

VIEWING *VALUE CREATION BY BUSINESS LAWYERS* THROUGH THE LENS OF TRANSACTIONAL LEGAL CLINICS

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ABSTRACT

In 1984, Professor Ronald Gilson wrote *Value Creation by Business Lawyers: Legal Skills and Asset Pricing* when there were only a handful of

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transactional legal clinics offering pro bono business legal services to real clients. Professor Gilson offered insightful observations in that seminal article that have been useful to clinicians about the failure of law schools to teach the skills and judgments needed by business lawyers. He observed that law schools could cure this deficiency by teaching practice skills, and facilitating practice through partnerships between academics and practitioners. Due to the changing legal marketplace and the rise in technology-driven entrepreneurship in the last 30 years, the authors review Professor Gilson's observations, implementing, in part, the theoretical perspective in his seminal law review article as a platform for their analysis.

This article analyzes how transactional legal clinics in law schools are responding to some of the reforms urged by Professor Gilson. Today, transactional legal clinics are facilitating partnerships between academics and practitioners not only in the academy, but also through partnerships with bar associations, law firms, and private lawyers. Additionally, this article examines transactional legal clinics nationwide 30 years after Professor Gilson's foundational work, which described business lawyers not as innate transaction costs to be endured, but as transaction cost engineers with the potential to create value in business deals. Despite a surge in transactional law clinics in the last three decades, there has not been a comprehensive examination of these clinics and the opportunities they create for educating law students to be business lawyers through the representation of actual clients in need of business legal services. The authors hope to fill a gap in the relevant business law scholarship and spark a robust conversation in the legal community about transactional clinic design trends and opportunities.

Finally, this article is also a companion to *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools* and discusses areas of clinical transactional practice, models and funding, industry sectors represented, clients served, transactional lawyering models, and future opportunities. Given the surge in transactional clinics at American law schools, which now number more than 150, and emerging scholarship in the field, a comprehensive discussion and analysis of design trends and opportunities is timely.

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INTRODUCTION

In 1984, Professor Ronald Gilson wrote *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*¹ when there were only a handful of transactional legal clinics offering pro bono business legal services to real clients.² Indeed, Professor Gilson offered many insightful observations in that seminal article that have been useful to clinicians about the failure of law schools to teach the skills and judgments needed by business lawyers. It should be noted that Professor Gilson's article concentrated on the traditional doctrinal curriculum. While he touched on aspects of clinical law and pedagogy, his article focused on how the traditional business law curriculum failed to adequately prepare transactional lawyers.³ He observed that law schools could cure this deficiency by teaching practice skills: "for example, how to draft; how to negotiate; the form that different types of agreements commonly take."⁴ The problem with this approach, he opined, "is that most legal academics are not really competent to teach these skills; the career paths of teachers at leading law schools typically do not reflect sufficient time in practice to have themselves perfected the skill that this approach to business law education would require."⁵ Professor Gilson also observed that the business law curriculum is focused on public ordering – the government's involvement in private arrangements – as opposed to private ordering, which is the substance of transactions between businesses and individuals most often encountered in private transactional practice.⁶ Overall, Professor Gilson called for law schools "to facilitate practice, [through] a partnership between academics and practitioners that holds promise for an important role for the former and better performance by the latter."⁷ Given the changing legal marketplace and the rise in technology-driven entrepreneurship, a review of Professor Gilson's observations is timely.

This article explains how transactional legal clinics in law schools are responding to this call and other reforms urged by Professor Gilson. Indeed, transactional legal clinics are facilitating partnerships between academics and

¹ Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L. J. 239 (1984).

² Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195, 208 (1997) [hereinafter Jones, *Small Business and CED*].

³ See Gilson, *supra* note 1, at 303-06.

⁴ *Id.* at 304.

⁵ *Id.*

⁶ *Id.* at 304-05.

⁷ *Id.* at 306.

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practitioners not only in the academy, but through partnerships with bar associations, law firms, and individual lawyers.⁸

This article examines transactional legal clinics 30 years after Professor Gilson's foundational work, which described business lawyers not as innate transaction costs to be incurred, but as transaction cost engineers with the potential to create value in business deals.⁹ With the objective of improving business law training, Gilson further recognized the divide between transactional practice, i.e., what business lawyers actually do, and the academic study of business law. Despite a surge in transactional law clinics in the last three decades, along with Gilson's assertion that law schools "cannot teach practice,"¹⁰ there has not been a comprehensive examination of these clinics and the opportunities they create for educating law students to be business lawyers while representing actual clients in need of business legal services. The authors hope to fill a gap in the relevant business law scholarship and spark a robust conversation in the legal community about transactional clinic design trends and opportunities. The platform for our analysis is the theoretical perspective offered in Professor Gilson's seminal law review article. Given the number of transactional clinics nationwide, currently numbering over 150,¹¹ an analysis and discussion of programmatic trends is timely.

Building on our earlier article, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*,¹² Part I lays a brief foundation for areas of transactional clinical practice. Part II explores transactional clinical models, program funding, and industry sectors represented. Part III analyzes client communities served. Part IV considers transactional lawyering models. Part V speculates on future opportunities for transactional clinics.

PART I. THEORETICAL UNDERPINNING OF TRANSACTIONAL LEGAL CLINICS

In *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*,¹³ we discuss how transactional clinics, like their litigation counterparts, emerged in response to societal needs.¹⁴ In the case

⁸ See Part III, Subsection E on Univ. of Michigan's affiliate program.

⁹ Gilson, *supra* note 1, at 244.

¹⁰ Gilson, *supra* note 1, at 304.

¹¹ *Law School Entrepreneurship Clinics*, KAUFFMAN FOUNDATION, available at <http://www.entrepreneurship.org/en/entrepreneurship-law/law-school-entrepreneurship-clinics.aspx> (last visited May 10, 2014).

¹² Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 WASH. U J.L. & POL'Y 85 (2013) [hereinafter Jones/Lainez, *Enriching*].

