

New York State Judicial Institute

**Partners in Justice:**

**A Colloquium on Developing Collaborations Among  
Courts, Law School Clinical Programs and the Practicing Bar**

***The Role of the Organized Bar in Building Bridges  
Between Practicing Attorneys and Law Schools:  
An Essay on the Prospects for Collaboration  
Between Law Schools and the Bar to Advance Social Justice***

By:

Norman L. Reimer  
Gould Reimer LLP  
President  
New York County Lawyers' Association

May 2005

## Introduction

The organized bar in this country has long advocated for the reform of legal education.<sup>1</sup> In response, the legal academy has engaged in a constant self-analysis, critiquing its own approaches and striving to blend reverence for established methodology with innovation.<sup>2</sup> Clinical education, externships and other modalities that depart from the traditional case method of instruction have expanded at a varied pace throughout the American legal establishment. While some in the profession may question whether this trend is occurring as pervasively as it should, it does move forward, answering the call for reform in a sustained quest to produce better-trained, more versatile and ethical lawyers.

But has the bar itself done all that it can to foster reform? Have we looked to our own organizations to more aggressively and effectively integrate law students into our profession? Or have we assumed the role of interested spectators, all too ready to criticize, but unwilling to enter the fray?

From the perspective of a major urban bar association, imbued from its creation with a mission to promote legal education and expand access to justice, the question arises of whether the organized bar has overlooked important opportunities to incorporate law students and faculty members into its program component? While most mainstream bar associations are all too ready to welcome law students into their membership ranks, and aggressively pursue them upon graduation with free memberships, CLE discounts and other blandishments, they have stopped short of building the kinds of bridges between the law student and the practicing bar that can produce an array of benefits for the student, the law schools, the profession and society.

---

<sup>1</sup> The colloquium paper assembled by Professor Randy Hertz fully documents those calls for reform.

<sup>2</sup> The Clinical Legal Education Association is currently engaged in a process to develop a comprehensive compilation of best practices of law schools for preparing students to practice law.

A confluence of developments suggests that this is a time of unique opportunity to build those bridges. Law school receptivity to new teaching approaches is just one important factor. At the same time, the nature of lawyering itself is evolving in ways that increase the demand for more versatile lawyers equipped to provide representation in a more creative and holistic approach. With unprecedented levels of unmet legal needs, and an ever-increasing panoply of legal sanctions and impediments, society is in dire need of high-quality and more comprehensive legal service. Ironically, however, as the complex legal needs of the community spiral, governments on all levels are less willing and able to meet those needs. The *pro bono* movement, which is gaining steam throughout the profession, offers a measure of hope. While the profession may debate the precise definition of what constitutes *pro bono* service, the indisputable fact is that the organized bar remains firmly committed to advancing *pro bono* projects in service to the community. The coupling of that commitment with changing notions of lawyering and the willingness of law schools to support hands-on practical teaching methods, presents an enormous, largely untapped opportunity to improve legal training while simultaneously expanding access to justice.

This essay explores how the profession can realize that potential and invites participants in this colloquium, representing the clinical faculties, the judiciary and the bar, to propose viable models for concerted action consistent with sound pedagogic practices.

### **The Value of Clinical Education - A Subjective View**

I write as a lawyer who was trained in one of the early clinical programs and whose career was shaped by that experience. When I graduated from law school in 1977, I was one of a small cadre of lawyers whose law school experience afforded an opportunity to interact with real clients, witnesses, judges and adversaries. That clinical experience provided an opportunity to apply the first two years of classroom legal training in actual contexts, including investigation, witness and client preparation, motion

practice and numerous litigated court proceedings. Abstract ethical issues discussed in theory in the classroom arose on a daily basis in what amounted to the (supervised) practice of law. Employment flowed more directly from the clinical experience than anyone could have predicted. For all intents and purposes, clinical training enabled me to commence my career with more lawyering experience than most non-clinically trained attorneys would gain for years.

