

Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor

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INTRODUCTION

Since its inception in 1974, the University of Windsor's Clinical Law Program at Legal Assistance of Windsor (LAW) has placed law students in a downtown community legal clinic staffed by lawyers and social workers. As an interdisciplinary clinical legal education program whose mission is "to provide access to justice to the poor,"¹ LAW holds numerous possibilities for advancing a social justice agenda in both professional education and practice. In this Article, however, we suggest that its success in this regard depends upon renewed and purposeful attention to certain critical factors: (1) a shared understanding of LAW's goals and values; (2) curriculum design that is reflective of these goals and values; and (3) institutional sanction and support for the goals and values.

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1. Legal Assistance of Windsor, Mandate—Clinical Law Program (1977) (on file with the Washington University Journal of Law & Policy).

I. UNDERSTANDING GOALS AND VALUES

The significance of the first critical factor we identify is related intrinsically to that of the second and third. It is fundamental to the success of the enterprise that goals and values be accepted and embraced in order to be woven through the program and given the necessary institutional support for the enterprise to develop to its maximum potential.

We believe it is essential that the goals of the program be identified, explained, and inculcated in all of its constituent actors, represented within each of its elements, and bolstered and championed by the organizations that espouse them. In the case of a clinical legal education program charged with advancing social justice through a collaborative, interdisciplinary approach involving social work, it is clear that there are several key “goals and values” that must be understood and shared. These may be located within the mission statement of Legal Assistance of Windsor:

A project of the University of Windsor Faculty of Law and Legal Aid Ontario, LAW provides a range of legal and social work services to the low-income communities of Windsor and Essex County. Through an interdisciplinary approach, lawyers and law students, social workers and social work students engage in casework, public legal education, law reform and community development activities in a learning environment. Inherent in this work is a recognition that assisting people to improve their lives or general community conditions may be done not only through case-by-case service, but also through community development activities.²

The following values are imbued within this mission statement:

- The joint effort of a university law school and a governmental agency links the clinic to *professional education and engagement with social policy*;

2. Legal Assistance of Windsor, Mission Statement (2002) (on file with the Washington University Journal of Law & Policy).

- Service to low-income communities connotes a commitment both to *access to justice* and to *social justice*;
- *Interdisciplinary approach* combines law with social work services;
- An inclusive range of services going *beyond traditional casework*, which consists of public legal education, community development and law reform activities;
- *Learning environment* suggests a balancing of the mission between service to the community and academic curriculum.

In short, the key goals and values are: professional education, engagement with social policy, access to justice, social justice, an interdisciplinary approach, and services beyond traditional casework in an environment that balances learning and service.

Each of these goals has been promulgated by the clinic in describing itself to its stakeholders (namely, the funding agency, university and law school, board of directors, staff lawyers, social work staff, administrative staff, law students, social work students, and community). Nonetheless, we question the extent to which these goals are truly “shared” as fundamental guiding principles. We therefore advocate a renewed campaign to make them explicit so as to establish common ground, enabling advancement of the social justice mission.

Clearly, the integration of values by those who operationalize the goals and purposes (e.g., financial backer, law school and board, staff and students) is determinative of the nature and level of the clinic’s responsiveness to community need for social justice. Indeed, each of the clinic’s “choices” regarding, for example, service in certain areas of law, the nature of the services provided (referrals and self-help versus accepting a retainer), and client eligibility criteria, are “value-laden” and therefore must be undertaken in accordance with the clinic’s guiding principles.³

3. See PETER HANKS, SOCIAL INDICATORS AND THE DELIVERY OF LEGAL SERVICES 50 (1987). Hanks argues that arrangements for legal aid services inherently reflect fundamental values. *Id.* at 50, cited in Mary Jane Mossman, *From Crisis to Reform: Legal Aid Policy*

II. INSTITUTIONAL SANCTION AND SUPPORT

Legal Assistance of Windsor relates directly to two key institutions—the University of Windsor Faculty of Law and Legal Aid Ontario (LAO)—and indirectly to a complex of organizations including the legal profession, the School of Social Work, and the community of social service agencies in the city of Windsor. By virtue of its status as a project of the Faculty of Law, which is funded by LAO, the clinic’s political economy is particularly centered in these two institutions. Certain of its goals and values are actually legal requirements, which are enshrined in the clinic’s “memorandum of understanding” and funding agreement with LAO,⁴ as well as in its enabling statute. The statute mandates that LAO is to “promote access to justice throughout Ontario for low-income individuals by means of providing consistently high quality legal aid services in a cost-effective and efficient manner.”⁵ Legal Assistance of Windsor is one of more than eighty community legal clinics and student legal aid service societies⁶ currently funded by LAO to engage in “clinic law,” which is defined in the legislation as follows:

“clinic law” means the areas of law which particularly affect low-income individuals or disadvantaged communities, including legal matters related to,

- (a) housing and shelter, income maintenance, social assistance and other similar government programs, and
- (b) human rights, health, employment and education. . . .⁷

Making in the 1990's, 16 WINDSOR Y.B. ACCESS TO JUST. 261, 269 n.23 (1998).

4. LAW is funded by Legal Aid Ontario (LAO), an arms-length public corporation established under the Legal Aid Services Act, S.O. 1998, ch. 26. LAO derives its funding from the federal and provincial governments.

5. *Id.* § 1.

6. Student Legal Aid Service Societies (“SLASSes”) exist in each of Ontario’s six law schools as projects funded by LAO and directed by the Dean. SLASSes generally offer assistance in summary conviction criminal matters (where imprisonment is not likely), small claims, landlord-tenant, and immigration matters. See Legal Aid Ontario, Getting Legal Help—Other Services, at <http://www.legalaid.on.ca/en/getting/other.asp> (last visited Apr. 30, 2003).

7. S.O. 1998, ch. 26, § 2.

The law school and university, as the bodies governing the clinic in delegation to LAO,⁸ respond to all of the above legal requirements, including those relating to “justice,” and the “teaching and service” aspects of the mission statement. Over and above the commitment to support LAW in its social justice goals, each shares a “justice mission.”⁹ The University of Windsor regards social justice research as central to its mission,¹⁰ and the Faculty of Law, in addition to its theme of “access to justice,” also aims “to instill in the students a sense of social responsibility in the practice of law and the need for examination of social structures with a view to contributing to such changes as may ensure social justice.”¹¹

8. The Faculty of Law controls the board of directors: its Dean is President and Chair of the Board; the President of the University of Windsor (or delegate) is Vice-President; the Law Faculty Council nominates a faculty member to serve as Secretary-Treasurer; and the community-based advisory committee nominates one of its members to serve as member-at-large.

9. The term “justice” is utilized in this paper in the Rawlsian sense, referring to fairness and equality in process and outcome in society’s distribution of goods, services, benefits, and punishments. *See generally* JOHN RAWLS’ THEORY OF SOCIAL JUSTICE (H. Gene Blocker & Elizabeth H. Smith eds., 1980).

10. The University of Windsor’s Strategic Research Plan aspires:

[T]o strengthen the focus on social justice, including discipline-specific and interdisciplinary research. . . . Several overlapping research and training thrusts in social justice exist at the University; four are substantive, one methodological:

- a) Social justice, work and globalization,
- b) Social and criminal justice,
- c) Social justice and health,
- d) Social justice and cultural studies,
- e) Community-based research and social justice.

University of Windsor—Office of Research Services, Strategic Research Plan, *at* <http://www.athena.uwindsor.ca/units/research/ors.nsf> (last visited Apr. 30, 2003).

11. In full:

To provide opportunities for the development of social consciousness and self-awareness by students, and to examine and develop ethical and social values in relation to personal and professional responsibility; and in particular, to instill in the students a sense of social responsibility in the practice of law and the need for examination of social structures with a view to contributing to such changes as may ensure social justice.

Faculty of Law, University of Windsor, Objectives of the Faculty, *at* <http://athena.uwindsor.ca/units/law/Law.nsf> (last visited Apr. 28, 2003).

