, is most systematically taught in in-house clinic programs. Simulations by their nature are pre-planned, and most externships are staffed by expert lawyers working on limited types of cases. Those experts tend to already have well-developed modes of operation in their practice settings, and do a good job of passing along those developed strategies to students. In-house clinics, on the other hand, deliberately create a setting where students are required to extract order from chaos.³⁶ Faculty supervisors are trained to NOT reveal too much information, but rather to create opportunities for students to figure out how to

Report to Strengthen Live-Client Clinics, 1 CLINICAL L. REV. 411 (1994) (arguing that clinicians should be part of curricular reform movements centered around MacCrate reform in law schools); Joanne Martin & Bryant G. Garth, *Clinical Education as a Bridge Between Law School and Practice: Mitigating the Misery*, 1 CLINICAL L. REV. 443 (1994) (discussing relationship between clinics and skills training in law schools).

³⁵ In the Externships 5 conference in 2010, there was one concurrent session during the two and a half day conference on the topic, entitled *Pursuing Justice through Externship Pedagogy*. See <http://www.miamiexternshipconference.com/pdf/SCHEDULENEW.pdf> (last accessed 8/25/10).

³⁶ David Chavkin outlines research on learning theories related to how much direction to provide a student in David F. Chavkin, *Am I My Client’s Lawyer: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507 (1998), 1529-30 and cites in fn 30.

proceed in a situation they have never been in before. Such struggle is then followed by structured discussion, feedback and planning in a carefully tailored setting.³⁷

Goal “D. Instructing Students in Professional Responsibility” is also best perfected in an in-house environment. While there are more courses in professional ethics than ever before, and some effort has been made to integrate professional ethics into other courses, no place offers applied ethics like an in-house clinic. As Peter Joy argued in his 2003 article, *The Law School Clinic as a Model Ethical Law Office*,³⁸

The law school clinic is the best place for the student to become acculturated to the ethical practice of law. In the typical legal ethics or professional responsibility course, law students learn the rules of ethics, study related cases and ethics opinions, work through hypotheticals highlighting ethical dilemmas, and discuss lawyer obligations to clients, third parties, and tribunals. In clinical courses, law students consider their ethical obligations in role as lawyers for clinic clients as they "grapple with the real-life demands of being a lawyer." And, as clinic students confront the same types of issues they will confront after becoming full-fledged lawyers, they do so under the supervision of faculty who engage the students in the process of critique, self-critique, and self-reflection.³⁹

Students need to grapple with ethics issues in a real setting to understand what the rules really mean. Students can excel in a course in Professional Responsibility and still routinely fail to identify common ethics issues that present in real life.⁴⁰ This failure to issue-spot a real ethics issue is so commonplace, in my experience, as to make me wonder how many ethical violations are overlooked by new lawyers who did not engage in a clinical experience prior to graduating from law school. And, I have observed the phenomenon consistently

³⁷ *Id.*; see also William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 485 (1995).

³⁸ Peter A. Joy, *The Law School Clinic as a Model Ethical Law Office*, 30 WM. MITCHELL L. REV. 35 (2003).

³⁹ *Id.* at 42-43.

⁴⁰ I have taught in in-house clinics at three law schools, continuously since 1988; I have also taught simulation-based courses, externship courses and a seminar.

at each of the three law schools where I have taught, with no difference in this regard.

Certainly externship faculty are very careful to discuss ethics issues with students in placements.⁴¹ Unfortunately, however, externship faculty are limited in discussing only those ethics issues that students raise, either through the students' own observations or because of guidance by a site supervisor. In my experience, such reliance results in relatively few ethics issues being analyzed and discussed – and usually the more glaring ones that were handled poorly. Practitioners may or may not make a conscious effort to help students see potential ethics issues at very early stages, when there is the greatest chance of preventing ethics problems. Expert lawyers automatically take actions to minimize ethics problems, but do not necessarily talk about the steps they take.

Goal “I. Critiquing the Capacities and Limitations of Lawyers and the Legal System” has turned out, not surprisingly, to be the most controversial and least discussed goal from the original report. Because externship and hybrid clinic placements take place in law offices outside the law school, they offer limited opportunities for systematic critique of the legal system. Lawyers in practice typically carry busy caseloads. Supervising law students is a small part of the job for most of them. Law students are expected to help them carry out their work. While I am sure some non-academic supervisors discuss systemic issues with law students from time to time, they are more likely to spend their

⁴¹ See, e.g., Alexis Anderson, Arlene Kanter, & Cindy Slane, *Ethics in Externships: Confidentiality, Conflicts, and Competence Issues in the Field and in the Classroom*, 10 CLINICAL L. REV. 473 (2004) (suggesting that ethics issues that arise in externships are different from those that arise in in-house clinics, and recommending protocols for dealing with common ethics issues.) See also Ogilvy *et al* supra note 23, Chapter 4, *Ethical Issues in Externships* at 49-78.

time with students critiquing their legal work, handing out new assignments and welcoming students to observe the in action. Full time faculty, on the other hand, study the legal systems for a living. Their focus is academic in nature – they are trained to observe legal systems with a critical eye. While they will also spend time critiquing students’ legal work, they also spend time challenging students to observe law in action and reflect on those observations.

Skilled on-campus supervisors in externships can raise issues that provoke students to consider those issues and many do. Not all in-house clinics overtly take on this critique. A small number of clinicians have argued, in fact, against such critique.⁴² But more faculty teaching in in-house clinics embrace the academic opportunity to examine legal systems. Such faculty include those who engage students in Critical Race Theory and Rebellious Lawyering curriculum for in-house clinics.⁴³ While not the only launching pad for such critique, these approaches have produced unusually rich curriculum for clinics.

Finally, the “Future” report concluded that in-house clinics provided the best opportunity to integrate “theoretical, analytical, skills, and ethical goals” identified in the report, in what that report labeled Goal “J. Conclusion: Integration or, The Whole Is Greater than the Sum of Its Parts.” Twenty-plus years later, after influential reports suggest there is insufficient integration of

⁴² See Adam Babich, *The Apolitical Law School Clinic*, 11 CLINICAL L. REV. 447 (2005).

⁴³ Gary Bellow, *Steady Work: A Practitioner’s Reflections on Political Lawyering*, 31 HARV C.R.-C.L. L. REV. 197 (1996); Sameer M. Asher, *Law Clinics and Collective Mobilization* 14 CLINICAL L. REV. 355 (2008); see also Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541 (2006) (using the label “collaborative lawyering”). The 2009 AALS Conference on Clinical Legal Education featured a discussion of the application of Critical Race Theory to clinics in the second plenary, “Using Critical Perspectives to Inform Change,” *program description located at* <http://www.aals.org/clinical2010/booklet.pdf>.

substance, skills and identity,⁴⁴ law schools are committing to find ways to teach students in a more integrated fashion. Some schools have established first or second-year programs to try to present legal study as an integrated whole⁴⁵ rather than the more traditional segmenting of knowledge/case analysis in the first year, followed by separate skills and ethics courses. Clearly in-house clinic faculty can provide leadership in helping colleagues understand the importance of such integrated awareness and also help provide techniques toward achieving that goal.

The Carnegie Report emphasizes the need for sophisticated apprenticeship training, where academic faculty who are also practitioners can help law students synthesize analytical analysis with context-based decision-making.⁴⁶ That report suggests that the type of integrated context-based learning recommended by the

⁴⁴ Carnegie Report, *supra* note 2; Best Practices, *supra* note 2.

