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(Re)constructing Clinics in a Challenging Context: Teaching Policy and Legislation

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Introduction

Early clinical legal education focused almost solely on representing individual, low-income and otherwise disenfranchised clients in litigation.[1] The need to serve clients in housing court, on social security appeals, and in so many other areas, was, and remains, extraordinary. Yet, over the last decade or more, clinical educators, much like our public interest colleagues in the field, have been diversifying our methods of representation and advocacy.[2]

We are part of this trend. For the last many years, we have been teaching policy and legislative advocacy clinics.[3] Indeed, this is a burgeoning area of clinical development. For example, when Chai Feldblum published her influential, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*,[4] she identified seven legislative or administrative clinics in existence at the time. A survey of such programs conducted in the summer of 2008 [need to update] identified over forty legislative clinical offerings (including externships/internships with seminars).[5]

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[1] Cite.
[2] Cite.
[3] Anita Weinberg established a childlaw policy and legislative program at Loyola University Chicago in 1999, which evolved into a clinical offering; Elizabeth Cooper has been teaching an Urban Policy and Legislative Advocacy Clinic Fordham University since 2004 [check date]. See infra Section ____ for more information about our clinical offerings. We use the terms "legislative clinic," "legislative and policy clinic," and "policy clinic," interchangeably, unless otherwise indicated. Each of these terms refers to a clinic whose primary focus is on legislative or policy advocacy.
[4] Chai R. Feldblum, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*, 34 MCGEORGE L. REV. 785 (2003).
[5] *See infra* Appendix A (identifying the legislative clinical and externship programs that exist as of summer 2010). Many types of "clinics," however, may be offered under the "policy/legislative advocacy" rubric. Some use this

In an effort to learn more about our work, and to inform others about the benefits (and difficulties) of teaching these clinics, we decided to explain what we do, why we do it, the challenges we have faced, and where teaching this type of clinic fits within existing pedagogical principles.[6] Part I sets forth the pedagogic values of clinical law teaching as found in our three primary references, MacCrate, Best Practices and Carnegie, as well as resources on multi-cultural lawyering. Part II explores the function and role of policy/legislative clinics, with particular reference to Feldblum's article on the legislative lawyer.[7] In the second half of Part II, we explain the primary skills and values we seek to teach and the context in which we do this work.

In Part III, we briefly describe the range of policy/legislative clinics that are offered, and then provide somewhat more detailed information about our own clinics, providing a helpful context for the discussion that follows. When we started to write this piece, we knew that we had adopted similar approaches to our clinical teaching. When, however, we shared with each other our goals for student learning, and the activities in which students engage as a means of achieving these goals, we learned that we had adopted very similar priorities. Thus, in the second half of Part III, we set forth our common vision and the range of policy/lawyering activities of our students, linking both back to the six circles of advocacy identified by Feldblum.

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title to describe what are largely externships, where students are placed in legislative offices for part-time (10-15 hours/week) or full-time work. For the purposes of this paper, however, we focus on live-client offerings, where students generally work with, or on behalf of, community-based organizations identifying, constructing, and executing specific policy and legislative advocacy projects.

[6] We were, in fact, incredibly happy to meet at an AALS Clinical Conference in 2004(?), as we found a kindred spirit in each other: someone who believes deeply both in the power to create social change through policy and legislative lawyering and in the importance of teaching the related skills and values in a law school setting. We recognize that we have not yet addressed (in this draft) each of the issues set forth in the text.

[7] Chai Feldblum, [cite].

Much of clinical pedagogy developed when most law clinics represented individuals in poverty-based litigation (civil or criminal). Yet, that clinical model no longer predominates. As a way to better understand how clinical pedagogy might need to be adapted for the context of policy/legislation clinics, we set forth in Part IV eleven key ways in which individual, poverty-based litigation varies from a practice based in policy and legislative advocacy. In Part V [not yet written], we analyzes these differences and identify a number of ways in which one must adapt established pedagogical principles for teaching in legislative and policy advocacy clinics.

I. Identify Pedagogic Values of Clinical Teaching Generally

Over the past 18 years, three reports have sought to reform our deeply flawed system of legal education. In 1992, the American Bar Association issued *Legal Education and Professional Development – An Educational Continuum*, better known as "the *MacCrate Report*," in tribute to its editor, Robert MacCrate.[8] This Report had a profound effect on the conceptualization and acceptance of legal education generally, and clinical legal education more specifically.[9]

In 2007, two equally informative and compelling reports were published. The Carnegie Foundation for the Advancement of Teaching issued *Educating Lawyers* (known more commonly as "the *Carnegie Report*"), which criticized modern legal education for "emphasiz[ing] legal knowledge and reasoning at the expense of attention to practice skills, while the relations of legal activity to morality and public responsibility receive[] even less direct

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[8] The MacCrate Report was developed by The Task Force on Law Schools and the Profession: Narrowing the Gap, which was formed in 1989 by the Section of Legal Education and Admissions to the Bar of the American Bar Association. Its members included representatives from "the federal and state judiciary, deans and faculty members of law schools, and members of the practicing bar." Legal Education and Professional Development – An Educational Continuum, Student Edition (Robert MacCrate ed.) (West ___ - no year provided in the book) at v.

[9] Cite.

attention in the curriculum."[10] Rather, the Report's authors noted, "[t]he task of professional education [should be] to facilitate novices' growth into … capacities to act with competence, moving toward expertise," which they define as "the ability to both act and think well in uncertain situations."[11]

That same year, the Clinical Legal Education Association (CLEA) published *Best Practices for Legal Education*, authored by Professor Roy Stuckey and others.[12] Perhaps more than the two other pivotal reports, this publication seeks to provide more tangible guidance toward the creation of "what legal education might become if legal educators step back and consider how they can most effectively prepare students for practice."[13]

Each of these publications has individual merit, and read together they constitute a strong indictment of the predominant system of legal education. More important, however, although their recommendations for revitalizing legal education are not uniform, they establish fundamental elements which must be incorporated into legal education to ensure it truly prepares our students to be thoughtful, capable, ethical practitioners. From the three reports, we have identified the following common set of fundamental skills and principles:

1. Self-reflection

Cognitive learning scholars have identified self-reflection as a core element of effective learning and learning for transfer. Put simply, the ability "'to monitor your progress; … to measure it; to mull over different options and courses of development; to be mindful of your own

[10] William M. Sullivan, Anne Colby et al., EDUCATING LAWYERS (Wiley [or – should it be The Carnegie Foundation for the Advancement of Teaching?] 2007) (hereinafter EDUCATING LAWYERS), at 7.
[11] William M. Sullivan, Anne Colby et al., EDUCATING LAWYERS (Wiley 2007), at 9.
[12] Roy Stuckey et al., BEST PRACTICES FOR LEGAL EDUCATION (CLEA 2007) (hereinafter BEST PRACTICES). The CLEA Best Practices Project was initiated in August 2001; the resulting publication "was developed collaboratively" from 2001 – 2007. *Id.* at ix.
[13] Best Practices, *supra* note ___, at 1 (noting that the report "could serve as a road map for a partial or complete review of a law school's program of instruction").

assumptions and habits, and to be able to stand back from them and appraise them'" [14] are essential to maximizing one's learning experience in law school, being able to use the learning in analogous contexts (learning for transfer), and to continue learning throughout one's professional life.[15] Both the MacCrate Report[16] and Best Practices[17] emphasize the importance of developing this skill. The Carnegie Report admittedly only implicitly recognizes its value in its discussion of the importance of formative assessments.[18]

We set forth the remaining essential skills in outline form, to be completed as we continue to work on the draft.