As eloquent as these statements of principle may be, however, one must examine the practice into which law schools put them. The existence of a “social justice agenda” within legal education has been doubted by a variety of commentators, who criticize traditional legal education for, among other things, its distance from practice. The tendency of law schools to ignore political, economic, and social values has been blamed for helping to perpetuate idealized notions of fairness that fail to accord with the realities of poverty and discrimination.¹²

In addition, within legal education, there is a sense of “academic illegitimacy” associated with clinical legal education when it is perceived as “skills training,” and therefore lacking in academic rigor.¹³ While its closeness to vocational preparation may account for some of the resistance encountered by clinical legal education from traditional legal education, it may also be that the subject-matter of clinical legal education (i.e., poverty law), its unstructured nature, and its closeness to inter-personal dynamics is unsettling to mainstream faculty who have been acculturated to the “isolationist” mode of behavior within legal education.¹⁴ Yet another objection may

12. See, e.g., Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 40 (David Kairys ed., 1982); *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberle Crenshaw et al. eds., 1995). Some feminist scholars blame traditional legal education for, among other things, positivism, replicating hierarchy, dominant narratives, and ideology to the detriment of communities: “The reduction of social problems to predetermined legal formulae permits what then passes for bona fide legal knowledge to be cordoned off from the affective, the corporeal, and the intuitive.” Phyllis Goldfarb, *A Theory Practice Spiral: the Ethics of Feminism and Clinical Education*, 75 *MINN. L. REV.* 1599 (1991); see also Margaret Thornton, *Commentary, Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same*, 36 *OSGOODE HALL L.J.* 369, 373 (1998).

13. H.W. Arthurs, *The Law School in a University Setting*, in *LEGAL EDUCATION IN CANADA* 157 (R.J. Matas & D.J. McCawley eds., 1987). Arthurs suggests that this enables clinical legal education to be viewed as a dangerous “competitor for the soul of legal education . . . [and as] a device for anchoring the law school more solidly within the profession.” *Id.* at 157-78.

14. See Mark V. Tushnet, *Scenes From the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education*, 52 *GEO. WASH. L. REV.* 272 (1984). Tushnet characterizes clinical education as marginal to mainstream legal education because of its association with the characteristics of women (i.e., its unstructured, emotion-laden, and poverty-oriented nature). *Id.* at 275-75. Goldfarb, *supra* note 12, states quite bluntly:

[T]he status of clinical education in law schools is not unlike the status of women in society. Although many perceive both as making a special and essential contribution to

stem from the perception that social activism is incompatible with education, risking inappropriate placement of value upon the study of practice, in contrast to the “hierarchy” of rights discourse presented by traditional legal education.¹⁵ Attitudes such as these, if prevalent and influential within a law school, can erode institutional support for clinical legal education programs, and provide much less openness to adopting a social justice orientation.

As will be explored within this paper, we find it striking that mainstream legal education is so sharply at odds with the most mainstream view of social work education, which regards its mandatory “field instruction” program as essential to professional education and as an “integral component” of the philosophy informing experiential learning.¹⁶ Nonetheless, even “mainstream” observers have encouraged law schools to adopt a perspective that questions the assumptions underlying legal rules, reasoning, and institutions. For example, in 1984, a report by the Consultative Group on Research and Education in Law recommended that law schools actualize the notion of “humane professionalism” by teaching students to think more broadly and more critically about law.¹⁷ In 1989, the American Bar Association’s *Task Force on Law Schools and the Profession* identified “striving to promote justice, fairness and morality” as a “fundamental value” of the profession, one which

the collective enterprise, each operates largely outside the main arena. Viewed from the main arena, both women and law school clinics constitute outsiders.

Goldfarb, *supra* note 12, at 1618-19 (internal citations omitted).

15. See Kennedy, *supra* note 12, at 48 (“The real world is kept at bay by treating clinical legal education, which might bring in a lot of information threatening to the cozy liberal consensus, as free legal drudge work for the local bar or as mere skills training.”).

16. Dean Schneck finds that:

Indeed, the learning opportunities in field education for the development of practice skills and identity, critical thinking, and the overall integration of learning serve in many ways as the primary vehicle for the professional development of students. Moreover, if well done, field education stands as a constant bulwark against the age-old process/content dichotomy still evident in academia.

Dean Schneck, *The Promise of Field Education in Social Work*, in *SOCIAL WORK FIELD EDUCATION: VIEWS AND VISIONS* 3, 4 (Gayla Rogers ed., 1995).

17. CONSULTATIVE GROUP ON RESEARCH AND EDUCATION IN LAW, *LAW AND LEARNING: REPORT TO THE SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL OF CANADA* 48 (1983).

law schools accredited by the ABA were encouraged to impart.¹⁸

While the goal of integrating social values into legal education has long been central to the clinical legal education movement,¹⁹ this aspect of legal education also has been critically examined (and found wanting) in respect of legal education's ability to effectively advance a social justice agenda.

[C]linical legal education, so history reveals, neither necessarily nor naturally facilitates transformative practice. In practice, clinical legal education has often been (and continues to be) permeated by the same vision of law and lawyering that

18. AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992). This ABA Report, widely known as the MacCrate Report, states:

As a member of a profession that bears "special responsibilit[ies] for the quality of justice," a lawyer should be committed to the values of:

Promoting Justice, Fairness, and Morality in One's Own Daily Practice, including:

- (a) To the extent required or permitted by the ethical rules of the profession, acting in conformance with considerations of justice, fairness, and morality when making decisions or acting on behalf of a client;
- (b) To the extent required or permitted by the ethical rules of the profession, counseling clients to take considerations of justice, fairness, and morality into account when the client makes decisions or engages in conduct that may have an adverse effect on other individuals or on society;
- (c) Treating other people (including clients, other attorneys, and support personnel) with dignity and respect;

Contributing to the Profession's Fulfillment of its Responsibilities to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them;

Contributing to the Profession's Fulfillment of its Responsibilities to Enhance the Capacity of Law and Legal Institutions to Do Justice.

Id. at 213 (internal citations and section numbers excluded) (italics and brackets in original).

19. In the United States, this history is well documented in numerous writings. *See, e.g.*, Steven Hartwell, *Moral Development, Ethical Conduct and Clinical Education*, 35 N.Y.L. SCH. L. REV. 131 (1990); Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469 (1992); Fren Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37 (1995); Minna J. Kotkin, *The Law School Clinic: A Training Ground for Public Interest Lawyers*, in EDUCATING FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION 129 (Jeremy Cooper & Louise G. Trubek eds., 1997). The Canadian context is explored in a number of articles published in Volume 35 of the *Osgoode Hall Law Journal*, in celebration of the twenty-fifth anniversary of Parkdale Community Legal Services. In particular, see Janet Mosher, *Legal Education: Nemesis or Ally of Social Movements?*, 35 OSGOODE HALL L.J. 613 (1997).

informs classroom instruction. Indeed, many authors have critiqued law school clinics for their failure to reflect critically about justice or about practice norms, and for the control and manipulation to which they routinely subject clients.²⁰

Dissonance between a social justice agenda and the actual practice of any enterprise results from lack of consensus as to what “social justice” might mean.²¹ From an optimistic perspective, however, such disagreement may represent the potential for interesting and constructive discussion, which in turn advances understandings of social justice.

For example, in a clinical legal education program, debate among staff and students about whether to take on a particular case, or type of case, may lead to considerations of the ethical dimensions of denial of representation.²² It may also lead to discussion about the role of lawyers in society, and the nature of lawyer decisionmaking and the possible influence of race, class, gender, and ability on that decisionmaking.

20. Mosher, *supra* note 19, at 634. The “history” Mosher refers to includes numerous explorations of this theme, specifically including Robert J. Condlin, “*Tastes Great Less Filling*”: *The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 36 (1986) (examining the failure of most clinics to provide a political critique of lawyering). *See also* Carrie Menkel-Meadow, *Two Contradictory Criticisms of Clinical Education: Dilemmas and Directions in Lawyering Education*, 4 ANTIOCH L.J. 287 (1986) (a critique of clinical legal education’s tendency to assimilate students to the profession while failing to study and change the legal profession); Minna J. Kotkin, *Creating True Believers: Putting Macro Theory into Practice*, 5 CLINICAL L. REV. 95 (1998) (arguing for the development of a methodology to systematically articulate and teach critical theory in clinical programs); Robert J. Condlin, *Learning from Colleagues: A Case Study in the Relationship Between ‘Academic’ and ‘Ecological’ Clinical Legal Education*, 3 CLINICAL L. REV. 337 (1997) (revisiting the importance of a critical perspective in clinical study in the context of externship-based programs).