⁴⁵ Some examples of these types of curricular innovations include Case Western Reserve University, which has a program titled the CaseArc Integrated Lawyering Skills curriculum, which integrates skills, professionalism, writing and doctrinal law in the first year. *See* <http://law.case.edu/Academics/Curriculum/JDProgram/CaseArc/CaseArcCurriculum.aspx> (last accessed 9/10/10); CUNY School of Law, which has an integrated writing/skills course in the first year and requires each student to take 12 clinical credits; *See* <http://www.law.cuny.edu/academics/curriculum.html>, (last accessed 9/10/10); New York University School of Law, which has a first-year simulation-based lawyering program based on “experiential learning and guided critique....” *See* <http://www.law.nyu.edu/academics/lawyeringprogram/curriculum/index.htm> (last accessed 9/13/10); Northeastern University School of Law, which requires first year students to enroll in a course entitled Legal Skills in Social Context, where students learn writing and simulated skills in an integrated fashion, and work on a social justice research project for a public interest organization. *See* <http://www.northeastern.edu/law/academics/curriculum/lssc/index.html> (last accessed 9/10/10); Southwestern Law School has a alternative curriculum called SCALE, in which students are immersed in a problem-based, simulation-based integrated two-year program that is law-office based and includes externships. *See* <http://www.swlaw.edu/academics/jd/scale> (last accessed 9/13/10); The University of New Hampshire Franklin Pierce Law Center, which offers an honors scholar program in which participating students take a two-year bar practicum program. The program is an integration of simulation, clinics and externships. *See* <http://law.unh.edu/websterscholar/> (last accessed 9/10/10); The David A. Clarke School of Law of the University of the District of Columbia, which requires all first year students to participate in a Community Service Program that involves 40 hours of community service in the first year, and all student must take two seven-credit clinical programs later in the curriculum. *See* <http://www.law.udc.edu/?page=LawandJustice> (last accessed 9/10/10) and <http://www.law.udc.edu/?page=FullTime> (last accessed 9/10/10). There are undoubtedly additional programs that I am unaware of.

⁴⁶ Sullivan, et al *supra* note 2, Chapter 3.

Best Practices in Legal Education⁴⁷ and offered by clinical programs is consistent with current views by educators about the best way to learn professional wisdom:

By giving learners opportunities to practice approximations to expert performance and giving these students feedback to help them improve their performance, educators are providing an apprentice-like experience of the mind. Understanding develops through the actual performance of modes of thinking. This process can be greatly enhanced by the skillful use of mental representations to provide the scaffolds through which feedback can become meaningful to the learner in the effort to achieve mastery of new concepts or abilities.⁴⁸

While such integration can occur in a variety of courses, this type of apprenticeship learning is what in-house clinics do best, and arguably better than anywhere else in the curriculum. Academic analysis, together with experienced lawyers coaching novices in real problem-solving, followed by guided reflection and opportunities to repeat processes results in learning that lasts. New lawyers, when faced with new problems, can go back to these intellectual scaffolds to help solve new problems. It is precisely this combination of academic and practical that nurtures the development of professional identity with a critical, observational, element. Thus, students in context-based settings need full time academic practitioners to fully realize important educational objectives that have lasting implications for the future of the profession.

B. Institutional Reasons for Having an In-House Clinic

In addition to the goals set out in the Future Report, new institutional goals have emerged that can be fulfilled by in-house clinics. Few law schools have allocated budgets to allow, much less require, each student to enroll in an in-house clinic, as

⁴⁷ Stuckey et al supra note 2.

⁴⁸ Sullivan, et al supra note 2, ____.

suggested by the authors of a landmark article published in 2000.⁴⁹ Even some schools with a clinical requirement rely on externships to fulfill demand.⁵⁰ Every law school should, nonetheless, have at least one in-house clinic for institutional reasons. These reasons are: 1) pragmatic reasons related to student needs; 2) participatory role in evolution of legal institutions 3) a laboratory to explore lawyering; 4) a place for feedback on the lawyering outcomes upper level students have obtained prior to enrolling in the clinic; and 5) a pooled source of expertise in advanced clinical teaching methods and practices.

1) Pragmatic reasons related to student needs

Some students need an in-house clinic program because the other types of clinical experiences will not work well for them. For example, evening or weekend students who work full time cannot typically work in an office during regular working hours during the week. There are virtually no externship placements available for these students. A law school can develop an in-house clinic specifically for these students, doing legal work and meeting with clients evenings or weekends.⁵¹

Some students need the extra attention an in-house faculty supervisor can provide. Students increasingly come to law school with a range of special

⁴⁹ Barry, Dubin & Joy *supra* note 9.

⁵⁰ At Cooley, about 80% of students fulfill their clinical experience requirement through externships or hybrid clinic placements, while about 20% fulfill it in an in-house clinic.

⁵¹ For descriptions of two such programs, see David F. Chavkin, *Clinic Under the Stars: Giving Part-Time Students their Due*, 13 CLINICAL L. REV. 719 (2007) and Gary P. Bauer, *The Sixty Plus Estate Planning Clinic – Change is the Constant*, 10 T.M. COOLEY J. PRAC. & CLINICAL L. 107 (2007). A few other schools have clinics for evening, weekend or part-time students. The ABA Standards for Approval of Law Schools require that “all students have reasonably comparable opportunities to take advantage of the school’s educational program...” 301(b). It should be noted that faculty administering and teaching in evening or weekend clinics have substantially more evening and weekend obligations than a faculty member teaching a stand alone course. Not only does the faculty member need to teach the course during evening or weekend hours, but client contact, supervision, oversight of office and support staff all must coordinate with evening or weekend hours, which are times when overall administrative support tends to be lessened.

needs.⁵² Students whose primary language is not English, or who are from first or second generation immigrant families, may need more personalized attention regarding communication skills, customs or mores.⁵³ Students with certain types of learning or physical disabilities may need more tailored mentoring to help them reach their potential as lawyers.⁵⁴ Rather than being thrown into a placement or even a first job after law school with no chance to work through these special issues, an in-house clinic can offer specialized supervision. Finally, some students are more socially challenged than others. Externship directors may find themselves reluctant to allow these students to enter placements, or these students may fail to communicate successfully in interviews. Such students can be helped by the personalized attention of an in-house clinic. I have been asked to help students who fit in each of these categories over the years, and the students almost always emerge from an in-house clinic experience with a much stronger set of skills with which to practice law, with an upbeat feeling about their abilities, more awareness of their own limitations and some strategies to overcome them. In a school with a clinical requirement, these concerns are even more important,

⁵² A good discussion of how law school clinics can provide special assistance to students who have a wide range of special needs can be found in Alexis Anderson & Norah Wylie, *Beyond the ADA: How Clinics can Assist Law Students with “Non-Visible” Disabilities to Bridge the Accommodations Gap Between Classroom and Practice*, 15 CLINICAL L. REV. 1 (2008). See also Sande L. Buhai, *Practice Makes Perfect: Reasonable Accommodation of Law Students with Disabilities in Clinical Placements*, 36 SAN DIEGO L. REV. 137 (1999).

⁵³ Those students may also bring enhanced skills into the clinic. At the concurrent session at the 2010 AALS Conference of Clinical Legal Education entitled *Lawyering and Language Minorities: Working with Bilingual/Multicultural Students*, (panel presenters Evelyn Haydee Cruz, Troy Elder, Jayesh Rathod, & Kim Thuy Seelinger), (program located at <http://www.aals.org/clinical2010/booklet.pdf>) (last accessed 8/26/10) presenters discussed ways in which multilingual students have enhanced abilities to understand nuanced communications and thus can help monolingual students understand a broader range of client issues and goals.

⁵⁴ Anderson & Wylie, *supra* note 52; Buhai, *supra* note 52.

because a student with special issues does not have the option of choosing not to enroll in a clinic.

2) Participatory role in evolution of legal institutions

An in-house clinic is an institutional commitment by a law school to direct participation in a local or regional legal system. When full-time faculty and law students appear in local and regional courts, mediation centers, and outreach centers, the school is staking a claim in that legal system. Such a presence provides a vital link among local judiciary, attorneys and other actors in the legal system. While there are a number of ways to create a local presence,⁵⁵ helping clients in cases demonstrates to those local actors the school's tangible commitment to making the community a better place. Law schools can and do offer such a commitment in a variety of ways, but there is nothing like direct representation of under-represented people to show people in the community the type of help only lawyers can provide. Every time students go into court or make a presentation on behalf of the law school clinic they are ambassadors for the law school in a direct way. Even a small in-house clinic can have a big impact by helping real people in actual disputes.

⁵⁵ There are many ways for faculty and administration to become engaged in the local legal systems. My current school has a local Inns of Court chapter; many faculty hold now or have held in the past chairperson status for various state bar committees or sections; faculty serve on bar discipline committees; a teen court program runs out of our campus; our faculty speak in CLE presentations and hold public law programs; many faculty do pro bono work on behalf of clients. The law school clinics are the only programs, however, where faculty and students appear in cases on behalf of clients in a law office that is run by our law school. And often no one else in the community is representing the clients who are represented by the clinics.