Other participants in this colloquium are better able to describe the pedagogic value of a clinical program. My view, shaped by first-hand experience as a young lawyer, and through two and a half decades as an employer of young lawyers, is that the clinically trained student is an invaluable asset. They come to practice with a far greater awareness of the demands and rewards of practice. Their comfort level with clients, witnesses, adversaries, judges and court personnel is plainly evident. Their sensitivity to the myriad ethical issues that abound is already switched on. In short, the clinically trained student exhibits virtually all of the fundamental lawyering skills and values identified in the MacCrate Report.<sup>3</sup>

Closely akin to the clinical experience is the externship experience. For the past decade, law student externs have been placed in my law firm. These students come to the frenetic environment of the small litigation practice untested and unfamiliar with the “culture of the unexpected” that is the everyday life of the practicing lawyer. Gradually the student is afforded an opportunity not just to perform support tasks, but to participate in every aspect of a law practice. This includes experiences that range from interacting with staff to observing witness interviews, client preparation and lawyer conferences dealing with the mundane to the abstract: everything from billing issues to complex

---

<sup>3</sup> See American Bar Association Section on Legal Education and Admissions to the Bar, *Legal Education and Professional Development - An Educational Continuum, Report of the Task Force on Law Schools and the Profession; Narrowing the Gap* (1992). The “MacCrate Report” describes a set of fundamental lawyering skills and values designed to produce optimally trained lawyers prepared to enter practice with a wide range of skills capable of fulfilling the fundamental values of the profession.

litigation and negotiation strategies and interpersonal skills. The integration of these prospective lawyers into the actual practice of law, combined with an accompanying externship seminar conducted by full-time faculty, provides a rich and rewarding educational experience that no textbook or simulation can equal. It is a process that contributes immeasurably to the transition from student to lawyer.

But it is not just the student who benefits from the clinical experience, nor just the student and law office that benefit from the externship. Clients and society benefit as well. These young, soon-to-be lawyers are capable of making exceptional contributions to high-caliber representation. What they lack in experience, they make up for in diligence, focus and care. Of course, close and proper supervision is a *sine qua non* for success. But properly supervised, these law students are at least as capable of rendering quality service as most newly admitted attorneys. The fact of admission to the bar merely establishes a base line of legal learning; it does not portend any particular outcome in terms of ability or judgment.

Thus, in assessing the efficacy of law student involvement in projects designed to expand access to justice, there is no reason to doubt the value of law student participation and every reason to believe that in a properly structured environment, students are capable of rendering valuable service to client populations.

### **The Growing Acceptance of New Pedagogic Methods**

The colloquium paper, “Introduction to Clinical Legal Education” fully documents the evolution of clinical pedagogy from its roots in the 19th century to its slow and fitful road to acceptance in the late 20th century.<sup>4</sup> It was not until the 1960s through the late 1990s that clinical legal education gained substantial acceptance owing to “demands for social relevance in law school, the development of clinical teaching methodology, the

---

<sup>4</sup> The paper constitutes excerpts prepared by Professor Randy Hertz from: Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 *Clinical L. Rev.* 1 (2000).

emergence of external funding to start and expand clinical programs, and an increase in the number of faculty capable of and interested in teaching clinical courses.”<sup>5</sup> Chief among these factors was the social activism of the 1960s.<sup>6</sup>

Despite the widespread growth of clinical education, however, the casebook methodology remained firmly entrenched as the prevailing mode of instruction. Resistance to change prevailed notwithstanding sustained criticism by educators, the practicing bar, the judiciary and market forces demanding better trained lawyers.<sup>7</sup> Now, in the early phases of a new century, there is a growing recognition that clinical training is an ideal method not just to teach the skills necessary to practice in a particular subject matter, but as a broader means of acquiring the full range of skills essential to good lawyering:

The student learns about lawyering skills such as interviewing, counseling, negotiation, trial advocacy, and case management; technological resources; ethical considerations; political and structural influences; the role of social science, psychology and racial, cultural and economic forces; and the lawyer’s role as a force for extracting services from and changing the process. In other words, the student is learning how to be an effective problem solver for clients ....  
*Id.* 7 Clinical L. Rev. 72.

The expanding embrace of this new teaching methodology, manifested both in the development of in-house clinics and externships, and the recognition that it can produce better lawyers, may well foster an enhanced receptivity to new clinical models.

### **Evolving Notions of Lawyering**

---

<sup>5</sup> *Id.* at 7. (Page references are to the excerpted version of the article, unless otherwise noted).

<sup>6</sup> *Id.* at 8.

<sup>7</sup> See: *Id.* at 17 - 18, footnotes 81 - 85.

Interestingly, as the legal education community warms to the expansion of clinical training and seeks to develop new models for inclusion in the curriculum, the nature of lawyering is itself undergoing a profound change. These changes are manifested in a number of different ways. First, there is a growing recognition of the interdisciplinary nature of client problems. Legal problems that arise in a particular forum, involving a discrete body of substantive law, may well implicate other problems that involve unrelated legal issues. For example, what at first blush may appear to be a landlord-tenant issue may at its root involve underlying financial, employment, psychological or criminal issues. When the well-to-do in society encounter such interconnected problems, the likely response is to engage several different lawyers with different skills or alternatively to engage a large firm that services myriad practice areas.<sup>8</sup> For the poor and the working classes, that option has not generally been available. Accordingly, there is a growing recognition that well-trained lawyers must be able to address an array of client needs.