¹³ *Id.*

¹⁴ *Id.* at 87.

of transactional clinics, increased interest in experiential opportunities in business law in the last few decades resulted from several factors. These factors include student demand, government support for microbusinesses, a renewed emphasis on entrepreneurship fueled especially by a recent downturn in the U.S. economy, an expansion of early community economic development clinics beyond housing to include asset-based community development, and concern for closing the economic and racial wealth gap.¹⁵ Furthermore, many of today's transactional clients are likely to be social entrepreneurs who need help with a social enterprise. While both terms lack precise definitions, they typically refer to legal hybrids (for profit/nonprofit), and double or triple bottom line businesses,¹⁶ or nonprofits with social missions and a concern for income generation.¹⁷ Millennial generation entrepreneurs create some of these social enterprises, and are distinguished from other generations by their entrepreneurial spirit.¹⁸

Our earlier research shows the following types of transactional clinics and notes that one clinic may represent several different client types: Community Economic Development ("CED"), Small Business/Entrepreneurship, Intellectual Property, Microenterprise, Arts and Entertainment, and Nonprofit.¹⁹ For example, the University of Richmond Intellectual Property and Transactional Law Clinic focuses on IP issues in the context of small business, yet some of the cases have a distinct CED focus.²⁰ Similarly, IP is a strong component of the George Washington University Small Business and Community Economic Development Clinic (GW Law SBCED Clinic).²¹ In general, the overlapping nature of the work

¹⁵ *Id.* at 87-88; JOSEPH E. STIGLITZ, *THE PRICE OF INEQUALITY: HOW TODAY'S DIVIDED SOCIETY ENDANGERS OUR FUTURE* (w.w. Norton & Co., 2013). See generally, *Economic Development in Diverse Communities: Inclusive Procurement by Cities and Counties*, Insight Ctr. For Cmty. Econ. Dev., Jan. 2014, <http://www.insightccd.org/uploads/publications/assets/econ-dev-diverse-communities.pdf> (last visited May 19, 2014).

¹⁶ Double bottom-line businesses typically aim to serve both a 'people' (e.g. community development) and traditional 'profit' motive. Triple bottom-line businesses aspire to the same aims with the addition of also serving the 'planet' (e.g. global warming or related environmental objectives); see also *infra* note 152.

¹⁷ Jones/Lainez, *Enriching supra* note 12, at 105; see also Alicia E. Plerhoples, *Representing Social Enterprise*, 20 CLINICAL. L. REV. 215, 223 (2013).

¹⁸ The millennial generation encompasses persons "in their thirties or younger" and "precedes Digital Natives, persons twenty years of age and younger, who have not known a world without technology." Jones/Lainez, *Enriching supra* note 12, at 88 (citing Steven K. Berenson, *Educating the Millennial Law Students*, 1 CHARLOTTE L. REV. 51 (2008); DAVID HOULE, *ENTERING THE SHIFT AGE* 143 (Source Books Inc. 2012)).

¹⁹ Jones/Lainez, *Enriching supra* note 12, at 100.

²⁰ *Intellectual Property and Transactional Law Clinic*, UNIV. OF RICHMOND SCHOOL OF LAW, <http://law.richmond.edu/academics/clinical-programs/ip-clinic/index.html> (last visited May 10, 2014).

²¹ *Information for Prospective Clients*, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL, <http://www.law.gwu.edu/ACADEMICS/EL/CLINICS/SBCED/Pages/InformationforProspectiveClients.aspx> (last visited Nov. 17, 2014).

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may vary depending on issues such as client needs, faculty interest, and community partner referrals.

It is worth noting that transactional and litigation clinics have historically served indigent and low-income clients. In the case of transactional clinics, most programs continue that tradition of service to underrepresented individuals and entities. One reason for this is the avoidance of competition with the private bar. Another is the amount of clinic work that can be addressed in a typical 14-week semester, coupled with the arc of student skill development during an academic semester.

The authors advocate a three-fold purpose of transactional clinics – social justice²², public service²³, and service-learning²⁴ – which seeks to incorporate the unique ways they teach substantive law, legal ethics, and professional skills and values. This learning is not only scalable to larger transactions, but also invaluable to students witnessing the importance of a wide range of transactional law issues, while developing and strengthening a sustainable penchant for transactional law practice and pro bono work.

Given this three-fold purpose, the historical context of pro bono legal services in which transactional clinics developed and the realities of America's unmet legal needs, we do not believe that transactional legal clinics should represent high-income or corporate clients. Indeed, outside of a structure like the University of Chicago's innovative Corporate Lab, which is a unique model, there is no legal education market for high-end deals, because law students would not be trusted with large high-stakes financial transactions. The legal education offered in the aforementioned model is nonetheless valuable *and* has a different role to play.

Overall, the majority of transactional clinics represent undercapitalized small business startups and entrepreneurs. These cases can be ideal clinic clients, presenting legal issues that can usually be addressed within a few semesters.

²² Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice* law advocacy projects, as well as state and local tax advocacy work in support of small and microbusinesses. There are also some who would call for an increase in and creation of special tax incentives for microbusinesses and entrepreneurs: "Public policymakers in urban areas have an important role to play in reducing the legal costs of doing business and in considering partial and complete exemption from regulation and taxation in certain circumstances." 4 CLINICAL L. REV. 195, 222 (1997). (discussing how the social justice mission of clinical programs exposes students to economic differences).

²³ Susan R. Jones & Shirley J. Jones, *Innovative Approaches to Public Service Through Institutionalized Action Research: Reflections from Law and Social Work*, 33 ARK. L. REV. 377, 382 (2011) [hereinafter Jones, *Innovative Approaches*] (observing that "[P]ublic service is often synonymous with public interest, but it is distinguished from simply volunteerism or pro bono service. . . the most effective public service programs have an equal justice or social justice goal, and these programs increase pro bono work among law students and graduates.").

²⁴ *Id.* at 387. (defining service learning as "a type of experiential learning that puts students in service within a community while integrating theory and practice").

PART II. TRANSACTIONAL CLINIC MODELS, PROGRAM FUNDING AND INDUSTRY
SECTORS REPRESENTED

Transactional clinics typically represent small and microbusinesses, as well as social enterprises and nonprofit organizations. The doctrinal areas covered range from business associations and corporate law to intellectual property. This section explores the various program models and funding opportunities employed by transactional clinics.

A. Interdisciplinary Transactional Opportunities in Business and Law

Professor Gilson was an early proponent of transactional experiential education, and recognized transactional law practice as inherently interdisciplinary. Noting the high costs resulting from an essential low teacher-to-student ratio, he worried about the capacity of traditional law teachers, with limited practice experience, to teach practical transactional skills and endorsed a proposal that has recently re-emerged, namely, the third year of law school as a training year. Professor Gilson observed:

[I]t is precisely the sense of futility that arises from recognizing that law schools cannot teach practice that seems to me to have motivated the suggestion, originating in the law schools, that the traditional three year course of study be reduced to two, thereby letting practitioners begin their training of would-be practitioners a year earlier.²⁵

A few of the earliest clinical programs employed interdisciplinary approaches to transactional clinical teaching, keeping in line with Professor Gilson's views. Several scholars have examined these interdisciplinary opportunities in the clinical and non-clinical context. To illustrate, Professor Anthony Luppino (University of Missouri at Kansas City) studied this trend as a 2004 Kauffman Entrepreneurial Faculty Scholar, and examined ways of incorporating entrepreneurship into course curricula.²⁶ He provides an in-depth exploration of interdisciplinary transactional clinics based on scholarly research in the field. Describing his own desire to share the benefit of nearly 20 years' experience as a business and tax lawyer, Professor Luppino explains that he first pursued "interdisciplinary collaborations as a means to improve the substantive

²⁵ Gilson, *supra* note 1, at 304.