2. Intellectual and Analytical Skills
    a. Legal Research and Analysis
    b. Factual Investigation
    c. Practical Judgment
3. Problem Solving
    a. Assessing the problem
    b. Being creative in proposing solutions and approaches

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[14] BEST PRACTICES, *supra* note ___, at 66-67 (quoting U.K. Ctr. For Legal Educ., Higher Educ. Acad.,*What's Reflection Got to Do With It?*, http://ukcle.ac.uk/resources/reflection/reflection .html, quoting G. CLAXTON, WISE UP: THE CHALLENGE OF LIFELONG LEARNING 14 (1999)).

[15]*See, e.g.*, DONALD A. SCHON: THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION (1983) + add cites.

[16] The MacCrate Report identifies "[c]ritically assessing one's own performance" and "[i]dentifying practices that will make it possible to replicate effective aspects of the performance in the future and/or guard against repetition of ineffective ones" as parts of the fourth essential value of "Professional Self Development." MACCRATE REPORT, *supra* note ___, at 212-13 (4.1(a)(i) and (ii)).

[17] BEST PRACTICES, *supra* note ___, at 66-67. As stated in the Report:

> The key skill set of lifelong learners is reflection skills. The entire law school experience should help students become expert in reflecting on their learning process, identifying the causes of both successes and failures, and using that knowledge to plan future efforts to learn with a goal of continuous improvement.

Id. at 66.

[18] *See* CARNEGIE REPORT, *supra* note ___, at 171 (noting that "providing important information about the students' progress in learning to both students and faculty, can strengthen law schools' capacity to develop competent and responsible lawyers"); *id.* at 172 (discussing the importance not only of learning rules, but also of understanding context and "gradually developing [the] ability to see analogies, to recognize new situations as similar to whole remembered patterns").

    c. Using litigation, negotiation, ADR methodologies as appropriate

4. Communication with Clients
    a. Interviewing
    b. Counseling – recognizing clients' financial, commercial and personal constraints and priorities
5. Communication (more generally)
    a. Written (briefs, memos, position papers)
    b. Oral (court, legislature, media)
6. Advocacy
    a. In appropriate venue (court, legislature, media)
7. Recognizing and resolving ethical dilemmas
8. Maintaining an organized office

Although each of these three reports make mention of the importance of multi-cultural competence, none of them do appropriate justice to the issue. Thus, we take the liberty of adding it as Item 9 in the list of essential skills and values our students must acquire in law school. As described by Professor Susan Bryant (CUNY) and others, this competence includes: recognizing assumptions; identifying and analyzing the possible effects of similarities and differences on the interaction between the lawyer and the client, opposing counsel or (legal) decision-maker; identifying alternative interpretations to the assumptions we may make based on insufficient information; and being self-aware, rather than self-judgmental, throughout this process.[19]

[19] Add cite to Bryant; Bryant & Koh Peters; Carwina Weng; Michelle Jacobs.

II. Purposes and Roles of Policy and Legislative Clinics

Lawyers in policy/legislative contexts often engage in a range of activities, some of which traditionally are conceived of as "lawyering" skills and some of which may not be. For example, most policy/legislative lawyers regularly engage in legal analysis, client interviewing, client counseling, research and writing, some of the essential skills associated with litigation or even transactional lawyering.[20] As described throughout this Section, policy/legislative lawyers also engage in a range of skills and activities outside of the traditional lawyering realm.

A. The Model of Legislative Lawyering

No article on legislative lawyering would be complete without a discussion of Chai Feldblum's 2003 article, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*.[21] Based on her experiences as a "legislative lawyer" and as the creator of the Federal Legislation Clinic at Georgetown University School of Law, Feldblum describes the role and functions of the main players in a legislative advocacy campaign and coins the phrase "legislative lawyer."[22]

In her "six circles theory of advocacy," Feldblum identifies six players, each of whom has a unique role essential to executing effective legislative advocacy. These are: the Strategist; the Lobby Manager/Lobbyists; the Legislative Lawyer; the Policy Reseacher; the Outreach Strategist; and the Communications Director.[23]

The Strategist. The strategist is the "vision person," the person who creates the plan for seeing legislation through; conducts crisis management; and engages in long-term planning,

[20] *See, e.g.,* [texts teaching lawyering skills – Binder, Bergman, Price & Trembley; Neumann & Krieger; Ellmann, Shalleck, Kruse, Gunning & Dinerstein.]
[21] *See generally* Feldblum, *supra* note ___.
[22] *See* Feldblum, *supra* note ___, at ___.
[23] *See* Feldblum, *supra* note ___, at ____.

including the pre-legislative, legislative or administrative phases of the legislative campaign.[24] She is described as having the “talent, persistence, connections, interpersonal skills, and creativity to implement that vision step-by-step."[25] More specifically, she coordinates and oversees the efforts of the five other circles: the lobbyist, legislative lawyer, policy researcher, outreach strategist, and communications director. As Feldblum notes, the strategist must have "patience and endurance--because a significant advocacy effort is usually a long and arduous process."[26]

The Lobbyist. Feldblum describes the lobbyist as the “information carrier” and “persuader." He is responsible for conveying the advocacy message “clearly, simply and effectively, while also hearing, eliciting, and understanding the concerns and objections being raised by legislative staff or legislator and conveying that information back to the strategist.”[27] The lobbyist counts votes and is "able to persuade the [legislator’s] staff person [or] to understand what is getting in the way of the legislator’s sought-for ... vote.”[28] Most good lobbyists are “repeat player[s] – slowly building relationships with key staff people over time."[29] Above all else, the lobbyist must maintain credibility to be effective.[30]

The Policy Researcher. As explained by Feldblum, the policy researcher is the "policy content person," and the person responsible for communicating and sharing information between

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[24] *See* Feldblum, *supra* note ___, at 793.
[25] *See* Feldblum, *supra* note ___, at ____.
[26] See Feldblum, supra note ___, at 794.
[27] *See* Feldblum, *supra* note ___, at ____.
[28] *See* Feldblum, *supra* note ___, at ____. Feldblum notes that it is “of key importance” that the lobbyist “be able to gauge accurately how the vote will be cast based on the information conveyed by the staff person or legislator." *Id.* at ____.
[29] *See* Feldblum, *supra* note ___, at ____. The lobbyist’s building of relationships with legislators’ staffs requires "incredible endurance and patience -- because building a relationship takes time and staff turnover is often high." *Id.* at ____.
[30] *See* Feldblum, *supra* note ____, at 797.

the political players and the substantive policy and academic players on any particular issue.[31] For Feldblum, she is key in helping to analyze possible policy objectives and ramifications, especially when a legislative solution is not yet appropriate. The policy researcher helps to whittle down the academic research to its application to a specific policy agenda – drawing only those inferences that "may legitimately be drawn from the research," that take into account political realities, and presents in "easily accessible language."[32] The trust and respect of academics and political players is key in this role.[33]