### **Holistic Lawyering**

As a result of this need, the legal community is beginning to recognize the importance of “holistic” lawyering. In the criminal defense context, “holistic lawyering” “strives to encompass the various underlying issues that often lead to clients’ experiences with the criminal justice system, with the aim of addressing those circumstances and preventing future criminal involvement.”<sup>9</sup> In New York City, the Neighborhood Defender Services of Harlem and the Bronx Defender Services provide excellent

---

<sup>8</sup> From the standpoint of the small-firm criminal defense practitioner, when collateral issues are recognized, one typical response is to rely upon a network of colleagues in various practice areas to provide guidance to the criminal lawyer or who accept client referrals.

<sup>9</sup> Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 *Fordham Urb. L.J.* 1067-68 (2004), citing Erik Luna, *The Practice of Restorative Justice: Punishment Theory, Holism and the Procedural Conception of Restorative Justice*, 2003 *Utah L. Rev.* 205, 283 (2003).

examples of this revolutionary approach to lawyering. The methodology and benefits of holistic lawyering are covered in the colloquium paper prepared by Robin Steinberg.<sup>10</sup>

### **Problem-Solving Courts**

Court systems are also responding to multi-faceted social pathologies by abandoning traditional strictly adjudicative tribunals in favor of “problem-solving” courts. These courts are altering the traditional justice system landscape and changing the roles of courts, prosecutors and defense attorneys. In such varied areas as domestic violence, drug abuse and mental health, the success of these specialized courts depends upon attorneys with a new mind set: a focus not on “winning” or “losing,” but on the overall well-being of the client. These courts demand attorneys who are capable of rendering a far broader range of services than simply zealous pursuit of a favorable disposition of the single legal contest at issue. Attorney duties in these venues include assessing their clients’ underlying medical, psychological and rehabilitative needs and accessing a wide range of support services. To be sure, these courts, because of an inherently coercive component and the institutional pressure to relinquish fundamental rights, also present new ethical dilemmas with which the profession is just beginning to grapple. With these challenges come the potential for immense social and economic benefits for the clients and the community. But success depends upon the availability of lawyers specifically trained to function in an environment unfamiliar to the lawyer trained solely to function in a traditional adversarial role.

### **Collateral Consequences of Criminal Conviction**

From the client perspective, even when underlying pathologies are absent, a growing web of non-criminal sanctions has fostered a heightened awareness that

---

<sup>10</sup> See Robin G. Steinberg, *Beyond Lawyering: How holistic representation makes for good policy, better lawyers and more satisfied clients*. For a discussion of the limitations on the value of holistic representation, see the colloquium paper by Brooks Holland, *Holistic Advocacy: An Important But Limited Institutional Role*.



collateral consequences of a criminal adjudication may precipitate a wide array of adverse legal consequences.<sup>11</sup> The “collateral consequences” of a criminal conviction, the focus of this colloquium, have multiplied exponentially in the past decade. For an ever-expanding multitude of offenders, some guilty of relatively minor, non-violent offenses, these consequences dwarf the severity of the criminal sanction itself. The following scenarios are all based upon actual cases occurring within the past few years:

- A client charged with a drug offense who has lived in the community and worked as a lawful permanent resident for 20 years, with three children all born in the New York area and all under the age of 15, faces mandatory removal as a consequence of conviction.
- The middle son of a single working mother is charged with a drug offense. The other two children are model students with no criminal history. If the middle son is convicted, the entire family faces eviction from the public housing in which they reside.
- A middle-aged man who has worked his whole life as a broker is facing drunk-driving charges. If convicted, he will lose his broker’s license.
- A 32 year-old man, who came to the United States as toddler, has not visited the country of his birth since his emigration at the age of two, does not speak the language of his native country and has no relatives living there. He faces charges that under the Immigration Law are considered an “aggravated felony.” If convicted, he faces mandatory removal.