²⁶ Anthony Luppino, *Minding More than Our Own Business: Educating Entrepreneurial Lawyers through Law School-Business School Collaborations*, 30 W. NEW ENG. L. REV. 151, 160-62 (2007).

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knowledge, the grasp of underlying theory and policy, and the skills training of students seeking to become business lawyers.”²⁷

Reflecting on the role and value of business lawyers he observes, as Gilson did, that while they sometimes have a reputation for being deal killers, “can do” business lawyers serve as problem-solvers who know the practical and theoretical aspects of law practice, adhere to high ethical standards, and understand the questions to ask about the mechanics of a deal as well as the associated business concepts and jargon.²⁸ They explore the best way to achieve the client’s goals and have an understanding of the regulatory frameworks in which businesses operate.²⁹ Furthermore, problem-solving business lawyers have the ability to translate the law and explain complex legal concepts to non-lawyers.³⁰ In the end, good business lawyers become part of a client’s team and long-term trusted advisors.³¹

In assessing ways to incorporate entrepreneurship into course curricula, Professor Luppino studied entrepreneurship clinics and reported on the essential role of clinical faculty in the transactional interdisciplinary law arena, observing:

Not only have law school clinical faculty played a key role in advocating interdisciplinary elements in the training of transactional lawyers, they have also consistently practiced what they preach, and preached what they practice, by providing law students with hands-on opportunities to interact with clients trained in other disciplines, and with their clients’ accountants and advisors. Transactional and small business clinics at U.S. law schools are clear examples of interdisciplinary education of law students because they stress the importance of understanding the client’s business goals and needs and, in turn, educating the client on legal issues. This network of clinics is demonstrably entrepreneurial.³²

While some of the literature describes barriers to interdisciplinary collaboration, a number of law school clinics and courses have had successful collaborations.³³ As the Carnegie Report³⁴ and Best Practices³⁵ have noted,

²⁷ *Id.* at 153.

²⁸ *Id.* at 152.

²⁹ *Id.*

³⁰ *Id.*

³¹ Luppino, *supra* note 26, at 152.

³² *Id.* at 179.

³³ Professor Luppino observes that these barriers fall into six categories: “(1) discipline-specific student learning experiences; (2) interdisciplinary stereotypes based on faulty assumptions; (3) rigor and accreditation considerations; (4) logistical difficulties; (5) faculty egos and turf issues; (6) and insufficient institutional incentives.” Luppino, *supra* note 26, at 163. Successful collaborations have been reported at the following law schools: University of Missouri-Kansas

collaboration is a fundamental lawyering skill. Law school competitiveness “is the antithesis of teamwork.”³⁶

A number of transactional clinics have successfully engaged in interdisciplinary collaborations. Interdisciplinary opportunities in law and business may be fueled by collaboration among “committed faculty a compelling client/case study, and limited administrative involvement in the integration of the courses.”³⁷

Likewise, the expansion of upper-level law courses into increasingly multidisciplinary areas of study further complements the goals of transactional clinics, while also affirming the value of the traditional three-year law school model.³⁸ Second and third year law courses may include Entrepreneurship Law and Economics and Finance Law. Professor Gilson stressed that finance and transaction cost economics are areas of study fundamental to linking theory to practice and “to teach about private ordering in a fashion that is particularly suited to the academy.”³⁹ Moreover, some law school courses and clinical programs were influenced by Professor Gilson’s call for transaction cost

City School of Law, Entrepreneurial Legal Services Clinic; Lewis & Clark, Clinical Internship Seminar: Business Advising-Center for Technology, Entrepreneurship and Law (an interdisciplinary and inter-institutional program) with the School of Business at Portland State University; University of Baltimore Lab to Market (“law, business and, and liberal arts students collaborate in developing and implementing business plans for private commercialization of technology developed in federal laboratories”); University of Oregon (UO) Law School, Technology Entrepreneurship Program, a collaboration between UO Office of Technology Transfer and Pacific Northwest National Laboratories of Richland, Washington (a kind of laboratory involving business and law students in evaluating, developing and launching high tech businesses); The George Washington University Law School Small Business Clinic (involving law, business and engineering students); Western New England College of Law and Business Center for Advancing Entrepreneurship (collaboration with business and marketing professors); Indiana University Entrepreneurship Law Clinic (sparked by interest from JD/MBA students); Cornell University’s BR Legal Program (law students work with law firm/supervising attorney mentors on legal issues for startup companies; and University of St. Louis, Intellectual Property and Business Formation Clinic (works on biodiversity and agricultural-biotechnology innovation in collaboration with other university departments including business, medicine, social work, biomedical engineering and arts and sciences. Luppino, *supra* note 26, at 181-86.

³⁴ William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 1st ed. 2007) [hereinafter *Carnegie Report*].

³⁵ ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (Clinical Legal Educational Association, 2007).

³⁶ Business students work in teams and there is much to learn from business schools about the collaborative process. In addition, entrepreneurs are generally less risk adverse and more comfortable with uncertainty and ambiguity than lawyers. Luppino, *supra* note 26, at 165-68.

³⁷ Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POL’Y 249, 310-11 (2004) [hereinafter Jones, *Promoting Social And Economic Justice*].

³⁸ Gilson, *supra* note 1, at 304.

³⁹ Gilson, *supra* note 1, at 305.

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engineers.⁴⁰ Without a doubt, interdisciplinary transactional opportunities ultimately help budding lawyers to better represent their clients. Influenced by Professor Gilson's theoretical perspective, we posit that broadening the traditional business law curriculum to include experiential education involving work with real clients exposes law students to a greater scope of "theoretical developments" which "improv[es] the skills that practitioners bring to bear on a problem."⁴¹

B. Program Funding

As noted earlier, Professor Gilson was also concerned about funding for transactional clinical programs, observing: "[t]he central problem with clinical teaching, whether of litigation or business skills, seems to me to center on the enormous expense of doing it well."⁴²

Transactional law clinics present unique funding opportunities, especially for entrepreneurs, who are generally sought after as philanthropists for business schools. Entrepreneurs can also support the training of the new breed of transactional lawyers graduating from law school today. For example, University of Michigan alumnus and entrepreneur, Sam Zell, donated 5 million dollars to create the Zell Entrepreneurship and Law Program (ZEAL).⁴³ Launched in 2012, this new clinical program is dedicated solely to representing student entrepreneurs.⁴⁴ Entrepreneurs, generally sought after as philanthropists for business schools can also support the training of the new breed of transactional lawyers graduating from law school today.