21. Such dissonance even resonates within discussions about curriculum, admissions, tuition levels, and academic support during faculty meetings at a law school that has adopted an “access to justice” theme.

22. The Law Society of Upper Canada’s Rules of Professional Conduct require that lawyers “make legal services available” and exercise the right to decline a particular representation only when the probable result “would be to make it difficult for a person to obtain legal advice or representation.” RULES OF PROF’L CONDUCT R. 3.01 cmt. (2000) [hereinafter LSUC RULES], available at <http://www.lsuc.on.ca/services/contents/rule3.jsp>. It is unquestionable that clients who are declined service by a legal clinic would find it “difficult” to obtain other service—it is probably “impossible” in most cases.

When social work is practiced within that program, an even richer discussion may take place. Such a discussion may include, for example, the social needs within a particular community that may be affected by a decision to limit services. This outcome is only possible, however, if there exists the common will to value all aspects of the clinic's vision, and to reflect upon this vision when making decisions that affect its stakeholders.

The relationship between law and social work was clearly valued by the founders of LAW, who saw the potential to address client needs in a holistic fashion, and it continues to be a feature often cited as central to LAW's success in assessing community needs. However, the relationship is at times uneasy. For example, LAO has been slow to respond to pleas for recognition of the professional status of social workers by funding these positions appropriately,²³ thus giving rise to a concern that the value of interdisciplinarity is not fully shared as a "guiding principle" of the work of LAW.²⁴

III. REFLECTING GOALS AND VALUES IN THE PROGRAM

A. Social Justice Goals and Values

In 1974, law schools in many jurisdictions had already begun to develop storefront and neighborhood teaching centers in response to needs for access to legal services and a growing interest on the part of law students and some law professors to make the study of law

23. Thus, the professional training and experience brought by social work staff to the clinic was not recognized by the financial backer. This resulted in the need for clinic administration to engage in "budgetary gymnastics" to provide salaries that, although not equal to those paid to staff lawyers or social work staff in other large institutions (such as Children's Aid Societies or hospitals), were at a level that enabled the clinic to attract skilled and experienced professionals. The issue of salaries was central to a period of staff discord at LAW in the late 1990s, when social work staff perceived this issue as representative of a larger tension between the professions of law and social work. LAO announced the introduction of a more equitable compensation system for clinic employees who are non-lawyers, including social work staff in early 2003, recognizing the need to value other disciplines in the work of legal clinics. At this time, there are occupational hygienists, editors, and social workers employed in these capacities in various Ontario legal clinics. Letter from Sue McCaffrey, LAO, to Clinic Board Presidents; Deans of Faculties of Law; Executives Directors (Apr. 15, 2003) (on file with authors).

24. We will return to the notion of status and hierarchy between disciplines as a source of tension between the professions of law and social work. *Infra* Part III.E.

socially relevant.²⁵ As part of this “wave,” students and faculty at the University of Windsor initiated two advocacy-oriented projects: Community Legal Aid (CLA) and Legal Assistance of Windsor. In 1974, legal aid services in Ontario had only recently become operational, in the form of a publicly funded judicare program administered by the Law Society of Upper Canada, oriented primarily toward providing legal services relating to criminal and family law. The legal aid program did not address poverty law, however, which is comprised of matters such as landlord-tenant issues, social security, immigration, and workers’ compensation problems.²⁶

Wexler had already published *Practicing Law for Poor People*,²⁷ which argued that practicing law for the poor was fundamentally different from traditional lawyering in many ways.²⁸ Osgoode Hall Law School had established Parkdale Community Legal Services and had successfully fought off attempts by the Law Society of Upper Canada to restrict its efforts to promote its services through “advertising,” which at that time was prohibited under the Rules of Professional Conduct.²⁹

LAW was staffed by senior law students, who received academic credit for “clinical law training” for a full-semester placement. After an intensive orientation program which provided skills training and instruction in the related substantive areas of law (ranging at that time from criminal and family law to small claims and administrative law matters), students were assigned case files under the supervision of

25. According to its website, Dalhousie claims to have the oldest clinical program in Canada, having operated since the summer of 1970. The University of Manitoba commenced operation of its Legal Aid Centre shortly thereafter, in October 1970. Other legal clinics affiliated with law faculties followed in 1971: Saskatoon (with the College of Law, University of Saskatchewan) and Parkdale (with Osgoode Hall Law School). The University of Windsor established its Clinical Law Program in 1974, as did the University of Western Ontario. The University of Victoria opened its Law Centre in 1978.

26. L. Taman, *The Legal Services Controversy: An Examination of the Evidence, a Study Prepared for the Office of the National Council of Welfare* (Ottawa: National Council of Welfare, 1971).

27. Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049 (1970).

28. Wexler wrote: “Poor people are not just like rich people without money . . . [P]oor people are always bumping into sharp legal things.” *Id.* at 1049-50.

29. Frederick H. Zemans, *The Dream is Still Alive: Twenty-Five Years of Parkdale Community Legal Services and the Osgoode Hall Law School Intensive Program in Poverty Law*, 35 OSGOODE HALL L.J. 499, 515-20 (1997).

staff lawyers, and were also encouraged to “shadow” a member of the private bar. A faculty member was assigned the initial responsibilities of directing the operation of the clinic, and providing training and supervision for its law students. After 1975, this role was assumed by a succession of lawyers who were appointed by the Dean of Law, but who were not members of faculty.³⁰ LAW approached external sources of funding in order to hire supervising staff lawyers, as well as a social worker, to address concerns surrounding legal issues, including crisis intervention, short-term counseling, and advocacy.

Initially, the law school obtained funding through the federal Department of Health and Welfare and other grants. In 1976, the provincial government formalized funding to legal clinics, pursuant to regulation under the Legal Aid Act.³¹ This provided a level of operational stability, which, together with the Faculty of Law’s ongoing support, was frequently called upon to intervene in numerous instances of opposition to the Clinical Law Program from the legal profession and judiciary. From its inception, LAW faced concerted opposition from Windsor’s private bar, which strenuously opposed the entry of law students into the city’s courtrooms on the grounds that they lacked professional qualifications and would therefore put clients at risk.³² Some members of the judiciary also expressed this opposition, refusing to permit law students to appear. To resolve this political battle, which consumed a great deal of administrative time, an “Advisory Committee” was created,

30. The first director was Neil Gold, who refers to his experience from that period in *Legal Education, Law and Justice: The Clinical Experience*, 44 SASK. L. REV. 97 (1979–80).

31. The Legal Aid Act, R.O. 160/76, § 147 (1976), authorized the Law Society to establish a Clinic Funding Committee. Subsequent regulations addressed the mandate for clinics to provide a range of services not otherwise available through legal aid, including public legal education, community development, and law reform activities. LAW continues to receive funding from LAO for operational expenses, including salaries for two lawyers, an articling student, two social workers, and three support staff. Unlike other clinics funded by LAO, LAW is not operated by a community-based board of directors. Instead, it is the Dean of Law who functions in the capacity of the board, while the Director manages the day-to-day operations of the clinic, including the administration of its academic components (recruitment of students, course design, and teaching). A community-based advisory committee, drawn from public sector and client communities, assists with planning programs and activities geared to address the mandate of the clinic.