The Outreach Strategist. Feldblum describes the outreach strategist as the person who engages "real people," using "strategy, imagination, perseverance, and communication skills."[34] Also known as the community organizer, he brings information to individuals and organizations interested in the issue and organizes them to reach out to their legislators.[35] He also shares information learned from the field with the strategist and the individuals representing the other circles of advocacy.[36]

The Communications Director. As the title implies, the communications director is the "message shaper," the one who frames the debate on a particular policy question. As Feldblum notes, "how one frames the policy question to be answered by the political process will, in all likelihood, help determine the policy answer that will be given by players in that process."[37]

The Legislative Lawyer. In Feldblum's model the legislative lawyer is the legal content person and the conduit between the political players and the substantive legal players on any

31 *See* Feldblum, *supra* note ___, at ____.
32*See* Feldblum, *supra* note ___, at ____.
33 *See* Feldblum, *supra* note ___, at ____.
34 *See* Feldblum, *supra* note ___, at ____.
35 *See* Feldblum, *supra* note ___, at ____.
36 *See* Feldblum, *supra* note ___, at ____.
37 *See* Feldblum, *supra* note ___, at 802.

particular issue.[38] The legislative lawyer is the person with the greatest understanding of the legal landscape of an issue, and has the

> level of depth and sophistication parallel to those who litigate or produce academic writings in an area. He or she must also be directly engaged with the political process in order to have a sophisticated understanding of the political pitfalls that may characterize any particular advocacy issue.[39]

By identifying this division of labor, Feldblum accomplishes a great deal. She carefully parses the range of skills, tasks, and abilities that each participant in an issue campaign must have or must develop. This is a tremendously useful rubric to use when assessing the division of labor, even in the less well-financed campaigns in which our clinics tend to be involved, where each coalition member – indeed, each student – may need to fill more than one role.[40]

B. **The Skills of the Legislative Lawyer**

Like the MacCrate, Carnegie and Best Practices Reports, Feldblum identifies a key set of skills, discussed further below, that are essential for the legislative lawyer to develop. Notably, all of them are identified as core skills, albeit sometimes more broadly, by the fundamental reports discussed earlier. This mirrors our own assessment that the nature of the skills needed to execute a legislative campaign, as well as to be an effective legislative advocate, do not fundamentally differ from the skills that all effective lawyers must develop.

Feldblum identifies five skills that are essential for the legislative lawyer to develop, namely, the ability to:

i. assess the issue and how it might be remedied in a proposed piece of legislation, including the ability to gauge the political and legal landscape;

ii. research the problem/issue, including a sophisticated, refined, sharpened ability to read statutes and conduct legal research;

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[38] *See* Feldblum, *supra* note ___, at ____.
[39] *See* Feldblum, *supra* note ___, at 797
[40] This reality-based difficulty is explained in greater detail *infra* section ____.

iii. propose creative solutions and approaches to the legal and/or political issue;

iv. draft materials and make oral presentations that explain the issue and solutions to the issue to diverse audiences, including legislators, community members or other advocates;[41] and

v. make explanatory oral presentations and conduct persuasive negotiations – both within the relevant coalition and to the staff of pertinent members of Congress.[42]

The next section of this paper will explore ways in which developing the essential skills identified by MacCrate Report, the Carnegie Report, Best Practices, Bryant/Koh Peters and Feldblum are integrated into our policy/legislative clinics.

III. Legislative Clinics: What Do They Look Like? What Do They Do?

As we described briefly in the Introduction, there are many ways to teach policy/legislative clinics. Some professors supervise clinics that look more like externships, where students are placed in legislative offices and their work is supervised primarily by those in the workplace. In that setting, or in a setting more akin to the traditional clinic, faculty members may limit topics to more narrow subject matter that can be grasped in the short term (e.g., sibling foster care placement) or may assign students limited responsibilities related to ongoing broad effort (e.g. undertake state-by-state survey of legislation).

Some faculty members teach clinics with numerous projects in one area of the law (e.g., child, family and state) and others teach clinics that may focus more on the nature of the learning experiences students might have (without regard to particular subject matter). Some faculty members focus significantly on simulation, while others do not. As with other more "traditional" clinics, the structure can vary significantly. Although we do not have the space to

[41] *See* Feldblum, *supra* note ___, at ____. A legislative lawyer should expect to draft a number of different documents for audiences ranging in knowledge, sophistication, time, and patience. *Id.* at ____.
[42] *See* Feldblum, *supra* note ___, at 805-815. NEED TO CHECK WHETHER WE HAVE QUOTED FELDBLUM LANGUAGE (IF NOT, ADD " ") OR JUST PARAPHRASED HER, IN WHICH CASE THE CITATION IS OK.

more deeply explore the range of policy/legislative offerings in U.S. law schools, we encourage readers to examine the chart of such offerings, attached as Appendix C.

A. Our Clinics: Two Examples of Policy/Legislative Clinics

To make more tangible the somewhat abstract concepts we have been discussing, we set forth here some basic information about our clinics. The first section below describes some of the basic structural aspects of our offerings. The second section explains some of our goals and how we believe they line up with the general goals of legal education and clinical legal education.[43]

1. The Loyola ChildLaw Legislation and Policy Clinic

The Childlaw Legislation and Policy Clinic at Loyola University Chicago's School of Law addresses a broad range of issues that are related to underserved children and families. Topics include juvenile justice, child protection, domestic violence, child health. The one-semester, three-four credit course includes a seminar and clinical opportunity that mixes real life experience with simulations. The seminar is designed to examine the legislative process including its limitations and impact, and the role of legislator, advocate, and lobbyist. The class also examines the role of statutory intent and statutory interpretation.[44]

Students spend a significant amount of time working on a child law related legislative project that most often is deliberated in the state capital (Springfield, IL), located over three hours from the law school. Project topics may be identified by the instructor, brought to the instructor's attention by colleagues and community-based advocates, identified as a result of reform projects with which the ChildLaw Center already is involved, or grow out of direct

[43] *See supra* Sections I and ___ (discussing the MacCrate Report, the Carnegie Report, Best Practices, Bryant/Koh Peters & Feldblum).

[44] These topics are explored through an in-depth look at the development and implementation of federal and state child welfare laws including the Adoption Assistance and Child Welfare Act of 1980 and subsequent amendments culminating in the Adoption and Safe Families Act of 1997, and then the Fostering Connections Act in 2008.

representation cases that Loyola's ChildLaw Clinic is handling. Usually, background material is made available so students have a basis upon which to build and do not have to spend a vast amount of time during the semester researching to learn about the topic.

Students are expected to work in teams of two-to-four people. Team work is required because it reflects the real life challenges to legislative work: needing to communicate and collaborate with a broad range of individuals, share information, negotiate, compromise. Each team focuses on a specific project and drafts a bill or corresponding amendment and supporting materials. To do their work, students are expected to meet with some of the relevant community members, advocates, and/or others involved with the issue.

Because of the challenges of conducting legislative advocacy in a single semester at a capital located over three hours from the school, Loyola's program includes a strong simulation component. The course is taught through lecture (including guest speakers) and discussion, and peer instruction through individual and group presentations. Assignments provide an opportunity to integrate and apply course material.

