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Expanding Our Reach: Direct Client Representation vs. Policy and Advocacy Impact in a Transactional Clinic

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Expanding Our Reach: Direct Client Representation vs. Policy and Advocacy Impact in a Transactional Clinic

Joseph Pileri

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The 2016 presidential election was met immediately around the country with calls to action for lawyers to provide legal representation and resources to vulnerable populations that would inevitably be affected by the incoming presidential administration. Lawyers showed up en masse, for example, at airports to offer services to travelers and families impacted by the executive order banning individuals from several predominantly Muslim countries from entering the country.¹ Those lawyers were not alone. Calls also went out around the clinical community to use clinicians' positions and resources in ways that further our work on behalf of communities which suddenly found themselves potential targets of a new administration. Many transactional clinicians saw the outcry as an "all hands on deck" alarm and asked themselves how they could help.

1. Jonah Engel Bromwich, *Lawyers Mobilize at Nation's Airports After Trump's Order*, N.Y. TIMES (Jan. 29, 2017), https://www.nytimes.com/2017/01/29/us/lawyers-trump-muslim-ban-immigration.html?_r=0.

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Transactional clinics, compared with other law school clinics, face unique challenges in responding to threats facing client populations. Our colleagues in other clinics offer students the opportunity to work on advocacy projects, community education initiatives, impact litigation, or other work designed to achieve outcomes beyond individual client representation. Many transactional clinics, however, are structured entirely around representing individual entrepreneurs, businesses, and charities in a range of legal issues. This focus is the result of two phenomena. First, a disproportionate number of law students plan to pursue a transactional practice after graduation compared to the number of transactional experiences available in law school. Second, all clinical experiences are time-limited, and students generally have relatively little transactional law experience to draw on, limiting the amount of work that a transactional clinic can take on during the course of a semester. Representing individual businesses or nonprofits seemingly restricts the impact of students' work—they can only represent one or two clients per semester. Many businesses and nonprofits remain unserved.

Every clinic faces trade-offs between directly representing individual clients and taking on projects with broader policy and advocacy goals. For transactional clinics, that trade-off is between giving students hard-to-obtain transactional experience through representing individual entrepreneurs and organizations and allowing students to assist a wider group through other initiatives. Balancing these trade-offs is particularly important for clinicians interested in leveraging student resources to make their clinics agents of change in a community.

This commentary explores different options for accomplishing these broader goals, trade-offs that these options pose, and how clinicians navigate those challenges. The following summarizes ideas and challenges, and suggests ways to balance trade-offs and further integrate change-making into clinic design. In the wake of the 2016 election, transactional clinicians will undoubtedly increasingly design clinic work around impact. This commentary aims to help those clinicians in that effort.

I. Making an Impact Through Direct Representation

Transactional clinics can be and already are impactful using a model of individual client representation. Transactional clinicians often pursue impact through individual client representation by (a) targeting a specific set of clients from underserved neighborhoods or backgrounds, such as returning citizens or program participants from a small business incubator in an economic redevelopment zone; and (b) representing nonprofit organizations whose programmatic work aligns with the goals of the clinic. Those goals include supporting disadvantaged entrepreneurs, supporting community economic development, furthering the growth of social enterprises and other mission-based organizations, creating sustainable businesses, building and preserving affordable housing, and addressing economic inequality.

Due to the various structures and mandates of transactional clinics, some clinicians are more limited in their ability to choose clients. Certain law schools require that transactional clinics serve student entrepreneurs and other clients affiliated with the university, while others are required by their university or funders to make their services widely available to the public.² Several clinicians described having to balance these mandates with the desire to pursue broad impact, while others indicated that their ability to be change agents was heightened by having to take any client that comes through the door—a “public defender” model of guaranteed representation means that clients will not be denied representation because of sophistication or experience.

Below are examples from clinicians who have leeway in choosing clientele that have opted to take mission and impact into account when retaining clients. These examples demonstrate the ways that mission can be built into clinic design and the impact that transactional clinics can have on vulnerable communities.

A. Representing Returning Citizens

Since the spring 2014 semester, Georgetown’s SENL Clinic has worked with and actively recruited returning citizen clients or nonprofit clients that assist returning citizens. The SENL Clinic provides legal support to social enterprises, small businesses, and nonprofits in D.C. In spring of 2014, SENL Clinic students represented Women Involved in Reentry Efforts³ (W.I.R.E.) in its formative stages of development. The W.I.R.E. is a network of formerly incarcerated women who have successfully navigated the reentry process who in turn help mentor other returning women and educate policymakers and community members on the particular challenges women face during reentry. The student attorneys advised the W.I.R.E.’s board of directors on entity structure options and the tax-exemption application process. The student attorneys also drafted governance documents and created a board manual for the W.I.R.E.’s board of directors.