32. See Gold, *supra* note 30, at 111, for an account of disciplinary proceedings for “soliciting” launched against a student when he offered a LAW business card to a person facing criminal charges.

composed of six members of the local bench and bar, the Dean of Law, and the Director, which would consult with respect to policy issues dealing with the provision of service in Windsor's courts.³³

B. Pedagogical Goals

Historically, Windsor's Clinical Law Program focused extensively on skills acquisition through experiential learning. Academic credit was provided based upon a graded evaluation of trial briefs, precedent files, and community project assignments (representing four credits), and on a pass-fail basis for professional conduct (representing eleven credits). Its pedagogical goals were largely unstated, except that it was "to expose the law student to traditional legal skills and to foster their development in both the theoretical and practical dimension."³⁴ Students were provided supervision and periodic file reviews with staff lawyers, but were "expected to develop through their own initiative specific skills."³⁵

It was not until 1982, when a subcommittee of the Academic Planning Committee of the Faculty Council began an examination of the Clinical Law Program, that the program's academic legitimacy was openly and directly challenged. The subcommittee appeared to use the decreased number of student enrollments as justification for launching an examination of a number of issues, including the clinic's "service component and [its] academic component."³⁶ The

33. See Press Release, Hon. S.G.M. Grange, Commissioner, Ontario Commission on Clinical Funding, Report of the Commission on Clinical Funding, at iv-v (1978) (noting similar opposition by the legal profession to the establishment of clinical programs in many areas of the province) (on file with the Washington University Journal of Law & Policy).

34. CLINICAL LAW PROGRAM, STATEMENT OF OBJECTIVES (1978) (on file with the Washington University Journal of Law & Policy).

35. *Id.* The Statement of Objectives appears to incorporate the notion of "self-directed learning" and "reflective practice" from adult learning theory. See MALCOLM S. KNOWLES ET AL., THE ADULT LEARNER: THE DEFINITIVE CLASSIC IN ADULT EDUCATION AND HUMAN RESOURCE DEVELOPMENT (5th ed. 1998).

36. Specifically, the subcommittee sought input on the following questions:

How is the academic component of a clinic to be provided? What differentiates the work of a student at the clinic (for which academic credit is given) from the work of a student for Community Legal Aid (for which no academic credit is given unless the student is on the C.L.A. executive)?

Report, Maureen Irish, Chairperson, Academic Planning Committee, Study of the Clinical Law

subcommittee held several meetings and received numerous submissions on the issues, ultimately recommending a restructuring of the Clinical Law Program “to incorporate, in addition to the educational experiences in the areas of professional responsibility and the provision of legal services, to place emphasis upon the legal process and legal professionals within the broad context of access to justice.”³⁷ In addition to instituting a research paper requirement, the restructured Clinical Law Program included two mandatory courses: “Legal Professions” and “The Legal Professional and the Legal System.” The latter course was intended to integrate “skills development and a holistic examination of the operation of the legal system and the role of legal professionals therein.”³⁸

Since 1982, more attention has been placed on pedagogical theory through the introduction of theoretically based texts and instructional materials. In 1991, the Clinical Law Program was further amended to consolidate the two new courses into “Clinical Advocacy,” which was designed to provide intensive exposure to skills training, ethics, and “access to justice in the clinical law context” in a weekly four-hour classroom-based seminar. In 1999, a subcommittee of Faculty Council prepared its “Five Year Plan,”³⁹ which proposed co-ordinating the Clinical Law Program with other faculty programs that are clinical or experiential in nature.

Much of the literature which propounds clinical methodologies in legal education implicitly understands that exposure to a social justice mission within a guided practice setting provides students not only with a key linkage between their legal education and their practice competence, but also with the intellectual foundation for a long-term engagement with the advancement of social justice. However, in the face of growing pressure from the “techno-centrism”

Program 1 (undated) (on file with the Washington University Journal of Law & Policy). Community Legal Aid is the Student Legal Aid Society, which did not provide an academic component and did not provide credit to its student volunteers except for its Directors, who received three academic credits.

37. *Id.* at 2.

38. *Id.* at 5.

39. University of Windsor, Investing in Excellence: A Five Year Plan for the Faculty of Law (unpublished document, on file with the Washington University Journal of Law & Policy).

of the political economy,⁴⁰ and from the profession upon law schools and their students, the reality of this understanding is becoming ever more questionable.⁴¹

It may be the case, however, that a clinical law program with a social work component is particularly well suited to fostering appreciation for understanding of, and commitment to social justice in law students because it exposes them to a profession that is philosophically rooted in social justice,⁴² and which adopts a holistic approach to client problems.

C. Interdisciplinarity as a Goal and Value

[I]nterdisciplinarity has been variously defined in this century: as a methodology, a concept, a process, a way of thinking, a philosophy, and a reflexive ideology. It has been linked with attempts to expose the dangers of fragmentation, to re-establish old connections, to explore emerging relations, and to create new subjects adequate to handle our practical and conceptual needs. Cutting across all these theories is one recurring idea. Interdisciplinarity is a means of solving problems and answering questions that cannot be satisfactorily addressed using single methods or approaches.⁴³

40. Thornton, *supra* note 12; Arthurs, *supra* note 13.

41. See Kotkin, *supra* note 19; Mosher, *supra* note 19.

42. The University of Windsor School of Social Work Social Justice Statement states:

The School's understanding of social justice and its mandate in social work education finds its roots in the profession's historical commitment to serve the interests of oppressed and vulnerable populations and a set of fundamental values stated in the profession's Code of Ethics. This mandate is realized in the preparation of students with knowledge, research and practice intervention skills to assume professional roles to eradicate systemic barriers which oppress citizens and disenfranchised populations. Principles of justice find their meaning here in a fundamental belief in the dignity of all persons, the importance of access of citizens to participation, and striving for a more equitable distribution of society's resources in the interest of promoting quality of life for all citizens.

The University of Windsor School of Social Work Social JUSTICE STATEMENT (2002), available at <http://athena.uwindsor.ca/units/socialwork/>.

43. JULIE THOMPSON KLEIN, INTERDISCIPLINARITY: HISTORY, THEORY, & PRACTICE 196 (1990).

“Unfortunately . . . simply bringing together a group of professionals does not necessarily ensure that they will function effectively as a team or make appropriate decisions. Effective teamwork does not occur automatically.”⁴⁴

The notion of interdisciplinarity has enchanted and perplexed legal educators for many years, especially with respect to scholarship, teaching, and burgeoning efforts to create interdisciplinary legal clinics.⁴⁵ Interdisciplinarity, however, is not a “magic bullet,” as suggested by the second quotation above; collaboration must be taught as a skill, and the needs of the individuals who will be collaborating must be anticipated and met with information and appropriate training. In other words, the goal and value of interdisciplinarity must be made explicit.

Legal Assistance of Windsor, as a clinical law program offered by a law school with an “Access to Justice” theme and held in a downtown poverty law center, effectively combines law with social work. It seems that such a context would provide an enviable opportunity for a cohesive approach to community-based, client-centered advocacy.⁴⁶ However, it is our experience that the goal of advancement of social justice through such an interdisciplinary approach becomes illusory if groundwork is not carefully laid in curriculum and modeled and demonstrated by staff. This foundation establishes common principles and language, which will operate to overcome ideological, skill-related, cultural, and ecological barriers.⁴⁷

44. Elizabeth Cooley, *Training an Interdisciplinary Team in Communication and Decision-Making Skills*, 25 SMALL GROUP RES. 5, 6 (1994), quoted in Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 WASH. L. REV. 319, 327 (1999).

45. See Kim Diana Connolly, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 11 WASH. U. J.L. & POL'Y 11 (2003).

46. It has been our experience that colleagues in the Ontario legal clinic system respond with envy when they learn about LAW's approach. Indeed, a Legal Aid Ontario quality assurance review of the program in 2000 cited LAW's interdisciplinary approach, praising the clinic's successes in community-based advocacy.

47. We adopt the barriers identified by Weinstein, *supra* note 44, at 32. We will explore this idea further, *infra* Part III.D.

1. Competing Ideologies: “Interests vs. Rights”

While it is true that each of the self-regulated professions⁴⁸ of social work and law articulates among its goals and principles a primary ethical obligation toward the client, a telling distinction may be discerned regarding which particular “*dimensions*” of the client (e.g., “best interests” or “rights”) are the focus of this obligation.