As part of their seminar, midway through the semester each student team convenes a mock coalition meeting with supporting materials to garner input from the other classmates about the direction the team is pursuing in their draft legislation. Stakeholders involved in the topics being addressed have been invited to participate in these coalition meetings. At the end of the semester, each team presents testimony at a mock legislative hearing or floor debate regarding the drafted amendment. Class members participate as the members of the coalition or legislature, and the presentations take place during the class period.

Specific materials to be drafted for the coalition meeting and legislative hearing or floor debates are decided with faculty. Faculty meet with students at least every other week to oversee these efforts and critique written materials. In addition to being used in the mock settings, the drafted bills and supporting materials have been introduced in the Illinois General Assembly; others have been used as a basis for later advocacy.

Among the projects on which students have worked are:

- legislation to establish a legislative task force to explore/tackle issue of rights of siblings placed in foster care
- an amendment to Illinois Domestic Violence Act concerning stalking
- a state-by-state survey of child guardianship laws and draft model act
- a model act concerning mental health services and youth in detention
- legislation to simplify and codify the expungement process of arrest records for youth
- amendments to the state lead poisoning prevention act
- amendments to Illinois' probate act to set out criteria for entry of and revocation of child guardianship
- review of compliance of Illinois child protection and education laws vis a vis federal Fostering Connections Act

2. The Fordham Urban Policy and Legislative Advocacy Clinic

Students in the Urban Policy and Legislative Advocacy Clinic are involved in the selection of clinic projects, which as a result, may vary from semester-to-semester or year-to-year. Students are assigned to work in teams of two people on one project over the course of the semester.[45] The clinic students partner with community-based organizations or legal services entity to develop their projects and to ensure effective advocacy throughout the semester.

[45] The professor comes up with potential projects, which students prioritize according to their interests. They also may create their own projects, so long as they conform with clinic pedagogic and pragmatic priorities.

Historically, the clinic works on at least one project each semester concerning the rights of youth in foster care and one addressing environmental justice.[46] In addition, the Clinic has worked to protect state-wide HIV laws, to address the needs and rights of LGBT youth, and to defeat "Don't Ask, Don't Tell." Students are expected to devote 12 – 15 hours per week to their project, receiving three credits for their project work and two credits for participating in the seminar.[47]

Client representation and the nature of the political (and legislative) process are regular parts of the seminar syllabus. Readings, exercises and project rounds provide a common ground for the discussion of strategy and skills and give students a chance to practice skills related to meeting direction and participation. Attendance, preparedness, and participation are essential to a successful seminar experience, the student's development as an attorney, and the experience of clinic colleagues. Thus, each of these factors will contribute significantly to a student's seminar grade.

Twice during the semester, students lead the class in "Project Rounds," a creative learning exercise where students present their project to their classmates and receive helpful feedback and advice about a particular issue or problem they are facing.[48] In Project Rounds, students provide the class with a concise, focused description of the major players, the significant facts, the relevant law, strategic decisions, ethical dilemmas, interpersonal dynamics

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[46] More specific and other subject areas have included the rights of youth over the age of 18 to return to foster care; subsidized guardianship; siting of possible jail in an underserved community; improved enforcement of lead-exposure laws; HIV testing and confidentiality policy; health needs of LGBT youth; "don't ask/don't tell."

[47] As part of their supervision, I meet with each student pairing once a week for a regular Team Meeting, for which they have developed an agenda. We also meet or communicate as often as students (or I) think necessary. Students will not be able to satisfy their responsibilities to their client or to the clinic if they fail to engage fully with their clinic, community partner or me. Clinic students must conform to the same rules of professional responsibility that apply to admitted attorneys. Students will learn a great deal about professionalism and attorney role during their time in the clinic.

[48] Cite to Susan Bryant and Elliott Milstein article on case rounds – include in parenthetical their definition of case rounds, assuming they have one!

or other aspects of the project that warrant group discussion.[49] At other times, students may at times be called upon to give a brief update on any significant activity that takes place in a project. Students also are encouraged to talk informally together about clinic clients, strategy, and activities as much as possible (being sure to comply with concerns rules of client confidentiality and privacy).

B. Our Common Vision

Our clinics operate in many comparable ways, reflecting our shared learning goals for our students. Indeed, our students engage in many of the same activities, notwithstanding the somewhat different substantive focus of each clinic.

1. Goals

Consistent with our similar approaches to teaching our clinics, our goals for student learning are very much the same. We have identified two different sets of goals. First, are the "MacCrate/Best Practices/Carnegie/Bryant" skills:

- To develop the ability to be self-reflective, aiding students' ability to learn more during the semester and to facilitate their learning for transfer;
- To become more complex thinkers, building from enhanced legal, policy, and factual research and analysis;

[49] A Case Rounds Memo is provided to students approximately three to four weeks before they present their first Rounds. This collaborative process is an excellent opportunity to receive valuable insight and feedback from colleagues who are in tune with the type of work a student team is doing but offer a fresh, independent perspective on that team's client's goals. It also is a great way to ensure that clinic students are up-to-date on each other's projects and to learn from each other's experiences. The success of the project rounds process depends upon the quality of the presentation and the level of participation by all class members in the discussion that follows. Students are expected to formulate specific questions on which student teams would like the class discussion to focus. To facilitate a more fruitful discussion, in addition to a project memo, students almost always provide their classmates with background material in advance of class. Everyone is expected to read rounds-related material and to participate actively in the discourse.

- To become creative problem-solvers, particularly when it comes to legislative and policy solutions, but also to recognize when other methodologies can yield a better solution
- To become better communicators and counselors, developing the ability to work constructively with community-based organizations (staff and members), legal advocates, and coalition members
- To develop a “voice” (written and oral) that can adapt for different advocacy contexts;
- To be thoughtful and zealous advocates;
- To be productive collaborators;
- To be ethical advocates;
- To develop multi-cultural competence; and
- To maintain organized files and records to facilitate effective work.

We also have identified goals that are specific to the context of our clinics and which largely track the activities described by Feldblum.[50] Among these primary objectives for our students are:

- To learn about the legislative process, gaining a sophisticated appreciation of political realities associated with the process;
- To understand the potential impact of legislation as well as its limitations;
- To develop skills in critiquing legislation, assessing a legislative problem, researching the problem, proposing solutions, and drafting materials and

[50] *See* Feldblum, *supra* note ___, at ____. As Feldblum acknowledges, however, only in the largest and well-funded advocacy campaigns will separate individuals actually fill the six roles she identifies. More often than not, and most assuredly in our clinics, "legislative lawyers" will find themselves playing more than one role. *See infra* Appendix B for a description of our respective clinics. By contrast, Feldblum’s students focus primarily on developing in their role as legislative lawyers. *See* Feldblum, *supra* note ___, at ___.

presenting information orally—all essential components of legislative advocacy.