An earlier example is also instructive. Dean Eric Gouvin, founding director of the Western New England Law School's Law and Business Center for Advancing Entrepreneurship (the "Center"), explains that "significant grants from a private charitable foundation, and from MassMutual Financial Group, the Lloyd G. Balfour Foundation, United Bank, and the Springfield Chamber of Commerce" enabled additional faculty hires and service expansion for the Center, in 2005.⁴⁵ The funding arrived just three years after Dean Gouvin founded the Small Business Clinic, which began through an affiliation with a local state-of-

⁴⁰ Robert R. Statchen, *Clinician Practitioners, and Scribes: Drafting Client Work Product in a Small Business Clinic*, 56 N.Y.L. SCH. L. REV. 233, 252 (2011).

⁴¹ Gilson, *supra* note 1, at 302.

⁴² *Id.* at n.181.

⁴³ See Part III, Section 5 regarding Sam Zell's donations.

⁴⁴ *Entrepreneurship Clinic*, UNIV. OF MICH. LAW SCH., <http://www.law.umich.edu/clinical/entrepreneurshipclinic/about/Pages/default.aspx> (last visited May 19, 2014).

⁴⁵ Eric J. Gouvin, *Foreword: Law, Business, and Economic Development – Current Issues and Age-Old Battles*, 29 W. NEW ENG. L. REV. 1, 4 (2006).

the-art business incubator.⁴⁶ The Center has had a huge impact in western Massachusetts and has set a national example.⁴⁷

C. Externships and In-House Clinic Hybrids

In-house clinics and some externships are responding to another call made by Professor Gilson. He noted that teaching students “to function as lawyers. . . requires very careful supervision of the students and review of the students’ work. My limited experience in trying to teach drafting skills suggests that the faculty-student ratio necessary to accomplish this is very high.”⁴⁸

While in-house transactional clinics are the mainstay, there are some transactional externships and a fewer number of hybrid in-house clinics employing elements of both in-house clinics and externship programs.

The Clinical Legal Education Association (CLEA) Handbook for New Clinical Teachers April 2013 describes an externship as an educational experience in which “students work in law offices engaged primarily in non-clinical practice, under the supervision of both attorneys engaged in that practice and law school clinicians.”⁴⁹ As several examples below demonstrate, externships are found most typically in Community Economic Development (“CED”) transactional clinics. The University of California Los Angeles Community Economic Development Clinic (“UCLA CED Clinic”), taught by Professor Scott Cummings, is one model that works in partnership with community groups. Attorneys at those partner organizations supervise students to “provide legal support to a variety of nonprofit and for-profit entities engaged in efforts to promote and preserve economic opportunities across Los Angeles. In addition to representing community groups on live cases and campaigns, clinical students also examine important legal and policy issues related to contemporary CED programs and undertake in-class exercises that focus on the unique aspects of counseling, drafting and negotiation in CED context.”⁵⁰

The UCLA CED Clinic embraces entrepreneurship as a core part of its mission and “students regularly work with lawyers at Public Counsel’s Community Development Project to represent low-income entrepreneurs starting

⁴⁶ *Small Business Clinic*, W. NEW ENGL. UNIV. SCH. OF LAW, <http://www1.law.wne.edu/faculty/index.cfm?selection=doc.3236> (last visited Aug. 8, 2012).

⁴⁷ *Id.*

⁴⁸ Gilson, *supra* note 1, at n.181.

⁴⁹ CLEA, HANDBOOK FOR NEW CLINICAL TEACHERS 2013 (Jill Engle et al. 6th ed. 2013) available at <http://www.cleaweb.org/Resources/Documents/CLEA%202013%20Clinicians'%20Handbook.docx>; see also J.P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZ. L. REV. 155, 159 (2002).

⁵⁰ *Community Economic Development Clinic*, UCLA SCH. OF LAW, <http://www.law.ucla.edu/centers-programs/clinical-program/in-house-clinics/Pages/community-economic-development-clinic.aspx> (last visited Oct. 1, 2012).

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small businesses and structuring nonprofit organizations for community-based groups.”⁵¹

Another example is found in the Transactional Law/Community Development Externship at Brooklyn Law School, taught by Professor Debra Bechtel. Students must work a 12-hour week in a wide variety of placements and receive three credits for the field placement and one credit for the seminar. The field placements include South Brooklyn Legal Services Community Development Unit,⁵² The New York City Economic Development Corporation⁵³ and the Lawyers Alliance for New York.⁵⁴

In yet another model, The Community and Economic Development Law Clinic at American University Washington College of Law offers an externship with the Community Development Project (“CDP”) of the Lawyers’ Committee for Civil Rights Under Law. Students work on-site under the supervision of staff attorneys representing “community-based housing and development organizations in the Gulf.”⁵⁵ Devoting an average of 20 hours a week to the externship, students work on a range of community development legal issues such as forming homeowners’ and tenants’ associations, helping organizations obtain 501(c)(3) federal tax exempt status, and assisting existing organizations with board governance.⁵⁶ Students in this placement also participate in the (in-house) CED Clinic classes.

Pro bono attorneys or adjunct law professors staff a few transactional externship programs.⁵⁷ This model has been described as a “clin-ship” because “it is a hybrid of the transactional law school clinic and externship opportunities.”⁵⁸

⁵¹ *Id.*

⁵² South Brooklyn Legal Services Community Development Unit provides legal assistance to low-income individuals and groups in the Brooklyn area. The organization provides legal advice and representation in court and before administrative agencies. *What We Do*, SOUTH BROOKLYN LEGAL SERVICES, <http://www.sbls.org/index.php?s=legalServices> (last visited Oct. 10, 2014).

⁵³ The New York City Economic Development Corporation uses its expertise to develop, advise, manage, and invest to strengthen businesses and encourage community development. *About NYCEDC*, N.Y. CITY ECON. DEV. CORP., <http://www.nycfedc.com/about-nycfedc> (last visited Aug. 16, 2012).

⁵⁴ The Lawyers Alliance for New York provides business and transactional legal services to nonprofit organizations that seek to improve the quality of life in New York City neighborhoods. LAWYERS ALLIANCE FOR N.Y., <http://www.lawyersalliance.org> (last visited Aug. 16, 2012).

⁵⁵ See *Community and Economic Development Law Clinic*, AM. UNIV. WASHINGTON COLL. OF LAW, www.wcl.american.edu/clinical/community.cfm (last visited June 24, 2012).

⁵⁶ See *id.* The Community Development Project of the Lawyers Committee for Civil Rights under Law also works with the University of the District of Columbia School of Law Community Development Clinic. See *CDP Launches New Initiative with the University of District Columbia School of Law Community Development Law Clinic*, LAWYERS’ COMM. FOR CIVIL RIGHTS UNDER LAW, <http://www.lawyerscommittee.org/newsroom/clips?id=0416> (last visited Feb. 3, 2012).