By adopting the general goal of “helping people,” social work aims to further the “best interest of the client.”⁴⁹ Its theoretical basis, which has been described as “ecological systems theory,”⁵⁰ is clearly “client-centered” in identifying unmet needs and interests and seeking to address them within the context of the client’s goals and objectives.⁵¹ In addition, its articulation of a social justice mission and an inherent philosophy of helping,⁵² which is founded on humanitarian and egalitarian ideals, dedicates social workers “to the welfare and self-realization of human beings...[to] the development of resources to meet individual, group, national and international needs and aspirations; and to the achievement of social justice for all.”⁵³

48. In this Article, we focus upon the Province of Ontario, which relatively recently legislated the creation of the College of Social Workers and Social Services Workers, in the Social Work and Social Service Work Act, S.O. 1998 ch. 31, *amended* by S.O. 2000 ch. 42, § 41-44; S.O. 2001 ch. 8, § 234-23. The Law Society Act, R.S.O. ch. L.8 (1990), created the Law Society of Upper Canada, which regulates the profession of law in that province.

49. CANADIAN ASSOCIATION OF SOCIAL WORKERS, SOCIAL WORK CODE OF ETHICS (1994) [hereinafter CODE OF ETHICS], *available at* <http://www.oasw.org/ENG/ETHICS.HTM> (last visited Aug. 30, 2003).

50. MARIA JOAN O’NEIL, THE GENERAL METHOD OF SOCIAL WORK PRACTICE 8 (1984). *See also* LOUISE C. JOHNSON, SOCIAL WORK PRACTICE: A GENERALIST APPROACH 44 (1983).

51. Critical social theorists within social work education, however, have critiqued its failure to provide creative and critical interventions that focus on social justice in the face of twenty-first century challenges to social justice, human rights, and citizenship. *See* Janet L. Finn & Maxine Jacobson, *Just Practice: Steps Toward a New Social Work Paradigm*, 39 J. SOC. WORK EDUC. 57, 57 (2003).

52. Perhaps the most traditional construction of social work’s mission is that it should help the economically and socially disadvantaged. *See* Jerome C. Wakefield, *Social Work as the Pursuit of Minimal Distributive Justice 1* (Feb. 8–10, 2001) (unpublished paper presented to the Kentucky Conference on the Definition of Social Work) (on file with the Washington University Journal of Law & Policy).

53. CODE OF ETHICS, *supra* note 49, at “Philosophy.” *See also* NATIONAL ASSOCIATION OF SOCIAL WORKERS, NASW CODE OF ETHICS art. 6.01, *available at* <https://www.socialworkers.org/pubs/code/code.asp> (last visited Sept. 26, 2003) (containing an ethical obligation to “promote the general welfare of society, from local to global levels, and the

The “theoretical heritage” of law, on the other hand, favors the assessment of the legal problem and the preservation and advancement of “the rights, liberties and property” of the client.⁵⁴ Unlike social workers, lawyers do not necessarily view themselves as “public servants.”⁵⁵ This distinction is manifest in the contrast between the social work profession’s “ecological systems theory” approach, which takes all aspects of a client’s circumstances (including the operation of “non-legal” concerns and interests) into account in problem solving, and the traditional lawyer’s individualistic concentration of effort upon the client’s “rights,” which dominate the legal issues of the case.⁵⁶

Another dimension of the disparity between the disciplines may be seen in the fundamentally different approaches taken by the professional schools themselves towards the teaching of “practice.” Unlike Canadian law schools, schools of social work are required to provide field instruction as a mandatory portion of the overall social work curriculum in order to be accredited by their regulatory body.⁵⁷

development of people, their communities, and their environments.”).

54. CANADIAN BAR ASSOCIATION, CODE OF PROFESSIONAL CONDUCT 6 (1988), *available at* <https://www.cba.org/CBA/Epiigram/february2002/codeEng.asp>.

The legal profession has developed over the centuries to meet a public need for legal services on a professional basis. Traditionally, this has involved the provision of advice and representation to protect or advance the rights, liberties and property of a client by a trusted adviser with whom the client has a personal relationship and whose integrity, competence and loyalty are assured.

Id.

55. David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 VAND. L. REV. 717, 720-23 (1988) (discussing Justice Brandeis’s vision of this progressive responsibility). *See also* DEBORAH RHODE, *LEARNING TO SERVE* (1997).

56. Weinstein, speaking about clinical law professors confronting the challenge of shifting law students’ focus:

We hope to convey to our students that all aspects of a problem influence each other and that attempting to deal solely with the “legal” aspect is a “band-aid” approach to problem solving. This lesson is often difficult for students to absorb in the context of an education that is otherwise one-dimensional. We tend to view clients’ problems from a traditional “rights” focus. We may be blinded to the other dimensions of the situation or other approaches for resolution. . . .

Weinstein, *supra* note 44, at 320. *See also* Brigid Coleman, *Lawyers Who Are Also Social Workers: How to Effectively Combine Two Different Disciplines to Better Serve Clients*, 7 WASH. U. J.L. & POL’Y 131, 134 (2001).

57. While simulations and labs may form an acceptable part of direct practice teaching, they cannot be substitutes for direct responsibilities in real practice situations. *See* CANADIAN

In social work education, there is unquestionably a high degree of sanction and support for practice instruction from the university program, the profession itself, and the students. Because field instruction is *required* (as opposed to optional), staff and administrative resources are dedicated to the program, and many agencies agree to offer placements and provide field supervision. The field placement program is structured upon a learning agreement, which sets out objectives ensuring the development of generalist competencies⁵⁸ and a series of field assignments designed and structured accordingly. The student is evaluated upon his or her ability to complete assignments and otherwise meet the curriculum requirements of the field courses.⁵⁹ In addition to these instructional tools, a designated member of the School of Social Work responsible for field liaison makes site visits and keeps in touch with the students and the supervisor as needs arise. The field placement is a course in itself, building upon other coursework to assist students in developing generic skills and knowledge, which may then be applied in practice experiences.⁶⁰

As noted above, this approach contrasts markedly with the orientation of legal education. Very few law schools require students

ASSOCIATION OF SCHOOLS OF SOCIAL WORK, STANDARDS FOR THE FIELD EDUCATION COMPONENT OF PROGRAMMES OF SOCIAL WORK EDUCATION § 1.5 (1992) [hereinafter STANDARDS], available at <http://www.cassw-acess.ca/xACCR/ac1x2.htm> (last visited Feb. 27, 2003).

58. In a Generalist Model, the student is expected to develop at least seven initial competencies through both curriculum and the field placement: (1) engage in interpersonal helping; (2) manage the change process; (3) utilize multi-level intervention modes; (4) intervene in multiple-sized systems; (5) perform varied practice roles; (6) assess or examine one's own practice; and (7) function with a social agency. Mona Schatz, A Conceptual Model of Generalist and Advanced Generalist Social Work, Presentation (undated) (on file with authors).

59. At the 1992 Annual General Assembly, a motion was approved to adopt the Standards to be used in the accreditation process. Section 1.1 prescribes: "Programmes of social work education at the first professional degree level will include field education as an integral component of the curriculum that is required of all students with the objective of developing practice competence and preparing a professionally reflective, self-evaluating, knowledgeable and developing social worker." STANDARDS, *supra* note 57, § 1.1.

60. The course maintains, "Field education is comprised of opportunities for students to carry direct and indirect social work practice responsibilities, and apply knowledge, values, and skills to practice situations as well as experience educationally-focused field instruction, practice supervision, and evaluation of practice performance and professional development." *Id.* § 1.4.

to complete a clinical placement in order to graduate, much less to meet expectations related to the acquisition of competencies or knowledge in the same way that the generalist model of social work demands.⁶¹ In fact, while there is general agreement that one of the basic functions of a law school is to prepare its students for the practice of law, in Canada, the profession does not exercise the same degree of authority with respect to accreditation standards for law schools as occurs in the United States.⁶² Initiatives such as the “Best Practices Project,” involving American academics, the bar, and the judiciary, seek to establish expectations and learning outcomes based upon these skills in an attempt to advance appropriate methodologies to realize the MacCrate Report’s goals.⁶³

Clinical legal education theory has, for many years, recognized the benefits of introducing law students to practice issues through experiential learning in role.⁶⁴ To this end, volumes of scholarship have emerged critiquing various aspects of “lawyering,”⁶⁵ and calling

61. This practice model has been adopted by some schools of social work in designing curriculum and field placement programs, which prepare students for a generalist practice.

62. Alvin J. Esau, *Competition, Cooperation, or Cartel: A National Law School Accreditation Process for Canada?*, 23 DALHOUSIE L.J. 183, 211-31 (2000) (comparing accreditation of law schools in Canada with those in the United States).