Many universities and law schools have looked for increased engagement, or “service-learning” programs.⁵⁶ The in-house clinic almost always fits that category of learning. Lawyers associated with in-house clinics frequently engage in legal reform and best practices associated with their clinic’s work. Scholarship from the past twenty-five years offers many examples of in-house clinics engaged in task forces, bar committees, litigation, community organizing and other support to improve life in their communities.⁵⁷ And law school faculty are far better able to effectively critique legal institutions and systems that they are inside, trying to function in and for which they are offering constructive reforms. Such engagement can help students and faculty see what is dysfunctional, what practices persist although frankly contrary to the letter of the law, where and by whom discretion is exercised.

3)A laboratory to explore lawyering

Because law students and faculty are active participants in the legal community, in-house clinics offer a laboratory to explore current lawyering practices. The practice of law changes incrementally daily, and in-house clinics offer a chance for full-time faculty to observe first-hand what those practices are.

⁵⁶ Linda Smith argues in favor of explicitly connecting service learning and external clinical programs in Linda F. Smith, *Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community Based Research*, 10 CLINICAL L. REV. 723 (2004); on the other hand, a different professor who reviewed a draft of this paper said that in her experience service learning projects were viewed as less rigorous, “light” activities and it might not be a good idea to link them with clinics.

⁵⁷ There are far too many examples to cite in this footnote. For a sampling of law reform efforts connected to clinics, see, e.g., Michael Norwood & Alan Paterson, *Problem-Solving in a Multidisciplinary Environment? Must Ethics Get in the Way of Holistic Services?*, 9 CLINICAL L REV 337 (2002); Louise G. Trubek, *Crossing Boundaries: Legal Education and the Challenge of the “New Public Interest Law,”* 2005 WIS. L. REV. 455 (2005); Joseph B. Tulman & Douglas M. Weck, *Shutting off the School-to-Prison Pipeline for Status Offenders With Education-Related Disabilities*, 54 N.Y.L. SCH. L. REV. 875 (2009-2010) Randi Mandelbaum, “Aging Out: Don’t Miss Out”—A Model of Community Legal Education, 48 FAM. CT. REV. 338 (2010); Srikantiah & Koh, *supra* note 27.

Jeanne Charn has called for law school clinics to serve as test centers for legal claims for indigent clients:

Large law school clinical service centers are ideal sites for research and training. Clinic staff are expert mentors of novice practitioners, and most law schools are part of universities with large research and scholarship capacities. Clinicians are often expected or encouraged to undertake research and scholarship, though only a few are involved in empirical work relevant to legal services. However, the Association of American Law Schools clinical section's Bellow Scholar program is promoting such work.⁵⁸

The in-house clinic as laboratory has been underused for empirical study during the past twenty-five years, but it is ripe for such inquiry.⁵⁹ Clinicians have called for more formal studies.⁶⁰ According to Neumann and Krieger, major reasons legal academics do not engage in more empirical research include lack of resources, lack of time, lack of respect among legal academicians generally, career pressures, and lack of training.⁶¹ They argue forcefully, and I agree, that more empirical research would enhance the theoretical constructs we provide to our students about what it means to be a good lawyer.

Even without formal empirical studies, clinicians can provide a touchstone for other faculty about current law practice. In the past twenty-five years,

⁵⁸ Jeanne Charn, *Legal Services for All: Is the Profession Ready?*, 42 LOY. L. A. L. REV. 1021 (2009), fn 106. She also calls for the funding of legal services offices that will “become centers for developing and testing innovations that will improve productivity, lower costs per case, and assure high-quality service. This work could involve developing not only new modes of service, but also novel substantive claims that, once established, could be delivered by the private bar.”

⁵⁹ There has been some empirical work arising from law school clinics. *See, e.g.*, See Barbara Bezdek’s study of housing court in Baltimore, *Silence in the Court: Participation and subordination of Poor Tenants’ Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992); Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 FORDHAM URB. L. J. 37 (2010); the Bellow Scholar project of the AALS Section on Clinical Legal Education has recognized several professors doing empirical work arising out of clinic cases. That project has also hosted several workshops that focus on empirical research, including the 4th Annual Bellow Scholars Workshop, *Merging Access-to-Justice Work and Empirical Research*, November 12 and 13, 2010. from lawclinic posting dated 8/17/10.

⁶⁰ *Id.*; *see also* Richard K. Neumann, Jr. & Stefan H. Krieger, *Empirical Inquiry Twenty-Five Years After The Lawyering Process*, 10 CLINICAL L. REV. 349 (2003).

⁶¹ Neumann & Krieger, *supra* note 60, at 383-395.

significant changes in law practice have taken place, and these changes have occurred in in-house clinics.

One such change is the use of technology in law practice. In 1985, in the clinic I directed, students still wrote most of their work in long-hand, but there were a couple of computers available for the few students who typed their own work. A secretary typed this work into a DOS-based computer program. Our office had no fax machine or scanner. Use of e-mail was new and very limited. Westlaw and Lexis were new, at least to us, and thinking in terms of “word searches” was still foreign to most of us who had been trained exclusively in index-based and key word systems. Our office had a computerized client database, but it was only used by the support staff, and only to keep track of clients and conflicts of interest. By contrast, today my students enter client notes, contact information and other relevant information in a robust off-the-shelf law office database. We have to discuss protocols for e-mailing clients and other attorneys in our procedures manual. Discovery documents are sent electronically between law offices, and we must take care of meta-data. It is almost impossible to think of a week where a student does not use a fax machine, or a day without e-mail. I can now review student work from anywhere that I can access the internet, and my students can submit it remotely as well.

A second change involves alternate dispute resolution mechanisms. In 1985, mediation in the court system was relatively new and occurred in few cases. Today, many courts mandate attempts at mediation before allowing the parties to proceed to litigation. Law students are so inculcated with the benefits of informal

resolution of disputes, I sometimes have to remind them that litigation is often an attractive choice for our clients.

Substantive law has changed a great deal as well. In my elderlaw clinic, it is important for students to understand how current probate practice is different from older paradigms, especially since our elderly clients remember negative experiences from the earlier era. Academic lawyers are trained to analyze and consider these sorts of changes in legal practice. Students who work in in-house clinics frequently discuss with academic faculty these practice histories, giving them a richer lawyering experience.

4)A place for feedback on the lawyering outcomes upper level students have obtained prior to enrolling in the clinic

Law Schools are moving quickly away from evaluating inputs and toward evaluating and measuring outcomes. The ABA has issued proposed accreditation standards that focus more on outcome measures and assessment.⁶² CLEA's influential *Best Practices in Legal Education*⁶³ devotes substantial text to explaining how to set learning goals, how to measure them and how to assess overall effectiveness.⁶⁴ The Legal Education at the Crossroads conference devoted its most recent (third) annual program to the topic of assessment.⁶⁵

⁶² The proposed revisions are located on the ABA's Section on Legal Education and Admission to the Bar home page located at <http://www.abanet.org/legaled/> (last accessed 8/26/10); there is a webpage devoted to the revision process located at <http://www.abanet.org/legaled/committees/comstandards.html> (last accessed 8/26/10).

⁶³ Stuckey et al, supra note 2.

⁶⁴ *Id.*, see especially chapters two, seven and eight.

⁶⁵ The Legal Education at the Crossroads conferences have taken place as a response to the Best Practices and Carnegie Reports, with an agenda toward law school reform. They have included a wide range of law school faculty and deans. The first conference, called Legal Education at the Crossroads: Ideas to Action, was an invitation-only conference consisting of 57 "leading legal educators" and organized by Stuckey and Wegner. It took place in November, 2007, the year both Reports were published. See <http://law.sc.edu/crossroads/> (last accessed 8/26/10). The second conference took place in September, 2008 and was titled Legal Education at the Crossroads: Ideas to Accomplishments ,Sharing New Ideas for

About a fourth of the conference presenters were clinical teachers. Mary Lynch, a clinical law professor at Albany Law School, moderates a blog about Best Practices that offers many assessment tools.⁶⁶

One method for assessing overall effectiveness of the teaching of lawyering skills and values is to draw upon the experience of clinical teachers who observe law students close to graduation. In-house clinic students offer rich information about the type of education law students are retaining and able to apply in real-life lawyering situations.