⁵⁷ Transactional clinical faculty postings to ELAW Listserv (Nov. 16, 2011) (on file with authors). The email thread discusses the use of outside pro bono lawyers in the following transactional programs: International Transactions Clinic (Michigan); Entrepreneurial Law Clinic (Colorado);

Given the expansive doctrinal coverage of transactional clinics, they often have unique staffing needs. The John Marshall Law School Business Transactions Externship Program (BTEP) directed by Professor Michael Schlesinger, serves as an example of this hybrid model. The BTEP teams adjunct professors, working as pro bono volunteers, with clinic students who are assigned live client cases. Professor Schlesinger oversees the adjunct law professors.⁵⁹ The BTEP provides “pro bono legal services to not-for-profit organizations and business clients with limited financial resources to retain a lawyer in connection with business and transactions matters.”⁶⁰ The program’s website explains:

The practice of law and the market for lawyers are changing. Law firms are demanding that recent law school graduates arrive with ready-to-work skills that will make them productive lawyers from the start. As such, law schools have an obligation to equip their graduates with the skill set to become competent business and transactional lawyers.⁶¹

As law schools strive to provide more experiential opportunities for law students while maximizing the academy’s internal resources, these externships may become more prevalent. Well-structured in-house transactional law clinics, as well as externship and hybrid models allow for the “careful supervision of students and review of students’ work” that Professor Gilson contends has, in the past, been difficult to accomplish in clinics.⁶²

Community Economic Development Clinic (Yale); Entrepreneurial Law Clinic (Drexel). The following programs report the use of paid adjunct faculty: Entrepreneurship Law Clinic, (West Virginia University College of Law). Both The Entrepreneurial Law Clinic (Univ. of Washington) and the Small Business Clinic (Lewis & Clark) use outside attorneys but it’s unclear from the email thread whether they are paid or unpaid. The pros and cons of the outside lawyer models are important to program design, but are outside of the scope of this article. For a comprehensive discussion of issues associated with the use of outside lawyers see, Amanda M. Spratley and Alicia E. Plerhoples, *Engaging Outside Counsel in Transactional Law Clinics*, 20 CLINICAL L. REV. 379 (2014).

⁵⁸ Sean M. O’Connor, *How to Build IPR-Focused Entrepreneurial Law & Bus. Clinics to Assist Regional Econ. Dev. Around the Globe*, INTELLECTUAL PROPERTY INSTITUTE, (2008), available at http://iipi.org/wp-content/uploads/2010/07/How_to_Build_IP-Focused_Law_Clinics.pdf. at 19 (last visited Nov. 17, 2014).

⁵⁹ See Email from Professor Michael Schlesinger to author (Jan. 12, 2012) (on file with Professor Jones). There were five adjunct professors in the fall 2012, two of whom were former law firm partners.

⁶⁰ *Free Legal Assistance to Business and Not-for-Profit Organizations*, JOHN MARSHALL LAW SCH. BUSINESS TRANSACTIONS EXTERNSHIP PROGRAM, <http://test.jmls.edu/btep/pdfs/btep-program-english.pdf> (last visited Nov. 17, 2014).

⁶¹ See *Business Transactions Externship Program*, JOHN MARSHALL LAW SCH., <http://www.jmls.edu/btep/> (last visited May 11, 2014).

⁶² Gilson, *supra* note 1, at n.181.

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D. Integrating Fellows and Adjunct Faculty

A few transactional clinical programs are addressing Professor Gilson's critique that some law professors "lack practical legal experience" by offering law teaching fellowships and by integrating practicing lawyers into clinics as adjunct professors.⁶³

Clinical teaching fellows, selected with the goal of teaching them to become law professors, and adjunct faculty, can offer perspectives from daily law practice, and provide extensive contributions to clinical programs. Clinical fellows can be secondary supervisors on case work, share teaching responsibility in the classroom and serve as another set of eyes and ears both within the clinic and in the numerous communities served by the clinical program, including the social, legal and academic environments that help propel the delivery of direct legal services.⁶⁴

Transactional clinical teaching fellowships are currently offered at Baltimore, Fordham, Georgetown, George Washington, Harvard, UCLA and Yale.⁶⁵ The development of clinical fellowships mirrors the progress of transactional clinics in the academy and helps meet the need to train the next generation of clinical teachers.⁶⁶

Professor Wallace Mlyniec, former clinical dean of Georgetown University Law Center, ponders the meaning of clinical teaching:

Clinical teaching is different from and more expansive than doctrinal teaching or professional legal practice; clinical teaching is goal driven and based on backward design; faculty intervention must be intentional and based on making choices that further a student's education; clinical education should be based on an expansive theory of justice; client and student needs are equally important in a clinical program and neither need be sacrificed for

⁶³ *Id.* at 304.

⁶⁴ Wallace J. Mlyniec, *Where to Begin? Training New Teachers In The Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505 (2012).

⁶⁵ Fellowships are often funded by an individual donor, law firm, or organization. The transactional fellowship programs named above are listed here with the particular clinic affiliation and with donors parenthetically noted: University of Baltimore, Community Economic Clinic; UCLA, Binder Clinical Teaching Fellowship; Fordham, Community Economic Development Clinic; Georgetown Community and Housing Development Clinic - Harrison Institute for Public Law; George Washington, SBCED Clinic (Phillip Friedman); Harvard, (Albert M. Sacks, fellowship rotates among clinical courses); and Yale, (Robert M. Cover).

⁶⁶ Professors Barry, Dubin and Joy explain that "[i]t was the development of a clinical teaching methodology that was critical in solidifying the place of clinical legal education in the law school curriculum during the period running from the 1970's through the present." Margaret M. Barry, Jon C. Dubin and Peter A. Joy, *Clinical Education For This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 16 (2000).

the other; and clinical teaching is personal and designed to accept students where they are and to maximize their learning potential.⁶⁷

Clinical fellowships are focused on imparting an appreciation and understanding of “intentional and reflective supervision and creative and adaptive teaching methods.”⁶⁸ This emphasis on professional development maximizes a fellow’s impact within their particular clinic and institution, and sets the stage for continuous progress and likely earlier maturation as clinical teachers. On the whole, clinical teaching fellows can make valuable contributions to the clinical mission of a law school.

Clinical adjunct faculty support teaching by serving as subject matter experts, or otherwise collaborating in teaching and supervision while engaged in full-time law practice.⁶⁹ As detailed in the MacCrate Report, “law schools and the practicing bar should participate jointly in the professional development of lawyers, [as] it is important for legal educators and practicing lawyers to recognize that they have different capacities and opportunities to impart these skills and values to future lawyers.”⁷⁰

At The George Washington University Law School, for instance, Adjunct Professor Kevin Peska serves as a Professorial Lecturer in Law in the SBCED Clinic. As a managing attorney at the U.S. Patent and Trademark Office, and a trademark law expert, Professor Peska delivers substantive law lectures during the semester on the legal and procedural issues students encounter while representing clients in trademark matters.⁷¹ Looking to an adjunct as a substantive expert reflects the value of integrating members of the practicing bar into legal education as articulated in the MacCrate Report.⁷² Further, largely due to the breadth of legal issues that arise in transactional clinical law, practicing members of the bar who serve as adjunct faculty or guest lecturers can provide students with vital insight into specific legal issues and into the practice of law generally. This approach, similar to the one employed in the Deals Program developed by

⁶⁷ See Mlyniec, *supra* note 64, at 505. Professor Mlyniec is the former Clinical Dean and Director of the Juvenile Justice Clinic and Lupo-Ricci Professor of Clinical Legal Studies.