63. See Alan Watson, *Legal Education Reform: Modest Suggestions*, 51 J. LEGAL EDUC. 91, 96 (2001) (“[M]ost law teachers that I am acquainted with deny that law schools are ‘trade schools.’ But to some extent law schools should be, and must be trade schools. The result of the denial is that law schools are poor trade schools . . .”).

64. Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING (1973) (distinguishing “clinical education as a methodology from the objectives which it can or should serve,” and presenting “an inquiry into the reasons for its potential as an educational vehicle in law study”); David R. Barnhizer, *Clinical Education at the Crossroads: The Need for Direction*, 1977 BYU L. REV. 1025, 1035 (1977).

65. This paraphrases the point Gary Bellow makes in articulating the goal of inculcating in students an understanding of the relationship between theory and practice in the context of human experience:

After graduation our students will be plunged into a welter of impressions, processes, roles and obligations. The most important questions they will face will not be concerned with the coherence of doctrine or the skills of case analysis, but with making sense of this experience, of coping with it, understanding it and growing within it, in the context of the particular professional role they have chosen to perform. The breadth, depth, and applicability of this understanding will be a function, in large part, of whether and how they have learned to learn.

Bellow, *supra* note 64, at 395.

for new and responsive approaches to the complex contextual problems of impoverished clients.⁶⁶

Focusing upon the necessity to recognize client needs and interests, early clinical legal theorists and educators began to experiment with techniques employed in other helping professions, including social work. Various skills, such as active listening and empathetic understanding in interviewing and counseling clients, which focus upon fact investigation as an important feature of case theory and the upon use of crisis intervention techniques in assessing emotional and social aspects of the case and making appropriate and timely referrals, eventually were adopted as examples of “lawyering” techniques.⁶⁷ Many clinical legal education programs, including LAW, offer parallel courses that teach these skills as a seminar component of the clinical program, as well as subjects related to social justice.⁶⁸

2. Barriers to Acquiring the Skill of Collaboration

While many students who participate in a clinical law program successfully overcome the challenges of competing ideologies in acquiring competence in the skill of collaboration, there have

66. Kotkin, *supra* note 20, at 109-13.

67. There is a rich body of literature in clinical legal education scholarship which traces the development of what David Chavkin calls the “theory of the client.” DAVID F. CHAVKIN, *CLINICAL LEGAL EDUCATION: A TEXTBOOK OF LAW SCHOOL CLINICAL PROGRAMS* 39-50 (2002). *See also* AVROM SHERR, *CLIENT CARE FOR LAWYERS: AN ANALYSIS AND GUIDE* (2d ed. 1999).

68. *See* Shelley Gavigan, *Twenty-Five Years of Dynamic Tension: The Parkdale Community Legal Services Experience*, 35 *OSGOODE HALL L.J.* 443, 467 (1997) (discussing anti-racism skills); Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 *STAN. L. REV.* 1807 (1993); Mary Jo Eyster, *Analysis of Sexism in Legal Practice: A Clinical Approach*, 38 *J. LEGAL EDUC.* 183 (1988); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client Centered Counseling*, 27 *GOLDEN GATE U. L. REV.* 345, 348 (1997) (exploring how race neutral-training of interviewing and counseling skills may lead to continued marginalization of clients of color); Michelle S. Jacobs, *Full Legal Representation for the Poor: The Clash Between Lawyer Values and Client Worthiness*, 44 *HOW. L.J.* 257 (2001) [hereinafter Jacobs, *Full Legal Representation*] (explaining how law students engage in value ranking); Michelle S. Jacobs, *Clinical Essay: Legitimacy and the Power Game*, 1 *CLINICAL L. REV.* 187 (1994) (confronting the belief of many clinical instructors that supervisory relationships should be characterized by cooperative, equal, non-hierarchical organization).

nevertheless been certain chronic difficulties in collaboration at a direct service level within the clinical setting.

Even though most law students choosing to dedicate a full semester to the Clinical Law Program link their choice to a desire to engage in social justice,⁶⁹ and although the interdisciplinary approach to the advancement of social justice may be explicit in the program's mission statement, there have been many failures in achieving student "buy-in" to the model in which these two disciplines collaborate.

At one extreme, we have observed law students' resistance to collaboration with social work staff, leading to neglect of all but the clients' most obvious "legal" problems. This also leads to grudging requests for help from social work staff at the "eleventh hour," once the interpersonal dynamics between the caseworker and the client have devolved to crisis proportions.

At the other extreme, we have noted that some law students not only display a high level of comfort with a consultative and collaborative approach to client service, but also articulate discomfort with, or out-and-out rejection of an adversarial model of lawyering that ignores relationships and environment-related problems.

When interdisciplinary collaboration "happens," there is no question that the client gets the best of both worlds. Two professionals with a wealth of skills address community needs in the fullest way, and clients benefit from both perspectives and skills brought to bear on the problems presented, both legal and non-legal.

Conversely, when the interdisciplinary approach fails, the client does not receive services undertaken in his or her best interest, and the caseworker has failed to discharge ethical obligations to the client by not acting "competently." A student who simply fails to grasp the point of pursuing a legal remedy because a client appears unlikely to benefit in a way the student is able to understand from his or her personal context (including race, class, health, and gender) may overlook legal options offering real advantages to the client had the

69. At least the reason is often given in the selection interviews, followed closely by the wish to acquire "hands-on experience." In actuality, while most students who apply to the clinic for summer jobs appear to be familiar with its focus on poverty law, or its interdisciplinary model, very few have any idea what these factors "look like."

student been capable of understanding that client's reality.⁷⁰ Further, if the student is unable to resist or overcome integrating the "welfare-bashing" rhetoric of popular culture, that student may carry discriminatory or judgmental attitudes into casework performed, to deleterious effect.⁷¹

Weinstein has identified a number of major barriers to interdisciplinary collaboration, including: lack of "competencies in . . . skills as well as the cultural differences between professions and ecological and personality concerns."⁷² As discussed below, this categorization appears to us to be particularly apt vis-à-vis collaboration between law students and social workers in the Clinical Law Program.

70. "Cultural competence" is the subject of at least two ethical rules in Ontario. The LSUC Rules require a "competent lawyer" to "communicat[e] at all stages of a matter in a timely and effective manner *that is appropriate to the age and abilities of the client.*" LSUC RULES, *supra* note 22, at R. 2.01 (emphasis added). The Rules further explain:

[A] lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to *recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario.*

Id. at R. 1.03(c) (emphasis added).

71. As noted elsewhere, it has been my experience that middle-class law students often comment on how "poor" they are themselves in moralizing about how clients of the clinic spend their public assistance allotments. This cannot help but interfere with client-centered interviewing and counseling, preventing the provision of effective representation. See Rose Voyvodic, *Considerable Promise and Troublesome Aspects*, 20 WINDSOR Y.B. ACCESS JUST. 111 n.32 (2001); Jacobs, *Full Legal Representation*, *supra* note 68, at 259 n.8 (noting the tendency of law students, who perform legal aid work in order to gain skills, to expect "gratitude" from clients). Jacobs comments, "[S]ince the students are not undertaking the work as a result of some magnanimous feelings towards the clients, one wonders why the *clients* are expected to feel grateful." Jacobs, *Full Legal Representation*, *supra* note 68, at 259 n.8.

72. Weinstein, *supra* note 44, at 328. Weinstein explains:

First, law school is a solitary experience with little opportunity for teamwork. Second, it is a very competitive environment, focusing on individual achievement at the cost of others. The adversarial context of practice, indoctrinated in law school, is not conducive to collaboration. Third, the focus on the values of law to the exclusion of other disciplines creates an impression of law as the predominant problem solver and an arrogance about the profession that has ramifications regarding status and hierarchy in working with others.

Id. at 341.