2. What Students Do

To achieve these goals, our students must engage in a range of activities (lawyering and policy based), which we seek to ensure both through their "live client" work and through classroom simulations. Immediately below, we identify these common activities and skills and also classify them according to the Feldblum six circles of legislative advocacy.[51] These undertakings include:

A. Legal Research & Analysis

- Identify and evaluate case law, statutes, regulations, proposed legislation, law reviews (legislative lawyer)
- Assess whether existing statutes, regulations or rules must be amended or repealed (legislative lawyer)
- Critique pending legislation and existing laws (legislative lawyer)
- Consult with experts as appropriate (legislative lawyer)

B. **Policy Research & Analysis**

- Glean necessary information from publications in fields related to the project (e.g., social work, science, medicine) (policy researcher)
- Meet with experts, coalition partners (policy researcher)
- Evaluate whether enacted legislation/regulation/policy change is effective (policy researcher; outreach strategist)

C. **Political Research & Analysis**

- Exploit the availability of information through blogs, the Internet, newspapers, radio, TV (legislative lawyer; lobbyist)
- Talk with experts in relevant fields (legislative lawyer; lobbyist)

D. Problem Solving

- Define the scope of the problem(s) to be addressed (legislative lawyer)
- Identify issues to be addressed and determine whether legislation,

[51] *See supra* section ___ discussing Feldblum's six circles of advocacy. As noted above, in a deviation from Feldblum's original model, our students often operate in more than one circle of advocacy. *Id.*

regulations, rules or policy are the appropriate vehicle to make change (legislative lawyer)

- Work with coalition partners to resolve conflicts and devise creative solutions (legislative lawyer; lobbyist)
- Strategize to build legislative/executive support (legislative lawyer; lobbyist)
- Negotiate on advocacy strategy and legislative/regulatory content (legislative lawyer; lobbyist)

E. Oral communication

- Interview client for basic information about the issue/campaign (strategist; legislative lawyer; lobbyist)
- Communicate with and counsel partner/client about best approaches, options, chances for passage/implementation (strategist; legislative lawyer; lobbyist)
- Consult with coalition partners, legislators (and their staff), government officials (strategist; legislative lawyer; lobbyist)
- Present at, participate in and run a meeting (strategist; lobbyist; outreach strategist)
- Negotiate advocacy strategy (strategist; legislative lawyer; lobbyist; outreach strategist; communications director)
- Deliver testimony (lobbyist; outreach strategist; client)
- Lobby on legislation (lobbyist; legislative lawyer)
- Negotiate about legislation, regulations, rules (strategest; lobbyist; legislative lawyer)
- Educate about legislation and goals behind legislation: media, legislators, community groups, public (communications director)

F. **Written communication**

- Draft critiques of existing or pending legislative or regulatory proposals (legislative lawyer)
- Draft legislation, testimony; educational materials to promote passage and to facilitate awareness upon passage (legislative lawyer)
- Compose informational and advocacy-based letters, e-mails, fact sheets and other supporting documents (legislative lawyer; lobbyist; outreach strategist)
- Educate about legislation and goals behind legislation: media, legislators, community groups, public (communications director)

G. Organization and Management

- Keep files and records in excellent order (to facilitate use by the incoming clinic team (everyone)

Many of the skills necessary to accomplish these activities are taught in the context of Legislative and Policy project work and supervision meetings, not necessarily in the clinic seminar. This is especially true of self-reflection (self-critique) and multi-cultural lawyering skills, which are touchstones of our students' learning experiences.

Some of the research skills students are called upon to use (e.g., statutory research), they have learned elsewhere. They may not, however, have the range and depth of skills they need to apply these skills in the context of a policy/legislative clinic. Further, many of the research skills students must use in such a clinic are outside the scope of those typically taught in legal research and writing courses, or are not part of other work/learning environments. As a result, law school librarians often become an important part of the educational process in our clinics. Unfortunately, library staff also may not have sufficient range or depth of skills in legislative and statutory research (particularly regarding other states, which often is an essential part of our comparative research).

Students also must be encouraged to make connections between some of the research skills they have acquired in other contexts and the information needed for their clinic projects. An example of this is learning the relevance of and how to apply case law or law review research skills to the context of policy/legislative advocacy. An equally important example is helping students to understand the range of, and importance of, political research to policy/legislative work.

Among the most difficult "skills" to teach are gaining an insider's understanding about the legislative/political process, working with coalitions, and participating in and leading meetings. These are "soft" skills that require both lawyering and non-lawyering abilities, useful in litigation and essential in the context of policy/legislative advocacy.[52]

The next part of this article takes a closer look at the ways in which litigation and policy/legislative practices differ, leading us ultimately, in Part V, to pose – and to try to answer – questions of how teaching in the latter context requires adaptation of traditional clinical pedagogy.

IV. How Policy/Legislative Practice Differs From Litigation, and the Impact it Has On Clinical Pedagogy

Many of the fundamental principles of clinical pedagogy grew out of individual client representation cases.[53] While these principles are equally relevant to policy/legislative work, they sometimes present different and difficult challenges. This section discusses the different characteristics of "traditional litigation"[54] and policy/legislative work, and the implication those differences have on teaching skills in a clinic setting.

1. Working Partnerships

In traditional law practice, working partnerships generally involve a client and an attorney. Others may be involved, for example, co-counsel and experts. But the partnership is finite. Unlike traditional litigation, policy/legislative work regularly involves working with groups of individuals and/or organizations to accomplish their goals.

Many policy and legislative campaigns involve collaborating with a broad range of individuals and organizations. For example, in a lead poisoning prevention initiative (Loyola),

[52] All lawyers need to be able to work with people and entities with similar or overlapping, but not necessarily fully consistent concerns; all need to be able to lead meetings and participate effectively in them.
[53] Cite.
[54] For purposes of this article, "traditional litigation" refers to representation of individual, low-income and otherwise disenfranchised claimants, usually in social security appeals, housing court, juvenile court, family or domestic violence court. Recognizing some clinics handle more complex cases but our comparison is to early clinics which provided the context for clinical pedagogy.

partners include property owners, tenant organizers, physicians, government officials, community based agencies, and other legal advocacy groups.[55] In a campaign to improve the rights of youth in foster care (Fordham), partners include service providers, legal advocates (of children and families), and government officials.[56]

Although we retain primary supervision responsibility, we may look to our community partners to use their expertise to guide the development of our projects.[57] In limited circumstances, we may undertake projects on behalf of - and in the name of - our own clinic.[58] Alternatively, we may advocate as a part of a loose (or, not formally organized) partnership or coalition where there is no specific, identifiable client.[59]

The roles students assume differ depending on our relationship to the community partner. More often than not the student does not assume the leadership role.[60] Students in policy/legislative clinics often will be active participants in (and, at a minimum, will observe) the discussions and decision-making of partnership groups and coalitions (which inevitable will include consensus building, power struggles and politics).

One way we have found to provide students with the opportunity to develop skills to work within partnerships and to experience what they observe is to assign them to work on their

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[55] Need info.

[56] The ASFA (Adoption and Safe Families Act) coalition developed in response to (to help pass?) the federal statute by the same name. Telephone interview with _____________.

[57] Our partners have included the Youth Advisory Council to the Department of Children and Family Services, Juvenile Justice Initiative, Lead Safe Housing Task Force, American Bar Association, Children's Defense Fund (Loyola Chicago) and Lawyers for Children, Inc.; The Door; West Harlem Environmental Action, Inc. (WE ACT); Sustainable South Bronx; and The Center for HIV Law and Policy (Fordham).

[58] The Chicago Loyola Childlaw Legislation and Policy Clinic will occasionally function as an independent research entity [need to explain/describe more]. The Fordham Policy and Legislative Advocacy Clinic always partners with one or more organizations. At times, however, our coalition partners ask, generally for strategic reasons, that we issue our reports and recommendations under our own name.