⁶⁸ *Id.*

⁶⁹ Law schools may choose to staff a clinical program with adjunct faculty due to funding shortages, including lack of dedicated faculty lines for the clinical program. The adjunct faculty member may be aware of and interested in the possibility of longer term funding and the possibility of a full time contract or tenure-eligible position. Sometimes, however, both the law school and the adjunct faculty member are content with a long-term, part-time arrangement.

⁷⁰ CLINICAL ANTHOLOGY: READINGS FOR LIVE-CLIENT CLINICS 15 (Alex J. Hurder et al. eds., 2d ed. 2011), (citing SECTION ON LEGAL EDUC. AND ADMISSIONS TO THE BAR, ABA, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM 234 (1992) [hereinafter MacCrate Report]).

⁷¹ The SBCED Clinic’s participation in the USPTO Law School Certification Program has allowed it to expand student opportunities and the scope of client services.

⁷² MacCrate Report, *supra* note 70, at 245.

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Professor Fleisher at Columbia Law School,⁷³ answers Professor Gilson's call to employ law school faculty with the requisite and relevant experience through "sufficient time in practice," to effectively guide students in honing valuable transactional skills.⁷⁴

E. Community Partners, Legal Services Organizations & Bar Associations

Transactional clinic students are exposed to practicing lawyers in many ways, including partnerships with a variety of community-based institutions, legal services organizations and bar associations. Indeed, these relationships can bolster a transactional legal clinic's CED impact. Some examples include Main Street programs,⁷⁵ local microenterprise development programs,⁷⁶ community development financial institutions,⁷⁷ volunteer lawyer associations that represent artists,⁷⁸ and local bar associations.⁷⁹ For instance, The DC Bar Community Economic Development Pro Bono Program, established in 1988, provides business lawyers non-litigation pro bono work while providing important legal services to groups in DC's low-income communities and distressed

⁷³ The Deals Program at Columbia Law School adapts Professor Gilson's transaction cost engineering (TCE) framework to a classroom and workshop setting. The Deals Class involves a series of lectures on managing "deal-related problems;" students apply the TCE framework "to several deals using actual deal documents" and present those deals to the class; and eventually students are visited in-class by "the actual lawyers or principals who worked on the deal. . . to give their view of why they structured the deal the way they did and to answer students' questions." The Deals Workshop is a skills-oriented class where students are asked "to apply the [TCE] theory to case studies and simulated problems;" draft client memos and simulate negotiations. Victor Fleisher, *Deals: Bringing Transaction Into The Classroom*, 2002 COLUM. BUS. L. REV. 475 (2002).

⁷⁴ Gilson, *supra* note 1, at 304.

⁷⁵ *E.g.*, Main Street Morgantown has been represented by the West Virginia University Law Clinic; see William McLeod, *Network Notes: The Domain of Morgantown*, NAT'L TRUST FOR HISTORIC PRES., (May 2001), <http://www.preservationnation.org/main-street/main-street-news/2001/05/network-notes-the-domain-of-morgantown.html>.

⁷⁶ See Small Business Administration partner Identification & Management System Participating Microloan Intermediary Report, http://www.sba.gov/sites/default/files/articles/Microlender_140716.pdf (last visited Oct. 12, 2012).

⁷⁷ See *Clinic Work*, YALE LAW SCH., <http://www.law.yale.edu/academics/clinicwork.html> (last visited Oct. 1, 2012); see also CMTY. DEV. FIN. INST. FUND, U.S. DEPT. OF THE TREASURY, CDFI PROGRAM AWARDS 7 (2012).

⁷⁸ *E.g.*, GW Law SBCED Clinic has a partnership with Washington Area Lawyers for the Arts. For a list of volunteer lawyer associations that represent artists, see *National VLA Directory*, VOLUNTEER LAWYERS FOR THE ARTS, (May 27, 2010), <http://www.vlany.org/legalservices/vladirectory.php>.

⁷⁹ The GW Law SBCED Clinic also works closely with the DC Bar. The program's Staff Director, Darryl Maxwell, is a GW Law Alum. See Susan R. Jones, *Transactional Lawyers Supporting Economic Development in the Nation's Capitol*, 9 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 18, 21 (1999) [hereinafter Jones, *Transactional Lawyers*].

neighborhoods. It accomplishes this mission through matching lawyers with nonprofit groups, providing legal training in partnership with government and nonprofit organizations, and periodic “walk-in small business legal clinics.”⁸⁰

Another example is the American Bar Association Section on Business Law, which in partnership with the National Legal Aid and Defender Association created A Business Commitment (ABC) in 1993. The ABC has a dual-purpose mission of providing pro bono opportunities to business lawyers and legal expertise to community groups unable to afford lawyers. The *ABC Manual: Starting and Operating a Business Law Pro Bono Project* contains information about how to start a business law pro bono program and insights into finding pro bono cases.⁸¹ ABC periodically updates a directory identifying pro bono organizations that serve as intermediaries for business law pro bono placements to lawyers and law school legal clinics.⁸² Other partners might include business incubators and shared workspaces.⁸³

Overall, community partners, legal services organizations, bar associations and business incubators provide not only sources of good cases for transactional legal clinics, but they also generate access to potential employers and mentors within the legal field.

F. Creating Entrepreneurial Lawyers

Good transaction cost engineers must be entrepreneurial to build their law practices and represent entrepreneurial clients. Another discrete transactional clinical model, used in conjunction with other models, is focused on creating entrepreneurial lawyers. Entrepreneurship as a core part of legal education is gaining momentum. Not surprisingly, transactional legal clinics are ideal laboratories for the exploration. Professor Steven Hobbs of the University of Alabama Law School, a leader in the Law & Entrepreneurship movement,

⁸⁰ *Community Economic Development Pro Bono Project*, D.C. BAR, <http://www.dcbbar.org/pro-bono/volunteer/ced-project.cfm> (last visited Oct. 10, 2014).

⁸¹ *The ABC Manual: Starting and Operating a Business Law Pro Bono Project*, A BUSINESS COMMITMENT (2002) available at <http://apps.americanbar.org/buslaw/committees/CL600000pub/bc/abc.pdf> (last visited May 19, 2014).

⁸² A.B.A., *Pro Bono Program Listings*, AMERICANBAR.ORG, <http://apps.americanbar.org/legalservices/probono/directory.html> (last visited May 19, 2014) (listing ABA pro bono programs).