While others may have had a different experience, it has been my experience that dialog between clinical teachers and the rest of the law school faculty about such observations is pretty rare. Law school culture has not traditionally been a place for non-judgmental evaluation. Clinical teachers who claim to see trends or patterns that illustrate any type of deficiency are likely to be viewed as cocky, arrogant or non-collegial.⁶⁷ Just as we teach our students that we will improve only if we can accurately assess our own strengths and weaknesses, a law school curriculum can improve only if we can accurately

an Integrated Curriculum. See http://www.law.washington.edu/News/Articles/schedule_Crossroads.pdf (last accessed 8/26/10). It was open to the public. The third Conference, Legal Education at the Crossroads v.3: A Conference on Assessment, took place in 2009. See <http://law.du.edu/index.php/assessment-conference>. (last accessed 8/26/10). Proposals were solicited widely and it was attended by over two hundred people interested in the legal academy.

⁶⁶ See <http://bestpracticeslegaled.albanylawblogs.org/about/>

⁶⁷ On March 5, 2009, Chris Church and I posted a blog entry called “Deconstructing the First Year: How Law School Experiences Lead to Misunderstandings of What Lawyers Do”, located at http://kotplow.typepad.com/clinicians_with_not_enough/2009/03/page/21. By the end of the day, we heard that several first year law professors at our school were outraged that we would publish such a non-collegial, unprofessional attack on their teaching. This notwithstanding the fact that we did not criticize anyone’s teaching, and we had carefully stated that these observations applied to every law school I had taught (three in number) and notwithstanding we had stated that ways of thinking like a lawyer were “appropriately taught”, but later had to be deconstructed. We thought (naively, it turns out) that faculty would welcome seeing how certain teaching methods foster misconceptions, so that perhaps, together, we could examine ways of correcting them. Instead people were offended.

assess its strengths and weaknesses. Law school faculty should welcome the opportunity to learn from the observations of all of their colleagues who work closely with upper level students.⁶⁸ No faculty have a better opportunity to observe student performance of a broad range of lawyering tasks than in-house clinicians.

5)Pooled source of expertise in advanced clinical teaching methods and practices

With increased focus on integrated teaching of knowledge, skills and professional role, full-time faculty who practice teaching methods that integrate these abilities on a daily basis provide expertise within the law school. A number of law schools have introduced programs to provide integrated knowledge/skills/roles programs early in the law school curriculum.⁶⁹ Others have implemented comprehensive evaluation of integrated lawyering later in the curriculum.⁷⁰ Clinicians have played an essential part in designing such programs.

Twenty-five years ago, or even ten years ago, clinical professors worried that being drawn into the development of such programs would result in inappropriate teaching and administrative overload. Although such concerns are still extant, two trends help mitigate this fear. First, increasingly law school

⁶⁸ The same lessons apply to in-house clinicians, who should make more overt efforts to learn whether their instruction works after students graduate.

⁶⁹ For a discussion of the programs at Case Western Reserve University School of Law, Northeastern University School of Law, University of the District of Columbia David A. Clarke School of Law, CUNY School of Law and Southwestern School of law, and New York University School of Law, *see supra* note 45.

⁷⁰ For a discussion of upper level integrative curriculum at Franklin Pierce, Southwestern Law School, University of the District of Columbia David A. Clarke School of Law and CUNY School of Law, *see supra* note 45.

administrators seem to be realizing that such programs are important. Such awareness should lead to some increase or re-allocation of resources to ensure that clinical programs become and remain viable and stable. Second, law faculty teaching traditional courses are beginning to show interest in integrating skills and ethics into their classrooms. Whether such interest can be sustained in light of perceived “coverage” needs is yet to be determined, but I predict that as higher percentages of faculty who enrolled in clinics in law school land traditional teaching jobs, they will be more open to learning the teaching skills necessary to provide more integrated educational environments. Clinical teachers who use these methods regularly should be there to help them.

C. Goals Better Achieved Outside In-House Clinics

Some clinical educational goals are better served by clinical experiences outside the in-house clinic. For example, if a goal is to bolster the resources of a vibrant and active legal aid or public defender office, and demonstrate to students how such professionals work on a daily basis, a hybrid clinic or externship on-site in that office would better accomplish such a goal.⁷¹ Such programs are billed as saving the school money but that is not always the case, especially if the outside program is new or struggling with its own resource problems.⁷² However, it is only in those offices that students can see daily practice as it exists without academic design.

⁷¹ See, e.g., Normal Fell, *Development of a Criminal Law Clinic: A Blended Approach*, 44 CLEV. ST. L. REV. 275 (1996).

⁷² It was also pointed out to me that the cost of this type of placement to a student could be seen as very high if the student could have gotten the same experience without paying tuition, for example by volunteering in the office. If the placement is well-run, however, I believe there is added value to structuring the experience with an eye toward teaching the student to reflect on the work, learning from it more than the student would learn on his or her own.

Sometimes students want to pursue a career in a special practice where practice skills are not easily transferable. If the school does not happen to have an in-house clinic in such a field, an externship might offer a better experience for the student. For example, a student of mine who wanted a career in labor law took an externship with a state anti-discrimination agency. Even those students can often benefit from an in-house clinic experience first, to learn more general lawyering skills, but not all students have sufficient elective credits to be able to do both. Similarly, a student who wants to network in a legal community away from the law school might prefer a placement in that locale. That student would need to trade the extra independent experience in counseling clients in primary role against a desire to make him or herself known in a community.

Finally, an externship offers a student an opportunity to be thrown into a legal environment that is NOT set up for the student's benefit. Such a practice might offer a more realistic view of daily practice—the good, the bad and the ugly—than an in-house, carefully designed program.⁷³

II. Design and Development of In-House Clinics

A. Innovations in in-house clinic design

While it would be impossible to list here every type of innovation in in-house clinical programs, in this section I will examine some trends in the types of in-house clinics that have developed, the types of curriculum presented in the classroom component of the clinics, and changes in how clinic curriculum is developed and assessed. I will also focus on one aspect of managing an in-house clinic that has been a

⁷³ Again, one reader of this piece asked whether students need to pay tuition to see an office functioning as it would without any educational design.

special interest of mine: maintaining quality in the lawyering that takes place in the in-house clinic law office.

1. Types of in-house clinics

The *Future* report states: "...clinics historically have focused their attention on handling cases in the lower trial courts..."⁷⁴ Twenty-five years ago, that focus had begun to change. Clinics had developed that focused on "alternative dispute resolution, legislation, business planning, and international human rights."⁷⁵ Today clinics focus on a much wider range of work, and in ways that blur traditional specialty areas. Gerald Lopez' 1992 book, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*,⁷⁶ along with the work of other progressive thinkers,⁷⁷ inspired a wave of scholarship⁷⁸ and workshops⁷⁹ coinciding with the development (or in some cases,

⁷⁴ Supra note 3 at 553. According to the *Future* report, at that time clinics tended to group as follows: "Typically, schools offering one clinic have a general civil practice caseload. Schools which offer two clinics most frequently offer a civil and a criminal practice experience. Schools offering more than two clinics almost uniformly offer a clinic in some specialized subject matter area(s) in addition to one or more general practice offerings." *Id.* at 532.

⁷⁵ *Id.* at 553-554.

⁷⁶ Gerald P. Lopez, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

⁷⁷ See, e.g., Anthony E. Alfieri, *The Antimonies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1988); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994); Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is there a Role for Facilitative Lawyering?*, 1 CLINICAL L. REV. 639 (1995).

⁷⁸ Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering* 7 CLINICAL L. REV. 147 (2000); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427 (2000). Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000); Andrea Seielstad, *Community Building as a Means of Teaching Creative, Cooperative and Complex Problem-Solving in Clinical Legal Education*, 8 CLINICAL L. REV. 445 (2002) Nancy Cook, *Poverty, Justice, and Community Lawyering: Interdisciplinary and Clinical Perspectives Looking for Justice on a Two-Way Street*, 20 WASH. U. J.L. & POL'Y 169 (2006); Karen Tokarz, Nancy L. Cook, Susan Brooks, & Brenda Bratton Blom, *Conversations on 'Community Lawyering': the Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 358 (2008).

⁷⁹ According to Tokarz, Cook, Brooks & Blom, *Id.* at 360-61, there were a series of workshops in 1996, 1997 and 1998 about community lawyering clinics; "between 2002 and 2007, the Washington University in St. Louis School of Law Clinical Education Program and Center for Interdisciplinary Studies hosted five interdisciplinary clinical conferences that morphed into a focus on community lawyering and generated three volumes of clinical scholarship published by the Washington University Journal of Law & Policy." (citations omitted).

redevelopment) of clinics that focus on community-based lawyering. Even within that sub-specialty, there are clinics that assign community-based projects as one set of assignments within a broader litigation-based clinic, clinics where the community groups are the clients, clinics that assist with economic development, clinics in specialized communities, clinics where students represent individuals and clinics where students work only on large-impact cases or on collective mobilization strategies designed to disrupt market forces in favor of poor populations.⁸⁰ It is fair to say that clinical teachers are considering a wide range of options, with diverse educational goals, when selecting types of clinics to set up.