These scenarios are by no means unique. As the national, state and local governments have increasingly adopted a retributive approach to offenders, the potential ramifications of conviction are now pervasive. In many circumstances the consequences are so severe and life-altering that it is not uncommon for clients to inquire if they can

---

<sup>11</sup> See Florian Miedel, *Increasing Awareness of Collateral Consequences Among Participants of the Criminal Justice System: Is Education Enough?*

“bargain” away these consequences by agreeing to accept a longer prison sentence. Nothing drives home the profound life-altering magnitude of these ancillary sanctions as the heart-wrenching spectacle of a human being offering to trade years of freedom to avoid those collateral sanctions. A number of the papers prepared in connection with this colloquium address these profound consequences and assess the general level of awareness concerning them.<sup>12</sup>

One basic fact emerges from these analyses: even the most experienced and best trained criminal defense lawyer, applying her skills in the highly specialized criminal defense field, may not necessarily have the skill set or knowledge to provide effective advocacy in the multitude of arenas in which a criminal adjudication may have collateral consequences.

### **Unmet Legal Needs, the Importance of *Pro Bono* Service and the Potential Benefits and Pitfalls of Unbundling of Legal Services**

Not surprisingly, as the burgeoning collateral consequences of conviction spawn an increasing array of related legal ramifications, particularly among less-than-affluent populations, society is experiencing a crisis of the unrepresented. In most cases, collateral legal ramifications occur in realms in which there is no right to the appointment of government-provided counsel. The right to hire counsel without the means to do so is a hollow right. This colloquium, documenting the vast array of unmet legal needs, demonstrates the enormity of this challenge.

Ideally this societal challenge should be shouldered by an equivalent societal response. Government should provide for a right to counsel and should provide the necessary funding to make that right a reality. The colloquium paper addressing the right

---

<sup>12</sup> See, e.g. Phylis Skloot Bamberger, *Article 6 C of the Correction Law: The Sex Offender Registration Act. Consequences of Conviction*; Barbara Mule and Michael Yavinsky, *Saving One's Home: Collateral Consequences for Innocent Family Members*; Manuel D. Vargas, *Immigration Consequences of Guilty Pleas or Convictions in New York Courts*.

to counsel and its absence amply demonstrate the magnitude of this problem and the potential value of providing counsel.<sup>13</sup> But no one can predict whether, or when, government will find and allocate the resources to realize the goal of providing counsel to all those who need representation. For the foreseeable future, access to justice will depend upon the largesse of the legal profession and its ability to respond creatively to this crisis.

A partial answer to this challenge lies in new approaches to “unbundling” legal services. Though far from ideal, unbundling offers one route to affording the unrepresented with at least partial assistance in meeting modern legal challenges. The colloquium paper on unbundling of legal services describes the potential benefits of this approach and identifies the difficult practical and ethical adjustments necessary to fully derive those benefits.<sup>14</sup>

Equally important is the willingness of the profession as a whole, as well as individual lawyers and law firms, to donate their professional expertise to meet the needs of the unrepresented. *Pro bono* legal services are the first and last defense against systemic injustice for those who lack the means to engage counsel. Recent studies suggesting that nearly half of New York’s lawyers provide *pro bono* services may be viewed either with glee or dismay, depending on the observer’s point of view. Whether the glass is considered half full or half empty is less important than finding new ways to fill it up. Fortunately, the confluence of developments in legal education and in how law is practiced and how courts address social ills may well provide an opportunity to foster far greater *pro bono* activity.

### **What Bar Associations Bring to the Table**

---

<sup>13</sup> See Andrew Scherer, *The Importance of Collaborating to Secure a Civil Right to Counsel*.

<sup>14</sup> See Rochelle Klempner, *Unbundled Legal Services in Litigated Matters in New York State: A Proposal to Test the Efficacy through Law School Clinics*.

Many bar associations<sup>15</sup> now either run their own *pro bono* programs or run them through a related bar foundation. An increasing number have one or more staff persons dedicated to the development and oversight of their *pro bono* program. In the case of the New York County Lawyers' Association (NYCLA), the bar now has two full-time employees whose sole function is to work with the volunteer membership to design and implement *pro bono* projects and then train participating attorneys to dispense a particular service in collaboration with volunteer experts in the field. In recent years, NYCLA's *pro bono* projects have included the following:

- A Legal Counseling Program that provides advice-only assistance to clients in landlord/tenant controversies, consumer bankruptcy and employment law.<sup>16</sup>
- The Parent Education and Custody Effectiveness (“PEACE”) program employs an interdisciplinary approach to education and counseling for divorcing and separating parents.
- A tri-bar Fee Dispute Program that, in collaboration with the Bronx Bar Association and the Association of the Bar of the City of New York implements the requirements of Rule 137.
- A tax law project designed to render service to the unrepresented in Tax disputes with the IRS.