[59] The Fordham clinic initially may partner with one organization that works on behalf of children or families in the foster care system; often, however, the development of the policy or legislative strategy occurs in conjunction with many other such organizations (at the recommendation, of course, of our original community partner).

[60] Students are less likely to assume a primary responsible as a member of a partnership for a variety of reasons discussed infra, pp. XXX (refer to discussion of Rules of the Road, Base of Knowledge, Value of Being a Repeat Player, Bases of Decisions, Impact of Decisions, Time Frame).

projects and assignments in teams of two to four. Team work serves to illustrate and challenge the students to have to collaborate, negotiate, share information. It provides students with the opportunity to become used to working in groups, brainstorming, learning the art of compromise, negotiating solutions, solving problems.

2. Client-centered Decision Making

Lawyers generally are trained to think in terms of an individual client and what that client is seeking. That is not always the case with legislative and policy advocacy. Both types of clinics require discussion of client-centered decision making, but the emphasis placed on decision making and what it looks like may differ.

In the litigation context there is a professional requirement that the attorney must consult with the client[61] and that no decisions can or will be made before an attorney goes back to the client if the client is not at the table.[62] Generally, this understanding and responsibility is respected by all the players.

In policy/legislative advocacy, the client may be one of several decision makers or may not be the decision maker at all, only a participant in the discussion. When groups of individuals come together to consider a legislative proposal, if the majority agrees, there often is a desire – and time pressure – to move forward on that agreement and not slow down the process by having to go back to a non-attending participant.[63] It is not always predictable where and when this will happen.

It may be helpful here to make the distinction between "client decision making" and "client based decision making." In general, the principles of client centered counseling and the

[61] Cite.
[62] Cite.
[63] This is particularly so especially if someone from the group is present or even if that group's interests are represented.

rules of professional responsibility require keeping the client informed and that certain decisions be made by the client. In legislative/policy work, we find that the community based organizations, coalitions or task forces with whom we partner do not expect and would not want to enter into a formal lawyer-client relationship, but instead view the relationship as a working partnership in which we share or develop an expertise and provide them with people resources.

In litigation clinics, there is significant focus on client-centered counseling and decision-making. Even as the model is critiqued and adapted (*see, e.g.,* Ellmann, Dinerstein, Gunning, Kruse & Shalleck book), it remains the primary model employed in the clinical context. In addition, as noted above, each clinic team is likely to have only one client who will be counseled and who will be making ultimate decisions in the litigation (see, e.g., Model Rule ___).

In the policy/legislative clinic setting, formal client relationships may or may not exist. In some instances, we have formal clients for whom, consistent with the Rules of Professional Responsibility, we must remain the ultimate decision-maker. In reality, however, even in these situations, decisions often are made in the context of communications with community partners, coalition members, and others. The student may still need to represent what the "client" is seeking, but more often than not the client's goal may be ever shifting, depending on media coverage, political pressures and considerations, shifting coalitions, opportunities for deal making, and changes in administration.[64]

In other instances, where we may be working more to advance a particular issue, rather than the goals of a particular organization, responsibility for decision-making can become even more muddled and may drift far from traditional principles of client-centeredness. Even when there is an identifiable client in our legislative clinics, the client may not be the sole decision-

[64] See infra, XX (refer to discussion on Bases of Decisions).

maker. As "client-centered" as our students may be with their counseling efforts, the client (or community partner) often is only one of many "deciders" about the strategy of an advocacy campaign.

For the teacher in the clinic setting, one of the benefits to client decision making in traditional litigation, is that it helps to reinforce to the student the notion that he or she is the agent of the client. In the context of settlement conferences in particular, this structure also buys time for the student to think about the decision to be made, to think about how to explain it to the client, and how to respond to the offer after counseling the client.

In the policy/legislative clinic context, often decisions must be made while everyone is around the table. If your client isn't there, a decision may well be made without them. If the student doesn't have the authority "to vote," their role may be limited. On the other hand, students are less likely to be granted the authority to participate in the bottom line negotiation. This often places students more in an observational role or as information gatherers rather than equal partners…

For this reason, at least one of us turns to simulated exercises to offer students the opportunity to develop skills of negotiation, decision making….

To be addressed – the importance of counseling clients that policy or legislative processes rarely result in the outcomes initially being sought. Student and client may need to work through some of the possible scenarios that may evolve and discuss the client's responses. It is critical to keep client updated on discussions and progress. Negotiation and compromise is a built in element to this work. Agreements need to be made in advance as to how the client wants to handle this aspect of the work.

3. The Players

Generally in litigation practice, the roles of the players are straightforward, barring complex litigation (and even then?). There is a respondent(s) and plaintiff(s) or defendant and the state, the attorneys representing the party(s), witnesses, judge or arbiter. In addition, the court has the power to allow or to prevent parties from intervening in a dispute.

Not so in the policy/legislative process where there are no formal rules and an unlimited number of players may get involved – some of whom may not be expected or may not seem relevant, but who nonetheless manage to become "players" in the effort. Who is involved can change from day to day and be affected by a newspaper article, the political wind, a conversation among colleagues.

This presents challenges for preparing students in the policy/legislative clinic. Skills needing to be taught include being able to:

(1) think through the types of people they need to get involved including personality, collegiality, expertise, political connections.

(2) identify who the players should be: who they may want and who they may need to involve in discussions; and who may get involved or be problematic even if not invited; and, the impact they might have on the coalition's reputation, coalition.

(3) …

All of this assessment can be overwhelming to students. In addition, students often are coming in with no knowledge of the players and the learning curve is extremely steep.

4. Rules of the Road

How one practices the craft of litigation can vary tremendously, but there are specific rules that must be followed. This is not the case in policy/legislative advocacy.

In litigation, there are a limited number of actors, with formal rules for engagement, including the Rules of Evidence (e.g., hearsay, relevance), the Rules of Civil Procedure (e.g., discovery, standing). For example, the law is straightforward regarding the prohibition on *ex parte* communication and the necessity of serving your opponent with motion papers with sufficient notice. Although learning to apply these rules effectively can require a lifetime of learning, the rules are available to be read, studied and applied.[65]

Explicit rules do not exist in the same way in the advocacy context. There are no limitations on what "evidence" can be presented to decision-makers and no rules on who can or must be present for essential meetings during which decisions may be made. Also, legislative work includes a great bulk of "*ex parte*" advocacy, whether in private meetings, encounters in the hallways, at dinner parties, or on the golf course. Some may say that there are numerous rules to ensure that our government remains a democracy; although this is true in a broad context (e.g., voting rights protections; election laws; lobbyist registration regulations), there are, in fact, few rules that regulate the "sausage making" aspects of the legislative process.

The implications for teaching policy/legislative advocacy in a clinic are great. …

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[65] We recognize that although these rules may exist, the decision-maker may not always apply them in a fair or equitable manner. We also acknowledge that, the risk for arbitrary decisions is particularly high in the context of administrative hearings, where there are fewer rules and less training of Administrative Law Judges.

5. Base of Knowledge

Legal representation of individuals involves fact-finding specific to allegations being made and identification and application of laws relevant to the particular dispute within the context of the Rules of the Road.[66] It may also be necessary to learn about and develop an understanding of psychological terms, the meaning of different tests, the strengths and weaknesses of various detention facilities in which a client may be placed.