In a survey based on the 2007-2008 academic year, general criminal defense and civil litigation clinics still comprised the largest number of clinic types (123, almost evenly split between criminal defense and general civil), but together they were only 15.2% of clinical offerings nationally.⁸¹ Of the 809 in-house clinics, 43 were immigration clinics, 38 community/economic development clinics, 33 tax clinics, 32 appellate clinics, 27 environmental law clinics, 19 innocence clinics, 10 securities clinics and 7 Indian law clinics in addition to the various housing, family law, child, employment, consumer law and other traditional legal aid-based subject areas.

The classroom component has likewise seen an expansion of objectives. The in-house clinic is still seen as an environment for teaching the skills and arts of lawyering,

⁸⁰ Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997); Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999); Susan R. Jones, *Current Issues in the Changing Roles and Practices of Community Economic Development Lawyers*, 2002 WIS. L. REV. 437 (2002); Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333 (2009); Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008).

⁸¹ David A. Santacrose & Robert R. Kuehn, *Center for the Study of Applied Legal Education Report on the 2007-1008 Survey*, available at www.CSALE.org (last accessed June 18, 2010), at 8. Respondents were asked to choose only one category, and 34 types of clinics were offered, including “other” or “no clinic”.

but the focus is less on mechanics and more on reflective and role-oriented topics. The last 25 years saw an explosion of scholarship on the topic of the attorney-client relationship.⁸² One can almost see a reflection of the different types of thinking about lawyering in the array of methods chosen to explore that one topic. Similarly, important work on race, gender, ethnic, nationality and sexual orientation identity has changed the conversation about the “us” and “them” of lawyers and clients.⁸³ Sue Bryant and Jean

⁸² The number of articles and books written in the past twenty-five years on this topic is much too long to list comprehensively. For a sense of the scope of such scholarship, see, e.g., Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717 (1987); Rodney J. Uphoff, *The Role of the Criminal Defense Lawyer in Representing the Mentally Impaired Defendant: Zealous Advocate or Officer of the Court?*, 1988 WIS. L. REV. 65 (1988); Robert D. Dinerstein, *Client-Centered Counseling, Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990); ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, AND NEGOTIATING, SKILLS FOR EFFECTIVE REPRESENTATION (1990); DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS, A CLIENT-CENTERED APPROACH (1991); Paul A. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street Level Bureaucracy*, 43 HASTINGS L.J. 947 (1992); Robert D. Dinerstein, *Clinical Texts and Contexts*, 39 UCLA L. REV. 697 (1992); Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1102 (1992); THOMAS L. SHAFFER AND ROBERT F. COCHRAN, JR., LAWYERS, CLIENTS AND MORAL RESPONSIBILITY (1994); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997); Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019 (1997); Stacey Caplow, *What if There is No Client?: Prosecutors as "Counselors" of Crime Victims*, 5 CLINICAL L. REV. 1 (1998); Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLINICAL L. REV. 321 (1998); Linda F. Smith, *Medical Paradigms for Counseling: Giving Clients Bad News*, 4 CLINICAL L. REV. 391 (1998); ROBERT F. COCHRAN, JR. ET AL., THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING (1999); Robert Rubinson, *Constructions of Client Competence and Theories of Practice*, 31 ARIZ. ST.L.J.121 (1999); Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259 (1999); Kimberly E. O'Leary, *When Context Matters: How to Choose an Appropriate Client Counseling Model*, 4 T.M.COOLEY J. PRAC. & CLINICAL L. 103 (2001); Kristin Henning, *Loyalty Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counseling Delinquency Cases*, 81 NOTRE DAME L. REV. 245 (2005); Katherine R. Kruse, *Fortress in the Sand: the Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369 (2006); Abbe Smith, *'I Ain't Takin' No Plea': The Challenges in Counseling Young People Facing Serious Time*, 60 RUTGERS L. REV. 11 (2007); STEPHEN ELLMANN, ROBERT D. DINERSTEIN, ISABELLE R. GUNNING, KATHERINE R. KRUSE, & ANN C. SHALLECK, LAWYERS AND CLIENTS, CRITICAL ISSUES IN INTERVIEWING AND COUNSELING (2009); Carolyn Grose, *In a Land Far, Far Away...Lawyers and Clients Telling Stories About Ethics (and Everything Else)*, 20 HASTINGS WOMENS L. J. 163 (2009).

⁸³ See, e.g., Michelle S. Jacobs, *People from the Footnotes: the Missing Element in Client-Centered Lawyering*, 27 GOLDEN GATE U. L. REV. 345 (1997); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001); Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J. L. & POL'Y 37 (2008).

Koh Peters created important guidelines for exploring cross-cultural lawyering issues.⁸⁴ Clinic teachers have reached out in greater numbers to work with non-lawyer professionals, most notably social workers and health care professionals, to explicitly teach students the value of cross-professional collaborations.⁸⁵ Clinicians have exported their work overseas and documented important lessons for those of us working in in-house clinics at home.⁸⁶ Clinicians have also collaborated internally with legal writing professors to better impart writing skills to clinic students.⁸⁷ Others have developed curriculum to assist students in exploring personal-professional balance issues and happiness in their professional choices.⁸⁸

⁸⁴ Brant, *supra* n 74.

⁸⁵ Rose Voyvodic & Mary Metcalf, *Advancing Social Justice through an Interdisciplinary Approach to Clinical Legal Education: the Case of Legal Assistance of Windsor*, 14 WASH. U. J.L. & POL'Y 101 (2004); Kim Diana Connelley, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 11 WASH. U. J.L. & POL'Y 11 (2003); Elizabeth Tobin Tyler, *Allies Not Adversaries: Teaching Collaboration to the Next Generation of Doctors and Lawyers to Address Social Inequality*, 11 J. HEALTH CARE L. & POL'Y 249 (2008);

⁸⁶ Lawrence M. Grosberg, *Clinical Education in Russia: "Da" and "Nyet"*, 7 CLINICAL L. REV. 469 (2001); Roy T. Stuckey, *Preparing Students to Practice Law: A Global Problem in Need of Global Solutions*, 43 S. TEX. L. REV. 649 (2002); Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 CLINICAL L. REV. 465 (2008); Leah Wortham, *Aiding Clinical Education Abroad: What Can be Gained and the Learning Curve on How to do so Effectively*, 12 CLINICAL L. REV. 615 (2006); Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: the Divide Between Civil and Common Law Cultures and its Implications for Clinical Education*, 15 CLINICAL L. REV. 131 (2008); Margaret Martin Barry, Martin Geer, Catherine F. Klein, & Ved Kumari, *Justice Education and the Evaluation Process: Crossing Borders*, 28 WASH. U. J. L. & POL'Y 195 (2008); Shannon M. Roesler, *The Ethics of Global Justice Lawyering*, 13 YALE HUM. RTS. & DEV. L.J. 185 (2010).

⁸⁷ Angela J. Cambell, *Teaching Advanced Legal Writing in a Law School Clinic*, 24 SETON HALL L. REV. 653 (1993); Andrea McArdle, *Teaching Writing in Clinical, Lawyering, and Legal Writing Courses: Negotiating Professional and Personal Voice*, 12 CLINICAL L. REV. 501 (2006); *Comment: Survey of Cooperation Among Clinical, Pro Bono, Externship, and Legal Writing Faculty*, 4 J. ASS'N LEGAL WRITING DIRECTORS 56 (2007); Darby Dickerson, *Building Bridges: A Call for Greater Collaboration Between Legal Writing & Clinic Professors*, 4 J. ASS'N LEGAL WRITING DIRECTORS 45 (2007); Michael A. Millemann, *Using Actual Legal Work to Teach Legal Research and Writing*, 4 J. ASS'N LEGAL WRITING DIRECTORS 8 (2009); Sarah O'Rourke Schrup, *The Clinical Divide: Overcoming Barriers Between Clinics and Legal Writing Programs*, 14 CLINICAL L. REV. 301 (2007); Bernadette T. Feeley, *Training Field Supervisors to be Efficient and Effective Critics of Student Writing*, 15 CLINICAL L. REV. 211 (2009); Phyllis Goldfarb, *So Near and Yet So Far: Dreams of Collaboration Between Clinical and Legal Writing Programs*, 4 J. ASS'N LEGAL WRITING DIRECTORS 35 (2007).