Under NYCLA's aegis, during the course of the past seven years, 600 volunteer

---

<sup>15</sup> For purposes of this paper, “bar associations” refer to county, city or statewide bar groups comprised of lawyers from all practice areas, as opposed to the vast array of specialty bars comprised of lawyers representing a particular gender, ethnicity or practice group.

<sup>16</sup> This program is a joint program with the Association of the Bar of the City of New York.

lawyers have rendered *pro bono* service to approximately 3000 clients.<sup>17</sup> The Association recently undertook an institutional commitment to triple its *pro bono* service within two years.

NYCLA's experience with *pro bono* reveals an important and exciting phenomenon: whenever the Association launches a *pro bono* project, the number of available volunteers **exceeds** the program needs. This suggests that there is an unsated willingness by attorneys to participate in *pro bono* projects. This hypothesis is confirmed by feedback from participating lawyers, who uniformly report that they derive a high level of professional satisfaction from their involvement in providing this service to the community.

Bar associations and their ancillary foundations also bring another important dimension to the equation: a fundraising capability to obtain financial support for valuable community legal service. A solid administrative support structure and a proven track record of success presents an attractive model for the wide spectrum of foundations and organizations with an interest in providing support for various disadvantaged groups.

So the questions logically arise: for those bar associations that have a *pro bono* infrastructure in place and an untapped pool of available legal talent, is there an opportunity to develop new programs that can partner with law schools to develop new clinical programs and externships to foster collaboration between law students and practicing attorneys? If so can these partnerships help to address the unmet legal needs of disadvantaged communities?

### **Can Law Schools and Bar Associations Collaborate to Expand Access to Justice?**

This question poses an overarching challenge for the colloquium. From the law

---

<sup>17</sup> Many of these lawyers participate in more than one *pro bono* project over the course of several years.

school standpoint, the first requirement of any partnership is the establishment of a structure that can ensure a meaningful and high-quality environment for legal training. Thus, colloquium participants should be prepared to address how a bar-sponsored legal program can fulfill the essential pedagogic prerequisites for success.

To assess the prospects for successful collaboration, it is vital to identify those pedagogic requirements. Coincidentally, simultaneous with the writing of this paper, the Clinical Legal Education Association (CLEA), in conjunction with other organization and individuals interested in improving the preparation of new lawyers in the United States, has undertaken a “Best Practices Project” to identify best ways to prepare students for legal practice. The stated mission of the project is to establish minimum qualifications for law graduates that promote public protection, competence and accountability in the delivery of legal services. The project is looking at the entire gamut of teaching methodologies, from the traditional casebook/Socratic dialog approach to the increasingly prevalent problem-solving, simulation, externship and clinical modes. A draft working paper is presently under discussion and was the subject of a conference convened in New York on March 11, 2005.

While recognizing the on-going nature of the CLEA project, it is hoped that colloquium participants will articulate the proposed benchmarks for assuring that clinical programs and externships can guarantee that law graduates will be properly equipped to fulfill a lawyer’s legal and ethical duties. In terms of clinical training, participants may want to address whether the criteria for in-house clinics can be fulfilled in a bar-administered clinic. Indeed, a fundamental question that must be considered is whether it is possible to design an “external” clinic that can ensure the necessary faculty participation and oversight, and satisfactorily fulfill the minimum education goals of the successful clinic. There should be similar consideration of whether the externship model is better suited for adaptation to a bar association project, or whether it is feasible to blend the two models.

## Conclusion

From the standpoint of a bar association eager to forsake the role of bystander and actively collaborate with legal educators to facilitate the integration of law students into the practice of law, there is a critical need for guidance to embark on this new journey of collaboration. For an organized bar that seeks to expand access to justice at a time of unprecedented unmet legal needs, legal educators can provide the necessary guidance to harness the bar's capacity to implement *pro bono* projects and the resources of a vast talent pool of practicing attorneys. Evolving concepts of lawyering, and the diverse needs of clients facing an increasingly complex and multi-faceted array of legal and social impediments, present new challenges for the profession. They also present new educational opportunities to produce better trained and better prepared lawyers. In particular, in the realm of collateral consequences of conviction, -- the substantive concern of this colloquium -- the bar, the judiciary and the law schools have a unique opportunity to elevate the caliber of lawyering and contribute meaningfully to expanding access to justice.

If this colloquium can define the challenges that must be met in order to harness this potential for synergistic interaction, it can jumpstart the process of building bridges between law schools and the bar in furtherance of the cause of social justice.