Generally speaking, a policy/legislative advocate may have a particular area of expertise and work on projects specific to that field. This is not usually so for students in policy/legislative clinics. Depending on the subject and the goals of the project, policy and legislative advocacy work, perhaps more often than in litigation practice, requires widely expanding one's expertise and often within a short period of time. Clinic work can feel overwhelming to students because of the range of information they need to do their work. This often can include:

(1) legal analysis to understand the body of law that may need to be amended, and critical thinking to gather information and analyze how it works in practice; to identify the range of laws and issues that may be affected by a given approach, for example needing to identify other statutes that may also need to be amended to be consistent and achieve the client's goal

(2) they need to understand more than one system (i.e., including … not just one court, one area of practice, one set of players)

(3) …

6. Value of Being a Repeat Player

Whether doing litigation or policy and legislative advocacy, there are at least two benefits to being a repeat player: (1) Unless one has established a "poor" reputation, being a repeat

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[66] See discussion above, pages XX, on Rules of the Road.

player can usually be helpful whether in a litigation context in front of the court, or working on a policy or legislative project. Repeat players can develop credibility and trusted relationships. (2) They can bring expertise and familiarity with process and substance to any issue on which they are working. (credibility/trust/knowledge/expertise)

But that's where the similarities end.

While being a trusted, repeat player, in a litigation setting is important, the rules are (technically, at least) the same across the board *(decision supposedly reached through applying precedent)*, can be learned, and generally can be learned through observation, reading, and talking with others. Moreover, a relationship is not supposed to influence a judge, although admittedly, the advantage to being a repeat player may be experienced more tangibly in local courts or in the administrative context where the abundance of "unwritten rules" significantly affect the ways in which disputes proceed and are resolved. This advantage may, however, be mitigated by the right to appeal the lower tribunal's decision. In addition, while repetition and experience is worthwhile and important in litigation, the Rules of the Road may make it somewhat less critical.

In policy/legislation, however, oftentimes one's contacts and relationships are as important as the substance of the argument. Much happens in the back rooms; there are no rules for who is guaranteed a seat at the table; and there is very high value of being a repeat player (assuming power, a good reputation, or both). Further, ifone does not prevail in this setting, unlike litigation, there is no jurisdiction in which one can file an appeal.

Cognitive learning theory teaches us that expertise comes chiefly through self-reflection and experience. Ironically, one cannot readily observe the legislative context the way one would observe, for example, litigation matters and learn from doing them because so much happens behind closed doors. In addition, while some students are born with the skill of seeing the big picture, usually that ability is connected both to a knowledge base and years of tackling problems and learning how to view issues in different lights and approach them differently depending on the situation. The challenge in a policy/legislative clinic is to help students develop skills even though the greatest asset is experience.

7. The Decision Maker(s)

Whether discussing litigation or policy and legislative actions, there always are final decision makers. In litigation, local, state or federal laws or rules set forth the decision-making process and identify the decision makers, generally just one person (or a dedicated panel of 3, 5 or 9 decision-makers). In litigation, the student knows who he or she must persuade of the facts and can focus attention on that goal and build an argument…

The decision-makers in policy/legislation efforts often are ill-defined and may be constantly changing (e.g., is it the committee chair? the senior opposition leader? the majority leader?) and numerous (e.g., the legislative committee members, the entire legislative body - 15, 25, 50 or more people)

This presents challenges for helping students develop skills…

8. Bases of Decisions

Most court decisions are (are supposed to be?) based on principles of law, statute, precedent, and the judge's understanding and application of the relevant law. Decision making in the legislative process/whether a legislator votes for a bill/whether a bill is passed depends on majority decision making by a large group with a broad spectrum of interests, opinions, and concerns. It is understood/accepted practice that bill passage may depend on a range of issues, including:

- Decisions and directions by legislative leadership (a large factor in the Illinois, New York State, and New York City legislatures)
- Legislator's own policy views and judgment on merits of bill
- Constituents' perspectives
- Strength of lobbying groups
- Media attention on issue
- Impact on reelection
- Views of colleagues
- Opportunities for deal making

Involving students – giving students responsibilities of these complex … Concern about student judgment, ability to assess the facts, analyze the problem, present…

9. Impact of Decisions

In litigation, with the exception of impact or class action cases, a court's ruling is designed to apply to the parties before it. Although an appellate court decision may have applicability beyond the individual claimants, it should affect only those litigants with similar claims or in similar position to the original parties. There also are rules related to precedent.

Legislators make law without regard to anything such as "precedent," yet their "decisions" have significant impact on large populations (e.g., racial minorities, all residents of a village, city or state). Although this theoretically allows for more "big picture" thinking, the nature of political compromise is such that this does not often happen (cf., health reform). (Discuss challenge to teaching students big picture thinking. – see Value of Being a Repeat Player)

10. Time Frame

Students generally participate in clinic over one or two semesters. This may be sufficient time to complete a case or… Although litigation generally may last for years, most clinical law teachers prefer to take on "smaller" cases (e.g., handled by lower/trial courts or in administrative tribunals).

Although significant movement may occur on a policy/legislative issue within a given semester or calendar year, most legislative campaigns are not likely to be resolved in this time frame. (To be explored further: do litigation clinics generally have more control over the litigation calendar and the activities in which students engage than generally is possible in policy/litigation clinics?)

11. End Results

In litigation, once a decision has been handed down, everyone knows where things stand; even a difference in interpretation or a decision to appeal will be handled within the given litigation structure, with (as noted above) defined rules. (An exception, perhaps, is impact or class-action litigation, where wrangling over implementation of a ruling or a consent decree can take at least as much time as the initial litigation.)

In the legislative context, so much compromise may be involved that a new round of advocacy begins almost right away. Even when a desired result is achieved, implementation concerns may be significant (e.g., did we truly accomplish what we thought we accomplished?). (This above section begins to introduce the challenges – need to figure out best framework within which to then discuss them.)

SHOULD THIS BE A NEW SECTION (V) OR JUST INCORPORATE INTO PART IV?

V. Specific Challenges to Legislative Teaching

As described in the prior section, engaging in litigation and in legislative advocacy can require very different types of lawyering. Yet, many of the basic principles of clinical pedagogy – namely, experiential learning, client-centered lawyering, and role assumption (including professional responsibility) – remain at the core of clinics that seek to teach these different lawyering skills. We continue to grapple – both for this article and in teaching – with questions of what needs to be taught, how it can be taught, the depth and breadth of material with which students can grasp or struggle, and how much can be taught in a limited period of time.

Although Section V will need much development, we plan to focus on: (1) the three pedagogical values mentioned in the prior paragraph and use the topics identified in Section IV as a lens to explore the pedagogical challenges to teaching legislation and policy clinics; and (2) extrinsic factors that influence clinic development. (We welcome the identification of other essential principles of clinical pedagogy through which we can analyze the topics identified in IV.) Thus far, we plan to organize our discussion as follows:

A. Pedagogical Principles

1. Experiential learning

Learning by doing – incorporating student responsibility and decision-making

2. Client Counseling

(explanation to be added)

3. Role Assumption and Professional Responsibility (explanation to be added)

Some General Observations

⇨ clients educate in both contexts, but in one (litigation) it's about themselves and in the other it's about the issue

⇨ in policy, the client is an expert in more than just themselves – and is likely to remain the expert beyond the student's one semester/year in the clinic.