⁸⁸ For an overview of these issues, see Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L. J. 247 (2008).

To help students achieve deeper levels of understanding and analysis, clinicians should continue to explore methods that require students to compare their own experiences, values and goals with those of other people in their communities and around the world.

2. Best Practices in Teaching

Teaching methods in in-house clinics have evolved, although the essential pieces are the same as they were 25 years ago. Students are taught theories and plans about lawyering, they are placed in carefully chosen real-life experiences, and faculty help them process those experiences to learn from them. Lessons learned are then considered in planning the next tasks.⁸⁹ The *Future* report recommended that in-house clinics include a seminar, or classroom, component, and today virtually all clinics do. That report also recommended that clinical teachers develop learning goals or objectives to evaluate and guide in-house clinic programs.⁹⁰ Numerous AALS and CLEA workshops and conferences, and some landmark articles, have helped articulate these processes.⁹¹

Building on those themes, today's focus on outcome measures and assessment takes experiential learning one logical step forward. Not only should clinical teachers have objectives, but they should articulate those objectives to their students. Not only should clinical teachers help students process their experiences, but they should do so in the context of assessment measures. In 1985, it is my impression that many, if not most, clinics were ungraded; today the opposite is true. The AALS clinical workshop in 2010

⁸⁹ A good description of this type of learning is found in Ogilvy, et al, supra note 23, at 3-5; they refer to this process as "plan, do, reflect."

⁹⁰ *Future Report*, supra note 3 at 562.

⁹¹ Probably the most influential article written about the clinical supervision process is Ann Shalleck, *Clinical Contexts: Theory and Practice in Supervision*, 21 N.Y.U. REV. L.& SOC. CHANGE 109 (1993-1994); see also Nina Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967 (1990).

focused on use of outcome measures, critical theory and strategic thinking in clinical settings.⁹² A perusal of the conference materials shows that many clinical teachers are using explicit outcome measures in their clinic design, and also using assessment tools to help students understand and improve upon their own lawyering abilities.⁹³

In my clinic, my colleagues and I have developed a written set of outcome measures that tell students what we expect them to be able to do when they complete the course. Our document also tells students what abilities look like when they are done in an “excellent” fashion, “satisfactory” and “unsatisfactory”. Our clinic is ungraded, and we use the outcomes assessment instrument to help students identify their own strengths and weaknesses and assist their self-development. We link the document to individual classroom objectives each week. We incorporate them into three assignments during the term: an initial goal-setting assignment, a mid-term reflection assignment, and an exit interview assignment. By being explicit, we hope students can better link our actions (classroom activities, supervision sessions, etc.) to their development. We have noticed that students are developing greater capacity to discuss their own progress, and a shared vocabulary for doing so.

Increasingly law students will ask for an explicit discussion of learning goals and outcome measurement, as law professors have begun to have these discussions early in the law school experience. Clinical teachers should be prepared to articulate those standards that are in their heads, breaking down what they expect from students. More

⁹² Conference on Clinical Legal Education *Answering the Call for Reform: Using Outcomes Assessment, Critical Theory and Strategic Thinking to Implement Change*, May 4-8, 2010, Baltimore, Maryland, workshop materials located at <http://www.aals.org/clinical2010/booklet.pdf>.

⁹³ *Id.*

explicit descriptions will help students understand how our actions can help them improve.

3. Maintaining Quality Lawyering in Clinic Offices

It is difficult at best to monitor quality of lawyering in a law office where most of the people responsible for cases are novices. Add to that a law office where at least some of those people leave every 14 weeks, and you have an office where the typical learning curve that comes with experience is difficult to maintain. While faculty are experienced attorneys, our method requires that we refrain from taking over and allow students to make mistakes. Moreover, the learning we would naturally glean from our own experience working on cases is muted by the fact that we no longer work on cases, at least not directly.

In the past two and a half decades, we have learned some techniques to help maintain a high quality of lawyering in in-house clinics. In May, 1997, the topic of competence in lawyering in a clinic law office was raised for the first time at a Clinic Director's conference.⁹⁴ In May, 1998, a similar topic, "Valuing and Evaluating Lawyer and Student Competence" was one of the sessions at the AALS clinic workshop. Clinical

⁹⁴ Quality issues were also raised at a Midwest clinical conference in Ann Arbor, Michigan either just before or just after this session at the Director's conference. Although I cannot find any proof that this was the first time the topic was raised, I was involved in the planning and remember how odd it seemed to quite a few experienced clinicians that we even wanted to discuss quality of lawyering. I remember one experienced professor stating something to the effect that if an experienced faculty member went over options with a student, that was sufficient quality control. I could only find two professors nationally who had used any sort of formal quality assessment of lawyering – Shelley Broderick, at the University of the District of Columbia School of Law, described a system similar to legal services case reviews by managers of the attorneys in the clinic, and Jeanne Charn described attempts in the Legal Services Center at Harvard to determine and measure case outcomes. Many newer directors contacted me after the session, thanking me for pushing the topic because as clinical faculty were moving into unfamiliar legal jurisdictions, they were frequently concerned about their own understanding of legal practice and strategies.

educators began to discuss the need for regular conversations between faculty to help raise the level of guidance provided to students.⁹⁵

All law faculty must keep up in a field of law and stay current in teaching methodologies. Clinical law faculty must additionally stay current with local and regional practice standards, court rules, court forms and lawyer networking. Faculty who teach in clinics must acquire and utilize classroom pedagogies, supervision pedagogies, critique pedagogies, and rounds pedagogies. Finally, clinical law faculty have to balance student needs and community priorities when selecting the clinic caseload.

In the in-house clinic, lawyers (faculty, staff attorneys, etc.) must be encouraged and supported in continuing education on all of these fronts. Budgets must include extra training money for substantive law and clinical teaching; time must be allocated for committees, outreach, and regular discussion among faculty and other attorneys in the in-house law office.

The juggling of these demands makes it sensible for an in-house clinic to have several faculty teaching together in the same program. To require one attorney/faculty member to be on-call for students during a typical law office work-week, attend training, engage in supervision sessions, attend court, mediation or other case-related meetings with students – all while conducting the ordinary affairs of regular faculty – is unrealistic and unfair. Additionally, people sometimes become ill, earn a sabbatical, take leave of

⁹⁵ Jeanne Charn discusses at length the need to have practicing faculty familiar with how systems currently operate, and talking among themselves and their students about local practice; see Jeanne Charn, *Service and Learning: Reflections on Three Decades of The Lawyering Process at Harvard Law School*, 10 CLINICAL L. REV. 75 (2003). Elliott Milstein has discussed the need for a rounds-type process for clinical teachers to discuss challenges in their work with one another. See also Kimberly E. O’Leary, *Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics*, 11 CLINICAL L. REV. 335, 363-64 (2005) (discussing need for regular meetings of clinic faculty and key office staff to discuss operational and practice issues to better help guide students).

absence – and finding a substitute on short notice is nearly impossible. Finally, as the *Future* report stated so many years ago, “It is very isolating when the majority of one's colleagues either are not full-time clinicians, or are only there for a year or two and do not see clinical teaching as a career.”⁹⁶ If an in-house clinic has at least two faculty, and preferably three, these problems are mitigated. As the Report and Recommendations on the Status of Clinical Faculty in the Legal Academy states:

...co-teaching clinical courses can help expand clinic slots for students as well as alleviate some of the demands on each faculty member's time, because it permits co-teachers to share responsibilities for the preparation of course materials and seminar teaching. It also permits them to cover each other's cases. Co-teaching also helps to spread the responsibilities of developing and maintaining relationships with important members of the legal community and to field requests for involvement on boards and committees, engagement in community education, networking, organizing, or advocacy work. Co-teaching also permits staggering teaching responsibilities among co-teaching colleagues to provide research leave time. While some of these benefits can be realized by co-teaching with clinic fellows or other short-term employees, the fullest benefits of co-teaching are realized when it occurs among members of the full-time clinical faculty with longer-term teaching experience and investment in the community.⁹⁷

Finally, in-house clinics should implement quality controls to help relieve the responsibility of one faculty member to constantly monitor the legal work of novices. Lawyers in practice discuss their work with other lawyers; lawyers in the clinical law office should also check their substantive knowledge and opinions with other lawyers.