⁸³ Dennis E. Powell, *Coworking Space: The Business of Serendipity*, NATIONAL BUSINESS INCUBATOR ASSOCIATION, Jun./Jul. 2012. “Business incubators nurture the development of entrepreneurial companies, helping them survive and grow during the start-up period, when they are most vulnerable. These programs provide their client companies with business support services and resources tailored to young firms. The most common goals of incubation programs are creating jobs in a community, enhancing a community’s entrepreneurial climate, retaining businesses in a community, building or accelerating growth in a local industry, and diversifying local economies.” National Business Incubator Association, <http://www.nbia.org> (last visited Nov. 17, 2014).

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observes that “information technology has forever changed the way people access legal services and products.”⁸⁴ Accordingly he urges:

Our challenge, as lawyers, is both to understand how the creative impulse animates our clients who engage in service or product enterprises, and tap into the creative impulse in the design and provision of legal services. Lawyers should both assist and serve entrepreneurs animated by a creative impulse and, concurrently, become entrepreneurial in the manner and methods in which we practice law.⁸⁵

Similarly, UCLA Clinical Dean Luz Herrera addresses the need for creating entrepreneurial lawyers and the importance of preparing students in entrepreneurship while they are in law school:

To better prepare our law students we must elicit the assistance of others who are better versed in technology, business, and management. Lawyer-entrepreneurs need to graduate with business plans that target niche markets, use technology to create viable income streams and create work-life balance to lead happy lives.⁸⁶

Beginning a new legal enterprise involves rainmaking, business plan development, scouting locations, hiring office staff, or, when there are budgetary issues, learning and streamlining the tasks normally assigned to support staff. Attorneys certainly have the capacity to adapt to these needs, but at a cost. “Few if any of these subjects get covered in law school. Most lawyers can learn, but they usually lose money while they do.”⁸⁷ While it is generally recognized that lawyers as a whole tend to be risk averse,⁸⁸ preparation for the assumption of calculated risks as a student would significantly benefit graduates as they build law practices and stimulate local economies. As Dean Herrera observes, “Law schools that prioritize preparing their students to be entrepreneurial in an uncertain legal market will become a commodity.”⁸⁹

⁸⁴ Steven H. Hobbs, *Entrepreneurship and Law: Accessing the Power of the Creative Impulse*, 4 *ENTREPRENEURIAL BUS. L.J.*, 1, 20 (2009).

⁸⁵ *Id.* at 19.

⁸⁶ Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 *DENV. U. L. REV.* 887, 920 (2012).

⁸⁷ Joan Indiana Rigdon, *Going Solo*, *WASHINGTON LAWYER*, (Jan. 2006), available at <http://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/january-2006-solo.cfm> (last visited May 19, 2014).

⁸⁸ As Melinda Sossamon, a partner at the DC firm Manning & Sossamon, expressed about her decision to leave her large law firm to start her own firm with a former college classmate: “Lawyers are naturally risk averse. This is definitely a proposition that is fraught with risk.” *Id.*

⁸⁹ Herrera, *supra* note 86, at 920.

G. Healthcare Entrepreneurship

Another innovative specialty program, the first of its type, is Arizona State University's Healthcare Entrepreneurship Legal Clinic, which pairs students interested in health law with health law related Arizona start-ups.⁹⁰ Law students will partner with early stage businesses to help them with "IP matters, compliance and regulatory issues, contracts, leases, and licenses."⁹¹ Working with "in-house counsel or senior leadership" in organizations, students learn about and address the challenges encountered while starting an entrepreneurial business.⁹²

H. Technology Transfer

Transactional legal clinics sometimes focus on representing a specific industry like technology transfer ("Tech Transfer").⁹³ Tech Transfer offices exist at a number of research universities, and transactional legal clinics can partner with these offices, offering legal representation regarding inventions and technological developments occurring institutionally.

To illustrate, Colorado Law School's Entrepreneurship Legal Clinic "assists in the process of commercializing University-developed technology by representing faculty members and companies working with CU's Technology Transfer Office."⁹⁴ Law schools at the Universities of Maine, Michigan, Pennsylvania and Washington are affiliated or interface with their Tech Transfer offices.⁹⁵

⁹⁰ *Healthcare Entrepreneurship Program*, SANDRA DAY O'CONNOR COLL. OF LAW, ARIZ. STATE UNIV., <http://law.asu.edu/clinics/TheClinicalProgram/HealthcareEntrepreneurshipProgram.aspx> (last visited Nov. 17, 2014).

⁹¹ *Id.*

⁹² *Id.*

⁹³ "In the academic world, technology transfer is "the process of commercialization – or bringing technologies to the marketplace." This process is mandated for schools receiving federal research funds. Typically, technology transfer "is accomplished through licensing intellectual property (IP) to companies that have the resources and desire to develop and produce the technology for specific applications. In return, universities receive payments (in the form of cash fees and/or equity royalties on earned revenues) for the products or services that were licensed. The income to the university is distributed according to each university's policy, but it includes compensation to inventors and a mechanism for channeling income back into the research programs of the university. *What is Technology Transfer*, UNIV. OF ROCHESTER, <http://www.rochester.edu/ventures/about/what-is-technology-transfer> (last visited Nov. 3, 2014).

⁹⁴ *Entrepreneurship Legal Clinic*, COLO. LAW SCH., <http://www.colorado.edu/law/academics/clinics/entrepreneurial-law-clinic> (last visited May 19, 2014).

⁹⁵ UNIV. OF PA., <https://www.law.upenn.edu/clinic/intellectualproperty/> (last visited May 19, 2014) (remarking on the Intellectual Property Clinic's "groundbreaking [and] unique relationship with Penn's Center for Technology Transfer (CTT)."); Office of Technology Transfer, UNIV. OF MICH., <http://www.techtransfer.umich.edu/about/index.php> (last visited May 19, 2014); Department of

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Additionally, like Michigan's new Entrepreneurship Clinic, UC Hastings has started two new clinics focused on technology and other innovative startups, a discerning development given its proximity to Silicon Valley. UC Hastings plans to incorporate outside attorneys specializing in technology to increase the reach of their clinical course offerings, with efforts underway to ultimately offer seats to an additional 50-60 clinical students through four programs, including a LAB Project associated with University of California at San Francisco's technology transfer office; a Start-Up in a Box program with the California Institute for Quantitative Biosciences to help new biotech innovators develop their ideas; and clinics focused on technology startups, small business and social enterprises.⁹⁶

In another example, the Brooklyn Law Incubator and Policy Clinic (BLIP) functions like a law firm that represents Internet, new media, communications, and other tech entrepreneurs and innovators on both business and policy advocacy.⁹⁷ Students work with clients to guide them through transactional, litigation, policy, and other advocacy projects. They also interact and strategize with members of the entrepreneurial, technology and financial communities, as well as with legislators, regulators, and other policymakers.⁹⁸

Clients are accepted based on the extent to which their issues implicate Internet or digital economy issues of first impression, or issues that require creative legal representation and arguably advance the Internet or digital economy. The Clinic's overarching goal is to help realize the promise of "an Internet-enabled, digital world."⁹⁹

I. Intellectual Property and the United States Patent & Trademark Office (USPTO) Law School Certification Program in Trademark and Patent Law

Given the impact of technology in today's business climate, clients demand a broad array of legal services including those related to intellectual property (IP) concerns. Accordingly, the USPTO's Law School Certification Program in Trademark and Patents started in 2008 has expanded transactional

Industrial Cooperation, UNIV. OF ME, <http://umaine.edu/dic/techtransfer/> (last visited May 19, 2014).