D. Lack of Basic Skills Required for Competence in Collaboration

Weinstein identifies five key skills necessary for collaborative problem solving: (1) communication skills; (2) knowledge of non-legal resources; (3) awareness of self and others; (4) understanding and appreciation of group process; and (5) leadership skills.⁷³ Each of these skills is explicitly taught in social work education, yet very few are offered as part of a traditional legal education.⁷⁴

For example, law students rarely receive explicit training in communication skills outside of the adversarial context, where the focus is upon writing and oral argument. Skills related to listening may be taught in courses that teach alternative dispute resolution, but they are rarely considered in other contexts.⁷⁵

Communication skills not only build competency in client-centred interviewing and counselling, but also form the foundation for the ability to collaborate. In addition to listening skills, awareness of the effects of language, tone, body language, and inattentiveness, as well as awareness of group dynamics are essential aspects of the ability to work within a team.⁷⁶

Another skill relating to effective collaboration is the ability to involve “partners” in addressing client goals. Traditional legal education typically does not explicitly address the types of resources that may be brought together to provide solutions to client problems, even though adversarial disputes often involve actuarial and other expert opinions. There, as in a clinical practice offering social work services, it is necessary to possess good communication skills, as well as a basic understanding of both the range of services available and any limitations to the partners’ expertise.⁷⁷

Traditional legal education values neither the skill of self-assessment (including the impact of one’s behaviors upon others) nor

73. *Id.* at 335-40.

74. Here we would distinguish clinical legal education, which has a long history of valuing these skills. See CHAVKIN, *supra* note 67, *passim*.

75. Weinstein notes, “Even attempts to teach listening during a course such as trial practice, for example, to train students to listen to the responses of their witnesses, is often an uphill battle, as students are generally much more focused on what they are going to say next.” Weinstein, *supra* note 44, at 336.

76. *Id.*

77. *Id.* at 337.

the ability to relate personal experience to the measurement of professional development.⁷⁸ As a result, law students tend to define success by comparing themselves to the small group of their peers who are included in the “top ten,” or to those who land jobs with major law firms.⁷⁹ In order to participate usefully in a team, it is vital to maintain an awareness of the effectiveness of one’s own interactional skills. To do so, it is helpful to have experience in self-evaluation.

Finally, training in specific skills related to “leadership” would enable lawyers to organize and motivate group efforts by respecting group needs and encouraging high standards of performance. It also would enable them to engage in long-range planning.⁸⁰ All of these effects relate to effective collaboration.

E. Cultural Differences Between Professions

Even if students come to the clinical experience after only one year of law school, they nonetheless may arrive with “baggage,” which “particularly detract[s] from the ability to engage in effective inter-disciplinary work.”⁸¹ This baggage is the product of acculturation to an educational experience that tends to be isolating, competitive, exclusive, and self-aggrandizing.⁸²

Because legal education tends to involve solitary learning, the value of collaboration (and, as noted above, the skills related to it) is neither required nor nurtured. Law students may be involved in teamwork for the purposes of competitive mooting or a legal writing

78. Clinical legal education does recognize the value of “reflective practicum,” described by Donald A. Schon, *Educating the Reflective Legal Practitioner*, 2 CLINICAL L. REV. 231, 248 (1995).

79. See Daisy Hurst Floyd, *The Development of Professional Identity in Law Students* (June 2002) (unpublished manuscript, on file with the Washington University Journal of Law & Policy), at http://www.law.fsu.edu/academic_programs/humanizing_lawschool/images/daisy.pdf. Floyd notes that many students report having little or no knowledge of such things before coming to law school, yet they quickly adopt them as “values” as early as the first week of classes during their first year. Because only the “elite” students attain these badges of status, those who do not may experience feelings of failure and inadequacy, even though they too will go on to become licensed lawyers, and may in fact possess superior skills in some areas.

80. Weinstein, *supra* note 44, at 340.

81. *Id.* at 341.

82. See *id.* at 342.

course, but they often “experience control issues, particularly if [they] will receive a group grade.”⁸³

The competitiveness of law school, as well as the overwhelmingly adversarial context it addresses, also operates to interfere with the ability to collaborate. Even though many have critiqued the failure of the classical model to meet the non-legal needs and interests of the client,⁸⁴ the dominant approach continues to view the development of a “winning formula”⁸⁵ as a “good.” In this construct, problem solving is anything but collaborative; instead, it becomes a “combative argument that tends to preclude or subordinate ideas of cooperation, compromise, planning, negotiation and invention.”⁸⁶

Through traditional legal education, law students also intuit that lawyers alone provide the ultimate solution to client problems, as highly specialized professionals, who occupy high status in society. Status and hierarchy obviously pose significant barriers to collaboration with other disciplines.⁸⁷ The lack of prior, direct service experience on the part of law students, which might otherwise operate to temper this view, can further inhibit a student’s ability to think creatively about the problems clients present, or to be open to the “ecological systems theory” presented by social workers, which may even suggest *refraining entirely* from legal intervention.⁸⁸ A law student who lacks the ability to consider the potential that legal services may actually interfere with a client’s goals might be puzzled or even offended by this suggestion.⁸⁹

83. *Id.*

84. See Menkel-Meadow, *supra* note 20; Kennedy, *supra* note 12.

85. Julie Macfarlane, *What Does the Changing Culture of Legal Practice Mean for Legal Education?*, 20 WINDSOR Y.B. ACCESS JUST. 191, 195 (2001).

86. *Id.* at 145, referring to Ann Shalleck, *Construction of the Client within Legal Education*, 45 STAN. L. REV. 1731 (1993), and Russell L. Weaver, *Langdell’s Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991).

87. Weinstein, *supra* note 44, at 345.

88. Linda G. Mills, *On the Other Side of Silence: Affective Lawyering for Intimate Abuse*, 81 CORNELL L. REV. 1225, 1250, 1261-62 (1996) (formulating rules for an advocate’s relationship to her battered client, and recommending an institutional approach that permits the client to design legal and non-legal courses of action that better address the violence in her life).

89. A graduate of a clinical program that partnered law students with social workers shared his memory of being gently chided by a staff social worker for “thinking that every problem was a nail, because all I had was a hammer [his legal skills].”

Exacerbating the problem of parochialism is the legal field's ignorance of the discipline of social work, which may be expressed as disregard or even contempt.⁹⁰ As Weinstein notes: "[D]isciplines are akin to cultures and . . . cultural ignorance and misunderstandings abound between disciplines, much as they do between cultural groups."⁹¹

F. Ecological or Personality Concerns

Another barrier to collaboration is found in the cultural "dissonance" between law and social work, which may also be seen in stereotypical characteristics of lawyers, who, as supported by research, are "achievement-oriented, more aggressive, and more competitive than other professionals and people in general."⁹² Legal education values rational, analytical thought and devalues emotional matters, including relationships, the "bread and butter" of social work.⁹³ "Being unable to recognize, tolerate, or admit such 'weaknesses' in themselves, law students and lawyers would have little tolerance for exploring those aspects of their clients' problems or dealing with the stress of group dynamics."⁹⁴

IV. RECCOMENDATIONS

Borrowing from the "Generalist Model" found in the field placement program of the school of social work, a clinical legal curriculum that adopts an interdisciplinary approach may move beyond the mastery of skills, requiring the application of knowledge and acquisition of a "style" of practice.⁹⁵

90. Michael Benjamin, *Child Abuse and the Interdisciplinary Team: Panacea or Problem?*, in FAMILY LAW: AN INTERDISCIPLINARY PERSPECTIVE 125, 135 (Howard H. Irving ed., 1981). "Having little direct contact with each other, operating from widely divergent conceptual and operational perspectives, the resulting high level of interdisciplinary ignorance can, quite naturally, give rise to harsh and pejorative stereotypes of professionals in other disciplines." *Id.* at ____.

91. Weinstein, *supra* note 44, at 328. Obviously, this cuts both ways, and lawyers are subject to being viewed as part of a profession that may not be trusted by others.

92. *Id.* at 349.

93. *Id.*

94. *Id.* at 351.

95. *See supra* note 16 and accompanying text.

Law students require an orientation that conveys real knowledge about the clients themselves (in social work theory, referred to as the “persons in environment”), their relationships to the community in which they live and to the community and social service network in which the clinic is located (“systems”), and the potential avenues for justice (“intervention”). Additionally, they need to learn how to collaborate with other clinic staff, as well as how to set goals related to their individual clinical legal education.