⁹⁶ *Future* supra note 3 at 560.

⁹⁷ Bryan L. Adamson, Calvin Pang, Bradford Colbert, Kathy Hessler, Katherine Druse, Robert Kuehn, Mary Helen McNeal, David Santacroe, Association of American Law Schools Section on Clinical Legal Education's Task Force on the Status of Clinicians and the Legal Academy, *Report and Recommendations on the Status of Clinical Faculty in the Legal Academy*, located at <http://www.abanet.org/legaled/committees/Standards%20Review%20documents/AALS%20June%202010%20Task%20Force%20Report%20on%20Status%20of%20Clinical%20Faculty%20in%20the%20Legal%20Academy.pdf> (last accessed 9/13/10) (2010), at 46.

Having multiple lawyers in the in-house clinic allows the faculty to talk to each other about their legal work, check their assumptions, and catch updates in law or practice.⁹⁸

B. Major Problems Faced by In-House Clinics

Three problems identified by clinicians in the *Future* report remain serious problems today. Foremost among these is the continued problem of status of clinical teachers in law schools. Twenty-five years ago, 55% of professional skills law teachers were on unified tenure tracks.⁹⁹ The *Future* report notes that not all of these teachers worked in in-house clinics and surmises that the percent of in-house clinicians was probably lower.¹⁰⁰ In the intervening years, the ABA modified Standard 405c to state:

A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

Law schools responded by placing full time clinical faculty on one of three types of positions: unified tenure track, clinical tenure track, or long-term contract track.

Unfortunately, the least secure type of track contains the most faculty teaching in clinics.

In the 2007-2008 academic year, 23% of all clinical law teachers were on regular tenure

⁹⁸ For suggested office methods for implementing in-house clinic office controls, such as peer review processes, see O’Leary *supra* note 94, at 346-353. Clinical conferences have become an important source of faculty who teach in clinics with similar subject matter to talk to each other about the law.

⁹⁹ *Future* *supra* note 3, at 556.

¹⁰⁰ *Id.* at fn 11.

tracks or had tenure.¹⁰¹ Not all of these teachers worked in in-house clinics either; some taught in externships so the actual percent of in-house clinicians might have been slightly higher. Additionally, 11.2% of clinicians in 2007-08 were on clinical tenure tracks. The largest percentage of clinical teachers in 2007-08 were on contracts: 45.7%. While ABA standards have required schools to place the majority of a law school's clinicians on some sort of presumptively renewable contract after some initial period, it appears the large majority of law schools have chosen the least secure form of such long-term security.

At a time when law schools are looking to clinical teachers for leadership in collaborative, integrative teaching methodologies, it is past time to bring clinicians into full status. The AALS Section on Clinical Legal Education recently made this argument in its task force report on the status of clinicians, with many pages of supporting arguments.¹⁰² It is time for law schools to admit that clinical teaching is essential to the overall mission rather than looking for back-door escape mechanisms should a law school decide it no longer wants a clinical program.

A related major problem toward expanding in-house clinics has been a perception that the programs are too expensive. In a review of the literature, cost is the most frequent reason given for not requiring in-house clinical experiences for all students.¹⁰³ While the low student-teacher ratio of in-house clinics forces the cost question, some have urged that law schools objectively measure all of their costs in light of educational goals when considering the price of in-house clinics.¹⁰⁴ Barry, Dubin and Joy state:

¹⁰¹ CSALE supra note 81, at 29. According to the task force report, supra note 96, CSALE data reflects that 27% of full time clinical law faculty were on unitary tenure track or tenured, and 48% of all ABA accredited law schools have at least one tenured or tenure track clinician. Task force report supra note 97 at 17.

¹⁰² Adamson et al, supra note 97.

¹⁰³ See, e.g., Barry, Dubin & Joy supra note 9, at 21 & citations contained in fns 85 & 92.

¹⁰⁴ *Id.*, 23-26.

In analyzing the 1987-88 budgets of 156 law schools, Dean John Kramer found that total instructional costs exceeded \$389 million. Of the \$389 million devoted to instructional costs, \$155.5 million was allocated for library costs, \$167 million for support personnel, and \$31.7 million for clinical education. Thus, non-clinical curricular spending was twelve times greater than clinical spending, and library expenses were five times greater than clinical spending.

These data illustrate the need to take a broader view of the cost of in-house clinical legal education. There needs to be a re-evaluation of the definition of a quality legal education. The MacCrate Task Force found in 1990-91 that professional skills training typically occupies only nine percent (9%) of the total instructional time in law schools. Is the present emphasis on upper level doctrinal courses necessary or even helpful to producing competent lawyers?¹⁰⁵

The Task Force on the Status of Clinicians concurs:

These [cost] arguments are usually mounted on the assumptions that traditional tenure-track professors exclusively teach large-enrollment courses that are more cost-effective and that clinical professors teach only small-enrollment courses. These assumptions, however, do not always hold. The early law school model of a few full-time faculty members with large teaching loads, high student/faculty ratios, and high adjunct utilization is no longer in effect at most law schools. However, the costs and benefits of upper-level small enrollment courses or small seminars developed around the research interests of tenured and tenure-track faculty are rarely placed under cost-benefit scrutiny by those making such arguments in reference to clinical legal education. To the extent that clinical professors on a unitary tenure-track are permitted or required to teach traditional large-enrollment courses above and beyond their clinical teaching, the costs of maintaining them on unitary tenure-track lines can be partially recovered through the savings of having those courses covered.

Cost vigilance is a valid concern. As the cost of legal education for students continue to rise, law schools are rightfully concerned about resource allocation - especially during acutely adverse economic times. However, such financial analysis should not be focused solely on the clinical faculty, a discrete subset of historically marginalized institution members. Any cost rationale must take into account a host of other costs incurred in the delivery of a sound legal education.

Because law schools are, first and foremost, educational institutions, it is time to acknowledge the clear benefits of an academic apprenticeship to every law student. If

¹⁰⁵ *Id.*, 23-4.

that premise is accepted, law schools must find ways to reallocate resources to incorporate the cost.

A third major threat has been outside political interference. Although this threat has occurred relatively infrequently, it is serious when it does occur and can have a chilling effect on many choices affecting in-house clinics. When law school clinics represent traditionally under-represented populations against large and powerful opponents, sometimes those opponents use their considerable power to try to interfere with the work of the clinics. Probably the highest-profile case in point was the political turmoil surrounding the work of the Tulane Environmental Law Clinic.¹⁰⁶ Although political attacks against clinic work was around before our look back twenty-five years,¹⁰⁷ there have been continued attacks since. Programs in Oregon, South Dakota and most recently Maryland have garnered support from clinical teachers nation-wide when they were attacked. The AALS Section on Clinical Legal Education and CLEA, along with organizations such as SALT and the broader AALS, provide information and support to help defeat these attacks.

C. Minor Irritations in the Administration of In-House Clinics

Compared to the three major problems described above, a handful of minor irritants also continue to create problems for clinical administrators. Unlike the major

¹⁰⁶ For information about the attacks against the Tulane clinic, see Jorge deNeve, Peter A. Joy & Charles D. Weisselberg, *Submission of the Association of American Law Schools to the Supreme Court of the State of Louisiana Concerning the Review of the Supreme Court's Student Practice Rule*, 4 CLINICAL L. REV. 539 (1998); Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TUL. L. REV. 235 (1999); Robert R. Kuehn, *Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 WASH. U. J. L. & POL'Y 33 (2000); Suzanne J. Levitt et al., *Submission of the Clinical Legal Education Association to the Supreme Court of the State of Louisiana Concerning the Review of the Supreme Court's Student Practice Rule*, 4 CLINICAL L. REV. 571 (1998).

¹⁰⁷ A history of political attacks on clinics can be found in Peter A. Joy & Charles D. Weisselberg, *Access to Justice, Academic Freedom, and Political Interference: A Clinical Program Under Siege*, 4 CLINICAL L. REV. 531 (1998).

problems, which tend toward national problem-solving, these minor issues are typically resolved on a school-wide basis.