B. Extrinsic Factors

1. Limitations law schools may make on # credits earned/ # semesters allowed
2. Student-faculty ratio
3. Distance from capital
4. University restrictions on lobbying

Appendix A – See separate attachment of charts

Appendix B

Comprehensive Descriptions of Chicago Loyola's Childlaw Clinic and Fordham's Urban Policy and Legislative Advocacy Clinic

Our clinics

While we both teach policy and legislation in clinical settings, and seek to teach similar skills sets, our teaching models differ.

1. Loyola ChildLaw Legislation Seminar (Clinic)

The legislation program at Loyola University Chicago's School of Law is focused on childlaw, addressing a broad range of issues but all related to underserved children and families. Topics include juvenile justice, child protection, domestic violence, child health. The three-credit course includes a seminar and clinical opportunity that mixes real life experience with simulations. During the seminar, we examine the legislative process including its limitations and impact, and the role of legislator, advocate, and lobbyist. The class also examines the role of statutory intent and statutory interpretation. These topics are explored through an in-depth look at the development and implementation of federal and state child welfare laws including the Adoption Assistance and Child Welfare Act of 1980 and subsequent amendments culminating in the Adoption and Safe Families Act of 1997, and then the Fostering Connections Act in 2008. Students also spend a significant amount of time working on a legislative project.

The goals for the students are to:

1. Learn the legislative process along with a sophisticated understanding of political realities associated with the process;
2. Understand the potential impact of legislation as well as its limitations;
3. Develop skills in critiquing legislation, assessing a legislative problem, researching the problem, proposing solutions, and drafting materials and presenting information orally—all essential components of legislative advocacy.

Because of the challenges noted above in section IV (rare for a student to be able to experience the various stages of advocacy in one semester; our capital is three plus hours away), Loyola's clinic seminar includes a simulation component. The course is taught through lecture (including guest speakers) and discussion, and peer instruction through individual and group presentations. Assignments provide an opportunity to integrate and apply course material.

Students are responsible for selecting a childlaw related issue needing legislative attention. Students interested in pursuing a specific issues may do so. But topics also are identified by the instructor who may already be involved in the project, or has identified a specific need. Projects may grow out of direct representation cases that Loyola's ChildLaw Clinic is handling, reform projects the ChildLaw Center already is involved with, or other topics brought to the instructor's attention by colleagues and community-based advocates. Background material is made available so students have a basis upon which to build and do not have to spend a vast amount of time during the semester researching to learn about the topic.

Students are expected to work in teams of two-to-four people. Team work is required because it reflects the real life challenges to legislative work: needing to communicate and collaborate with broad range of individuals, share information, negotiate, compromise. The teams draft a bill or corresponding amendment and supporting materials. Midway through the semester each student team convenes a mock coalition meeting with supporting materials to garner input from the other classmates about the direction the team is pursuing in their draft legislation. At the end of the semester, each team presents testimony at a mock legislative hearing or floor debate regarding the drafted amendment. Class members participate as the members of the coalition or legislature, and the presentations take place during the class period. Specific materials to be drafted for the coalition meeting and legislative hearing or floor debates are decided with faculty. Faculty meet with students at least every other week to oversee these efforts and critique written materials. Some of the drafted amendments have been introduced in the Illinois General Assembly; others have been used as a basis for later advocacy.

Sample listing of projects students have worked on:

- legislation to establish legislative task force to explore/tackle issue of rights of siblings placed in foster care
- amendment to Illinois Domestic Violence Act concerning stalking
- state-by-state survey of child guardianship laws and draft model act
- model act concerning mental health services and youth in detention
- legislation to simplify and codify expungement process of arrest records for youth
- prevention focused amendments to state lead poisoning prevention act
- amendments to Illinois probate act to set out criteria for entry of guardianship orders and termination of child guardianship
- review of compliance of Illinois child protection and education laws vis a vis federal Fostering Connections Act

2. Fordham's Urban Policy and Legislative Advocacy Clinic (Lincoln Square Legal Services, Inc.)

a. Introduction

Among the goals of the five credit Urban Policy and Legislative Advocacy Clinic (2 credits for seminar; 3 credits for field work) are:

- to learn about the political process
- to learn to be self-reflective
- to become better writers
- to become more complex thinkers
- to become better advocates
- to be good collaborators

b. Project Work

For project work, students are assigned to work in teams of two people on one project over the course of the semester. The projects may vary from semester-to-semester or year-to-year, but generally include a Foster Care project and an Environmental Justice Project. (More specific and other subject areas have included the rights of youth over the age of 18 to return to foster care; subsidized guardianship; siting of possible jail in an underserved community; improved enforcement of lead-exposure laws; HIV testing and confidentiality policy; health needs of LGBT youth; "don't ask/don't tell.") Should we need to pick up new projects during the semester, students likely will be responsible for evaluating options, making recommendations and participating significantly in decision-making.

In addition to the regular time students teams meet, do work, and consult with their community partner, the team and I will meet once a week for a regular Team Meeting. We also meet or communicate as often as students (or I) think necessary. Students will not be able to satisfy their responsibilities to their client or to the clinic if they fail to engage fully with their clinic, community partner or me.

Clinic students must conform to the same rules of professional responsibility that apply to admitted attorneys. Students will learn a great deal about professionalism and attorney role during their time in the clinic.

c. Simulations and Assignments

Although client representation often is the focus of clinic work, the exercises and assignments related to classroom work are an integral part of the Clinical Program and often are directly related to project work. They also provide a common ground for the discussion of strategy and skills and give students a chance to practice skills related to meeting direction and participation.. Assignments are reviewed by me and, oftentimes, by the other clinic students. This is a place to try out different things to see what works. It is an opportunity to make each other feel comfortable about assuming lawyer role.

Attendance, preparedness, and participation are essential to a successful seminar experience, a student's development as an attorney, and the experience of clinic colleagues. Thus, each of these factors will contribute significantly to a student's seminar grade.

d. Project Rounds

An important aspect of the seminar is the opportunity to conduct "project rounds," where students lead the class in a creative learning exercise about their project and receive helpful feedback and advice about a particular issue or problem they are facing. In Project Rounds, students provide the class with a concise, focused description of the major players, the significant facts, the relevant law, strategic decisions, ethical dilemmas, interpersonal dynamics or other aspects of the project that warrant group discussion. This collaborative process is an excellent opportunity to receive valuable insight and feedback from colleagues who are in tune with the type of work a student team is doing but offer a fresh, independent perspective on that team's client's goals. It is also a great way for clinic participants to stay in touch about each other's clients and learn from each other's experiences.

The success of the project rounds process depends upon the quality of the presentation and the level of participation by all class members in the discussion that follows. Students are expected to formulate specific questions on which student teams would like the class discussion to focus. To facilitate a more fruitful discussion, in addition to a project memo, students almost always provide their classmates with background material in advance of class. Everyone is expected to read rounds-related material and to participate actively in the discourse. In addition to project round presentations, students may at times be called upon to give a brief update on any significant activity that takes place in a project.

Students also are encouraged to talk informally together about clinic clients, strategy, and activities as much as possible (being sure to comply with concerns rules of client confidentiality and privacy). Without question, sharing thoughts, ideas, triumphs and tribulations substantially enriches the clinic experience.