Such an orientation elaborates upon the pedagogical goal of client-centeredness, which seeks to provide a means for the lawyer to understand the problem experienced by the client without mediating factors (such as a judgmental attitude) that interfere with full communication and inhibit effective performance of lawyering tasks.⁹⁶ It also teaches the value of fact investigation, by exposing students to “systemic, macro-level problems within the legal system” and the opportunity to explore social justice issues.⁹⁷

A “generalist” approach also supports other pedagogical goals that seek to foster social justice through examining the complexities and contradictions in the lawyer-client relationship and the impact of the legal system and its institutions upon clients subordinated by terminations of food, shelter, health care, and other necessities of life. For example, in a clinical setting that offers services to tenants facing homelessness, victims of crime, people with disabilities, immigrants, refugees, and other economically and socially disadvantaged clients seeking assistance, law students should be provided with an orientation that extends beyond an introduction to substantive and procedural laws. In order to engage in problem solving with clients, students need to appreciate the context in which the problems arise; this requires an understanding of the social realities in which clients live.

At the outset of the clinical semester, these concepts may be completely new, vaguely understood, or the subject of erroneous preconceptions. Each student brings unique experiences and terms of reference through which he or she interprets social issues such as

96. Client-centeredness is fully discussed by Avrom Sherr. See SHERR, *supra*, note 67.

97. Johanna Bond, *The Global Classroom: International Human Rights Fact-finding as Clinical Method*, 28 WM. MITCHELL L. REV. 317, 329 (2001).

unemployment, reliance on public benefits, and immigration.⁹⁸ Clinic staff and representatives of agencies and community organizations possess knowledge of and experience with the issues confronting our clients, through which they may challenge students' prior notions and beliefs. By facilitating discussion of the myths and stereotypes that surround issues such as racism, discrimination against people with disabilities, poverty, and domestic violence, teaching staff provide students with the basic knowledge from which they may engage in the experience of practice.⁹⁹

Core values fundamental to the mission of enhancing access to justice through interdisciplinary collaboration may also be demonstrated and modeled during this orientation. Team-teaching certain subjects, providing interviewing skills during new-student orientation, co-chairing weekly student/staff meetings, consulting with respect to client intake, and debriefing after interviews, mediations, or tribunal appearances all demonstrate to students that the professional staff members depend on and value each other when addressing client needs or administering the Clinical Law Program.

We contend that a curriculum more clearly focused upon the theoretical basis underlying specific competencies and values, as suggested by field instruction in the Generalist Model of social work, will produce several key outcomes. A clinical legal education program that includes a social work practice offers an ideal prospect for the development of a curriculum geared towards shaping appreciation for, understanding of, and commitment to social justice in law students by incorporating social work theory. Teaching a student how to reflect upon clinical experience within a social justice context will create a lifelong awareness of the roles the law and the legal profession play (or fail to play) in addressing the justice needs of the community.¹⁰⁰

98. Law students are as prone as the general society to believe myths and stereotypes about welfare recipients, refugees, and immigrants.

99. See Jacobs, *Full Legal Representation*, *supra* note 68. Jacobs speaks about "transforming our vision of clients from 'them' to 'us,'" through helping legal professionals become more aware of the way they actually relate to poverty. This is accomplished first, by becoming aware of the problem of "devaluing" clients, and then by contemplating how clients live. *Id.*

100. Research suggests that students required to engage in poverty law coursework derive

Furthermore, by valuing the theory, professional values, and language of social work,¹⁰¹ a clinical legal program will benefit through confrontation of the challenges inherent in such an enterprise, and by fostering collaboration, which embodies important principles related to teamwork, joint problem solving, and shared leadership. Honoring these principles will lead to a harmonious working relationship between the disciplines and also to a means for developing a common platform from which to forge compatible goals.

We propose that the curriculum in such a clinical law program must focus clearly and consistently upon its interdisciplinary ideology, and therefore be prepared to counter ideological conflict arising from this orientation. Such preparation could include, for example, introducing expectations that have not previously been made explicit, and confronting ideological, cultural, and linguistic “differences.” Socializing students (and staff) to accept and expect these challenges may in itself be an exercise in countering resistance to change.

a commitment to perform pro bono work after graduation. See Catherine L. LaFleur, *Surveying Poverty: Addressing Poverty Law in a Required Course*, 42 WASH. U. J. URB. & CONTEMP. L. 147, 157 (1992). See also Barbara Bezdek, *Reflections on the Practice of a Theory: Law, Teaching & Social Change*, 32 LOY. L.A. L. REV. 707, 710 (1999) (describing the “moral agency” aspect of the Legal Theory and Practice (LTP) course at the University of Maryland).

Whether students will devote all or part of their careers to the legal problems of poor and oppressed people, the enduring visions of justice that they develop in the LTP courses will shape policy throughout the nation. In addition to making law through formal channels in their capacity as counselors, legislators, and judges, our graduates will enact their social vision in corporate boardrooms, churches and synagogues, bars and clubs, and living rooms. By helping them to become responsible actors and equipping them to use law in real circumstances, LTP courses provide students with an early opportunity to apply the law and understand that it can ameliorate poverty and injustice.

Bezdek, *supra*, at 710.

101. Weinstein, *supra* note 44, at 365. Weinstein writes:

Professions are cultures of their own with their specific languages, knowledge bases, skills, methods, attitudes, and institutions. Cross-cultural communication and collaboration require an understanding of one’s own culture as well as a willingness to reach across cultural boundaries to share ideas. Legal training does not include education about these cultural differences; nor does it explicitly attend to the acculturation process that law students undergo.

Id.

Many law students face a steep learning curve upon enrollment in a clinical legal education program. In addition to mastering multiple new instrumental competencies and substantive legal principles in order to perform casework, the “successful clinical law student”¹⁰² must also acquire a significant amount of conceptual knowledge about the role of the legal profession in relation to poverty and social justice. Simultaneously, and often counter-intuitively, law students in a clinical program involving lawyers, law students, social workers, and social work students must learn how to collaborate, both within the legal profession and with members of the social work profession.¹⁰³

Linking clinic goals and values clearly and consistently with the clinical curriculum will create a framework and structure to ease this process. Academic and professional expectations related to competence in all of these areas must be made possible by clinical faculty and staff through the articulation of goals that set clear and measurable learning and evaluation standards and target core pedagogical principles and institutional objectives.

A clinic curriculum that incorporates goals and values performs the following functions:

(1) It forges a learning agreement, which identifies the important abilities (i.e., skills, processes, strategies, and techniques), knowledge (i.e., facts, concepts, and principles), and attitudes (i.e., values and dispositions) conducive to success;

(2) It offers a course, taught concurrently with the student’s placement, in which readings and discussions assist clinical law students to successfully meet the learning outcomes set forth in the learning agreement, and which conveys ethical principles and professional values that are demonstrated and modeled by teaching staff;

(3) It provides supervision to guide and support the clinical law student towards meeting expectations with respect to professional

102. This language suggests “substantive learning outcomes,” which are the “essential and enduring knowledge, abilities (skills) and attitudes (values and dispositions) that constitute the integrated learning needed by a graduate of a course or program.” See GRANT P. WIGGINS, UNDERSTANDING BY DESIGN (1999).

103. See CHAVKIN, *supra* note 67, at 85-90 (devoting an entire chapter to collaboration as a necessary skill and value identified in the MacCrate Report).

responsibility and competent case management in the performance of practice roles, as well as meeting the expectations set forth in the learning agreement;

(4) It engages law students in self-assessment in all aspects of clinical law practice and professional development; and

(5) It evaluates students through file review and direct observation of interaction with clients, tribunals, and colleagues.

V. CONCLUSION

By reconceptualizing experiential learning in a clinical legal setting from the theoretical perspectives of social work—a discipline to which it closely relates—Legal Assistance of Windsor imports new opportunities for its law students, clinical law faculty, and staff to explore theoretical issues at many points along the continuum of clinical practice, which includes skills, ethical considerations, questions of social justice, the role of law, and law itself. Such a project serves two purposes: strengthening and enriching the Clinical Law Program by building upon its theoretical base, while more fully exploring its transformative potential in engaging in forms of service and learning that are responsive to community needs and educational goals.