Student attorneys in the SENL Clinic also represented a returning citizen who had already started his own successful business and wanted to start a nonprofit to help other returning citizens learn job skills. The student attorneys assisted the returning citizen client with structuring the relationship between his for-profit business and the nonprofit arm, as well

2. The USPTO’s Law School Clinic Certification Program, which allows law students to practice before the USPTO, requires that clinics make their services available to the public. See *Law School Clinic Certification Program*, U.S. PATENT & TRADEMARK OFFICE, <https://www.uspto.gov/learning-and-resources/ip-policy/public-information-about-practitioners/law-school-clinic-1> (last visited June 13, 2017).

3. WOMEN INVOLVED IN REENTRY EFFORTS, <https://thewiredc.org/> (last visited July 10, 2017).

as preparing and filing all documents necessary for registration and tax exemption. SENL Clinic students presented legal workshops on various small business issues to participants in *Aspire to Entrepreneurship*,⁴ a pilot project for returning citizens developed by the D.C. Department of Small and Local Business Development, the D.C. Department of Employment Services, the Court Services and Offender Supervision Agency for D.C., Capital Area Asset Builders, and the D.C. Office of Returning Citizens. SENL Clinic students assisted a social enterprise that sells coffee and uses the proceeds to provide economic opportunity and job training to D.C.'s marginalized communities, including returning citizens. Finally, SENL student attorneys represented a returning citizen from the *Aspire to Entrepreneurship* pilot program in developing a business plan for his small business.

These projects accomplish several goals. First, they help individual returning citizens build businesses and organizations that are legally compliant and have structures that are thought out and built around specific organizational needs. They also create models that other returning citizen entrepreneurs can use when founding and growing their own organizations. By working with returning citizens and educating them on legal issues around entrepreneurship, the SENL Clinic empowers returning citizens to take control over their economic futures and put entrepreneurial ideas into action.

Following the success of these individual client projects, the SENL Clinic is exploring other broader projects to support returning citizen entrepreneurs. As the clinic director, Professor Alicia Plerhoples seeks out other opportunities to work with and support returning citizens in D.C. She is in talks now with a out-of-town small business incubator for returning citizens that is looking to expand and open a second incubator in Northern Virginia. She also has reached out to officials in D.C. government about the possibility of the SENL Clinic providing technical support for a potential initiative to encourage D.C. businesses to hire returning citizens.

B. Serving Entrepreneurs of Color

The EIC at Boston College gets a majority of its clients from small business incubators/accelerators *Smarter in the City*⁵ and *AccelerateBoston*.⁶ The incubators are located in two of Boston's poorest neighborhoods, Roxbury and Dorchester, respectively. Both accelerators incorporate supporting entrepreneurs of color into their missions. *Smarter in the City* was the first accelerator in the Dudley Square area of Roxbury, a Boston neighbor-

4. *Aspire to Entrepreneurship*, DEP'T OF SMALL & LOCAL BUS. DEV., <https://dslbd.dc.gov/service/aspire-entrepreneurship> (last visited July 10, 2017).

5. *SMARTER IN THE CITY*, <http://www.smarterinthecity.com/> (last visited July 10, 2017).

6. *Accelerate*, FUTURE BOSTON ALLIANCE, <http://www.futureboston.com/programs/accelerate> (last visited July 10, 2017).

hood that is not known for entrepreneurship. A high-tech accelerator, Smarter in the City provides six months of free workspace and professional mentorship to minority entrepreneurs.

The EIC provides free legal services to the accelerator cohort and alumni of both incubators. Smarter in the City is intentional about diversifying tech and diversifying entrepreneurship. The organization purposefully set up shop in Dudley Square rather than across the Charles River in Kendall Square, Boston's well-known "innovation district" where MIT is located and where most entrepreneurial investment is directed. This partnership has been mutually beneficial for the EIC and Smarter in the City. The Smarter in the City projects are especially exciting for EIC students because the entrepreneurs working at the incubator are engaged in cutting-edge work. The startups need sophisticated and complex legal assistance, which EIC's students are ready to offer. AccelerateBoston supports nascent small business owners in the Dudley Square and Roxbury communities as these neighborhoods begin to experience what looks like gentrification. AccelerateBoston helps community businesses within Roxbury and Dorchester stay in the community and mitigate displacement as the city strives to innovate and develop.