Although many law schools have built beautiful, state of the art law offices for clinic programs, issues related to space continue to be a problem for some programs. In the *Future* surveys 25 years ago, 20% of those surveyed said lack of adequate space was a problem. While space is a premium in any academic environment, certain essentials about clinic space are frequently overlooked. A law office should be confidential and professional. That means public school hallways should not go through the office; access should be limited to law office personnel (including, of course, students), and should not be shared by staff from other programs, faculty from other programs, students from other programs; there should be adequate file drawers, computers, faxes, printers and other office equipment; there should be adequate support staff to answer phones and greet clients, even when the office is open to clients on evenings and weekends; students must have access to physical and virtual space that non law office academic staff do not have access to; break rooms located within the law office should not be frequented by people who do not work in the law office; clients should have adequate waiting areas, some semblance of privacy, and decent access and parking; students should have both collaborative and private work spaces; conference rooms should be private and not sided with uncovered glass; faculty should have offices that allow for collaborative conferences and white-board or other writing surfaces for brainstorming sessions. In the 2007-08 survey 15.7% of clinical faculty still report physical/office space as a major challenge.¹⁰⁸ This problem persists because academic solutions (e.g. house programs together; staff have confidential information, students do not) do not work when there is a law office in

¹⁰⁸ *Id.* at 12.

the law school. Clinicians report other resource inadequacies as major challenges as well.¹⁰⁹

Another minor problem has been created by over-specialization of clinical curriculum. Curriculum planners should avoid the tendency to limit the flexibility of a clinical program in its initial design. When examining the primary goals of clinical programs (see earlier discussion) very little attention is paid to subject matter. Most law school courses, on the contrary, are subject-matter focused. Because legal practice is a fluid, organic set of processes, because community needs and educational usefulness of cases change from time to time, and because more general clinics can allow more co-teaching, it is in the interest of the clinician to define his or her clinic as broadly as possible. With an increasing focus on subject-specific clinics, there may be a tendency to write initial clinic design proposals too narrowly. The clinical faculty should rather define its course by the other educational goals and allow for specific case selection and client selection criteria to morph and change as needed. This will ensure a better learning environment for the students and a clinic more responsive to the community.

III. Internal Challenges in Sustaining In-House Clinics

A number of internal challenges remain that cause the clinical law teacher to occasionally consider whether it is sane to continue to work in an in-house clinic. Students entering a clinic frequently have no prior experience with the clinical method of learning. Good students have learned that if they read assignments, pay attention in class and write a good outline, they can do well on an exam. All of a sudden, students are

¹⁰⁹ *Id.* Other resource problems mentioned besides space include lack of hard money (tuition dollars, endowment income, or, at a public institution, state subsidies) (18.1%); competing demands on clinical faculty's time (18%); insufficient number of clinical faculty (16.2%)...lack of support among doctrinal faculty (9.6%); lack of administrative/secretarial support (8.1%); lack of support from the administration (8.1%).

thrown into a learning environment where they are expected to figure things out on their own. Rather than the anonymous feedback received when their exam is graded, students are asked to perform over and over, then required to process that performance and re-work a new plan. This type of learning environment is often stressful for students, creating anxiety and causing some to initially chafe at such active participation in their own learning. By the end of the experience, however, most students feel empowered and relieved. Such an environment creates tensions, too, for professors teaching in clinics.

Teaching in an in-house clinic is often exhausting. Exhilarating, but exhausting. All of the same reasons it is so satisfying to teach in an in-house clinic are also reasons that it can, on some days, seem as if it is just too hard.

Students are constantly touching base, voicing ideas but also anxieties. Sometimes students think they know more than they know, and have not had a lot of experience being critiqued. You think you have a clear schedule on a given day and plan, for example, to work on an article. Suddenly it is four o'clock and you've been working with students all day. On a good day, a clinical teacher can revel in the challenge. On a bad day, it can feel very frustrating.

If you are a clinician working by yourself in an in-house clinic, you often feel stressed by your responsibility without anyone to share it. You worry about meeting student needs if you have an emergency or are eligible for a sabbatical.¹¹⁰ If you work with colleagues, you must navigate collaboration with one or more independent-minded academic-lawyers, like yourself. On good days, you revel in the excitement of collegial

¹¹⁰ At the recent AALS clinic conference in Baltimore, one of the plenary session presenters, Muneer Ahmad, mentioned how he had instructed his students that he would be unavailable even by telephone from 9:00 am-10:30am on the day of the plenary; nonetheless, during the presentation he received a text message from a student asking him to call the office.

ideas and shared energy. On a bad day, you want to do it the way YOU want to do it, just once!

Your lawyering knowledge and abilities are constantly being stretched. If you have practiced in several jurisdictions, you often feel as if you just cannot understand why they do it That Way Here. If you have always practiced in one jurisdiction, you wonder if you are telling the students too much. You know you are asking the students to constantly learn new law, but you find it disconcerting that after decades of legal practice, there is still so much you don't know. On a good day, you feel like a lawyer, ready to guide the students to finding those answers. On a bad day, you feel incompetent and want to make sure the malpractice insurance is paid.

Your contacts in the community are plentiful, but never as attentively cultivated as you wish. People leave agencies and new people come in. Schedules are hard to coordinate. The people you most want to know about your services do not seem to know who you are. Or, you are finally reaching your target population, so you have to start telling people to wait for months before you can see them. On a good day, you feel sure that you are making a positive difference in your community. On a bad day, you don't see how you can find time nurture this network of connections when you have a faculty meeting, two supervision sessions and one of your clients called to say she cannot appear in court that afternoon.

Most experienced in-house clinicians know an impressive number of former in-house clinicians who now teach classroom courses, externships, simulation-only courses, or hold administrative positions. All of those types of work are demanding, but in a far

more predictable and less intrusive way. Many experienced clinical teachers persevere and enjoy this juggling act, however.

To help alleviate these stresses, it is critical that in-house clinicians who desire it are offered the chance to share responsibilities with other faculty. They must be able to realistically take time off, for emergencies or just for regular sabbaticals, without worrying that their program will self-destruct. While there are a number of ways to fill this teaching and administrative gap, it can only happen if there are other professors conversant with clinical methods. It happens most easily in co-teaching clinics. Faculty and other attorney staff should regularly attend training and networking opportunities to keep up their legal skills. Faculty should talk with other faculty about supervision and lawyering challenges. These discussions help one focus on the great aspects of the job. Turnover in itself can lead to chaotic programs and even more burn-out. All law school faculty must be able to pursue scholarship, law reform agendas, scholarship, and other professional interests that keep them excited about their work.

IV. The New Future of the In-House Clinic?

What is the new future of the In-House Clinic? What will we be talking about twenty-five years from now, in 2035? I see two possible paths: to satisfy increasing calls for more professional integration of knowledge, skills and values in legal education, law schools take the least expensive alternative and vastly increase external placements and simulation-based instruction. In-house clinics are allowed to shrink and are lost through attrition when long-standing advocates and program directors retire. Clinical teachers are re-allocated to working with less expensive programs. While a few in-house clinics

remain, they are not considered standard fare for law schools, but rather expensive boutique offerings for those schools that can afford them.

The other path would be the product of sustained advocacy by clinicians and fellow travelers who agree that the benefits in-house clinics offer law schools are important and necessary. On this path, the in-house clinic will be one of many experiential and integrated teaching loci in the law school, but acknowledged as a center of innovative lawyering and innovative teaching. Resources will have been allocated so that every law school has one or more in-house clinic, and they will be seen as laboratories for the study of teaching, lawyering, service to the indigent, and legal systems. Clinical educators exist in sufficient numbers that they have found time and resources to collaborate with social scientists for formal study of street-level practice of law and policy think-tanks. Similarly, clinical educators collaborate regularly with professors in the law school teaching in a variety of courses – including first- and second-year courses – and clinical methods of planning-experiencing-reflecting are regularly used in those courses. As a result, students have a smoother transition to practice because their early legal instruction gives them a good sense of professional role and advocacy.

Despite these changes, the core instruction taking place in in-house clinics is strikingly similar to what it looked like in 1985 and in 2010. Student attorneys still assume the role of problem-solving and decision-making by design; they have to meet with clients and figure out how to help them; they still struggle with having to figure out what to do first and where to look for ideas. Students still puzzle over how their expectations of the legal universe are not quite what they thought, and worry over how to make a difference. Clinical faculty still push their students to take that extra step to help

the client; to create that extra proposal to reform the system; to push that extra hour to achieve their best work. I hope, at least, that in this respect the new future of the in-house clinic looks a lot like the old future of the in-house clinic.