Both organizations are intentional about addressing the lack of opportunity for entrepreneurs in communities of color generally and in specific neighborhoods in Boston in particular. Smarter in the City, for example, explicitly states that it is showing a new face to both the city and the high-tech sector to overcome misconceptions about diverse peoples' capabilities. By focusing on these neighborhoods, the EIC attempts to create some form of equality of access and to empower residents of the neighborhood by providing free legal advice that they otherwise would not have received. Diversifying entrepreneurship by focusing on a particular geographic community addresses racial justice, income inequality, and wealth inequality. Like the SENL Clinic, the EIC's representation of businesses that are incubated by these organizations positions them to grow their operations and receive additional funding. This work also allows businesses to be stronger and more resilient in the face of legal risk, thereby increasing the odds that these companies survive and thrive and contribute to economic betterment in their communities.

C. Embracing Impactful Economic Models

In addition to the two examples discussed above, transactional clinics can effectuate change by implementing economic models like worker cooperatives or other worker-owned business structures. These models give economic power to members of underserved communities and have the potential to generate wealth for workers and communities that have been historically denied access to wealth. Recommending those models, however, must be balanced against client-centered lawyering. Students may recommend worker cooperatives or other models to their clients, but decisions about entity choice and business structure remain with

the client. That said, reference to the current political climate and the challenges that face client communities can be a powerful context for student recommendations. Economic models that enhance worker bargaining or political power vis-à-vis local governments and powerful private sector entities may be especially appealing to workers who feel disenfranchised. Clients will doubtlessly look to us for guidance on navigating what is sure to be a challenging and frightening time for many.

II. Impact Through Other Means

For the reasons discussed above, some clinicians find that using direct client representation as their sole tool for advocating for change is inadequate. While many clients are engaged in the work of coalition building and advocacy, student attorneys' work is often limited to advising on contractual, corporate, tax, intellectual property, and other legal matters. Clinicians and students may feel disconnected from their clients' advocacy and service work, and the clinic will necessarily limit its reach to the number of clients it can serve in a given semester. For that reason, transactional clinics increasingly pursue impact through alternative models of student work. Those models include (a) working with community coalitions in policy advocacy and other projects, including providing technical assistance to local government economic development initiatives; and (b) hosting workshops, clinics, or educational sessions for community members.

A. Legislation and Policy

Several transactional clinics already do or have begun to integrate legislative and policy advocacy directly into their clinic design. Legislative and regulatory reform,⁷ supporting efforts like "Ban the Box" legislation that seek to remove obstacles to employment⁸ and eliminating barriers to micro-enterprise,⁹ policy areas especially ripe for transactional clinics

7. The Food Law and Policy Clinic of Harvard Law School, for example, provided the Mississippi Department of Agriculture with a suite of legislative proposals relating to farmer's markets. *Past Projects*, CTR. FOR HEALTH LAW & POL'Y INNOVATION, <http://www.chlpi.org/food-law-and-policy/past-projects/> (last visited July 10, 2017).

8. "Ban the Box" refers to "a national campaign by civil rights groups and advocates for ex-offenders, aimed at persuading employers to remove the check box that asks if applicants have a criminal record from their hiring applications." Transactional clinics, like those at Wake Forest University School of Law, help raise awareness for this campaign. *Ban the Box*, PRO BONO PROJECT, WAKE FOREST SCH. OF LAW, <http://probono.law.wfu.edu/our-projects/ban-the-box/> (last visited July 10, 2017).

9. Student attorneys with the Cornell Securities Law Clinic submitted comments in support of rules aimed at reducing burdens on small issuers under the Jumpstart Our Business Startups Act. Letter from Cornell Securities Law Clinic, Release Nos. 33-9470, 34-70741; File No. S7-09-13 (Proposed Rule to Govern the Offer and Sale of Certain Securities Under the Jumpstart Our Business Startups Act)

to add their expertise and experience. Some clinicians prepare action research reports¹⁰ and other white papers on these issues. These projects not only add support to the position in question; they also build the clinic's reputation as a leader in a space and, in turn, attract more clients. Further, they give students the opportunity to develop skills to which they would otherwise not have exposure through direct representation. Students working on legislative and policy projects have the opportunity to navigate complex multiparty ethical issues, learn and understand regulatory frameworks from the perspective of an advocate, collaborate and develop relationships with other students and organizations, manage large projects, and translate their legal knowledge and judgment into material that is to be broadly consumed.¹¹

Not all advocacy projects require the use of students, and clinicians often have the time and flexibility to undertake projects outside of their work with students. Beyond student-supervised work, clinicians, in their role as faculty members and scholars, can take on policy advocacy and other projects themselves that leverage their experience working with students and clients but do not require that students sacrifice valuable experiential time. Scholarship presents the opportunity for faculty to rigorously delve into issues affecting clients and propose legal solutions to these problems. Clinicians are well positioned to add stories from client work to otherwise esoteric or abstract debates. Professor Plerhoples, for example, is in the beginning stages of writing a book about building smart public policies to support returning citizen entrepreneurs. Some students may want to take on such projects, but this method does not require additional work from students or detract from the clinic's ability to service its clients.

It also was suggested that transactional clinics can support advocacy measures by organizing clients and helping build coalitions of like-minded entrepreneurs and organizations. Transactional clinics often represent entrepreneurs from the same or similar communities or organizations with related missions. George Washington University Law School's Small Business & Community Economic Development Clinic, for example, hosted a citywide convening on boosting entrepreneurship among returning citizens. Transactional clinicians can leverage their connections

(Feb. 3, 2014), available at <https://www.sec.gov/comments/s7-09-13/s70913-219.pdf>.

10. For a discussion of action research, a method that combines action and service learning, see Susan R. Jones & Shirley J. Jones, *Innovative Approaches to Public Service Through Institutionalized Action Research: Reflections from Law and Social Work*, 33 UALR L. REV. 377 (2010).

11. For a detailed discussion of the educational benefits of complex advocacy projects in a transactional clinic, see Laurie Hauber, *Complex Projects in a Transactional Law Clinic*, 18 J. AFFORDABLE HOUS. & CMTY. DEV. L. 247 (2009).

within the communities they serve and use their position to foster partnerships that bring advocates and would-be advocates together.

B. Educating the Community

Some clinics include community education among the projects that students handle. In these clinics, students give community workshops or develop educational materials to disseminate to the public or prepare form documents, guides, and other educational materials. The Community Development Clinic at the University of Massachusetts Law School developed a database for animal shelters that multiple organizations now use in their work. The SENL Clinic and others ask students to give workshops on legal issues affecting nonprofits and small businesses to accelerators, nonprofits, and other organizations working with the clinics' clientele. The Small Business Legal Clinic at Lewis & Clark Law School has been working with local businesses in Oregon since the election to give entrepreneurs and business owners who depend heavily on immigrant workers "know your rights" presentations on businesses' and employees' rights in case of a raid by Immigration and Customs Enforcement.

Several clinicians noted that these projects require a substantial time commitment from students and that it is easier to fit these projects into a year-long clinic. That said, in addition to their impact, projects like these give students the opportunity to practice public speaking and writing for nonlawyers, important skills for when they enter practice.

III. Conclusion

Over a year since the presidential election, many of our colleagues may be interested in using their position to be agents of change in a way that goes beyond the services they provide individual clients. Transactional clinicians around the country are looking to redouble efforts described above and potentially supplement those efforts with new initiatives. The prospective implications of the new administration on our clients and their communities fuel this interest.

Nonetheless, some clinicians are reticent to be (or appear to be) too political or to bring their own political leanings into the classroom. Doing so has the potential to create an inimical classroom environment or alienate students with opposing political views. By producing animosity or devoting substantial amounts of classroom time to political arguments, time and effort that would otherwise be spent in service of clients is wasted. Some clinicians go so far as to bring in outside speakers on more politically sensitive issues to preserve their own appearance of impartiality.

Generally, however, the urgency of the current moment, combined with exposure to live clients, allows both faculty and students to overcome any perceived political differences. Exposure to clients and their work is powerful for students. Aside from learning real-world lawyering skills, students often absorb their clients' sense of mission through their

representation. Further, clinicians' enthusiasm and passion for their work are contagious. No matter the structure or methods, students pick up on that enthusiasm from professors. We should be thoughtful about how we integrate impact into our clinical design, but in turbulent times we can all be examples of passionate, tireless advocacy for our students. Doing so will ultimately have the biggest impact on our clients, our students, and our communities.