⁹⁶ UC Hastings College of Law LAB Project, *New Innovation Law Clinics at UC Hastings*, UC HASTINGS (2012), available at <http://www.uchastings.edu/news/articles/2012/04/Innovation-law-clinics.php>.

⁹⁷ Brooklyn Law Incubator & Policy Clinic, BROOKLYN LAW SCHOOL, <http://www.brooklaw.edu/academics/clinicalprogram/blip/More%20About%20BLIP.aspx> (last visited May 19, 2014).

⁹⁸ *Id.*

⁹⁹ *Course Description: Clinic-Brooklyn Law Incubator & Policy*, BROOKLYN LAW SCH., <http://www.brooklaw.edu/academics/curriculum/coursedescriptions/course.aspx?id=182> (last visited Oct. 1, 2014).

clinical program models.¹⁰⁰ Initially, it approved sixteen law schools for participation in a program that permits students to engage in limited practice before the USPTO, under the close supervision of clinical faculty.¹⁰¹ The USPTO expanded the program in 2012 adding eleven additional schools; a 2014 program expansion was also announced.¹⁰²

The law school programs participating in the initial USPTO project range from specialized IP clinics, like those at Richmond¹⁰³ and American University, to schools with general transactional practices that frequently handle intellectual property matters.¹⁰⁴ While more generalized transactional business clinics frequently offer limited representation to businesses and individuals in trademark and copyright matters, the specialized IP programs often handle both patent and trademark filings and sometimes litigate cases.¹⁰⁵

¹⁰⁰ See *Law School Clinic Certification Pilot*, U.S. PATENT & TRADEMARK OFFICE, http://www.uspto.gov/ip/boards/oed/practitioner/agents/law_school_pilot.jsp (last visited May 19, 2014).

¹⁰¹ The initial 16 schools admitted were American, Howard, NC Central, Rutgers, George Washington, John Marshall, University of Akron, University of Connecticut, University of Maine, University of Maryland, New Hampshire, University of Puerto Rico, University of Richmond, Vanderbilt, West Virginia, and William Mitchell. *Id.*

¹⁰² As of this writing the following 28 schools are certified: Arizona State University College of Law, Fordham University School of Law, North Carolina Central University School of Law, Thomas Jefferson School of Law, University of Connecticut School of Law, University of Maine School of Law, University of Maryland School of Law, University of Notre Dame Law School, University of Puerto Rico School of Law, University of Washington School of Law, William Mitchell College of Law, Case Western Reserve University School of Law, The John Marshall School of Law, University of Colorado Law School, Wayne State University Law School, American University Washington College of Law, California Western School of Law, Howard University School of Law, Michigan State University School of Law, Rutgers Law School, South Texas College of Law, The George Washington University Law School, University of Akron School of Law, University of New Hampshire School of Law, University of Richmond School of Law, University of San Francisco School of Law, Vanderbilt College of Law, and West Virginia University School of Law. See List of Law School Clinic Certification Pilot Program available at http://www.uspto.gov/ip/boards/oed/practitioner/agents/law_school_pilot.jsp (last visited Oct. 10, 2014). The USPTO has “open[ed] the Law School Clinic Certification Pilot Program to admit a limited number of additional law schools to commence participation in the fall 2014 academic semester.” *Id.* The pilot program was made permanent on December, 16, 2014 when H.R.5108 was signed into law by the President. See USPTO Law School Clinic Certification Program, Pub. L. No. 113-227, 128 Stat. 2114.

¹⁰³ The University of Richmond offers a certificate program in Intellectual Property Law and participation in the six-credit Intellectual Property and Transactional Law Clinic counts toward this specialized degree program. <http://law.richmond.edu/docs/ip-certificate-requirements.pdf> (last visited May 19, 2014).

¹⁰⁴ See *Law School Clinic Certification Pilot*, U.S. PATENT & TRADEMARK OFFICE, *supra* note 100.

¹⁰⁵ When a new trademark application poses a risk of likelihood of confusion or dilution of a mark, the existing holder of the mark may file a notice of opposition or intent to oppose. The holder of the mark has certain rights that can be pursued through the USPTO. Oppositions and similar actions can reach the level of full-blown litigation, along with related costs. There are instances, however, where the parties are able to negotiate a resolution without a protracted legal process.

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Overall, the number of IP legal clinics in the U.S. has increased, including those receiving external funding. For example, the Glushko-Samuelson Foundation funds three transactional legal clinics specializing in Intellectual Property (IP), including the clinics at Fordham, Colorado, and American University. The foundation is the eponymous nonprofit of two Berkeley law professors with practice and teaching specialties in IP, including information systems technology and policy, cyberlaw and digital copyright law.¹⁰⁶

J. Action Research and Service Learning

Transactional clinics can teach students to expand their reach as transaction cost engineers by identifying systematic interventions to improve and reform ineffective or unduly burdensome government regulation. In this regard, Professor Gilson observed that “business lawyers have done an awfully good job at something that law schools did not, and, for the most part, still do not match: helping people arrange their relationships in the absence of governmental intervention; facilitating private ordering.”¹⁰⁷

Indeed, scholars contend, when tested against empirical evidence, the findings “strongly support the hypothesis that transactional lawyers add value by reducing regulatory costs.”¹⁰⁸ Transactional clinic teachers and students have reduced regulatory costs by identifying the ways that government regulation impedes private ordering and inhibits business development, and have acted accordingly to encourage system reform. In contrast, they also see the ways efficient government regulation can serve important functions, for example, in the realm of public safety and environmental protection.

Action research and service learning present opportunities to deepen and extend the benefits of transactional legal representation. This activity links micro-level direct representation with law and policy initiatives that have an impact on law reform efforts and benefit multiple clients simultaneously.

Through a clinical education action research component, explained more completely in another article,¹⁰⁹ the GW Law SBCED Clinic has undertaken several action research projects. Action research, commonly used in higher education,

¹⁰⁶ Robert J. Glushko, UC Berkeley School of Information <http://people.ischool.berkeley.edu/~glushko/> (last visited May 19, 2014); Pamela Samuelson, UC Berkeley Law School <https://www.law.berkeley.edu/php-programs/faculty/facultyProfile.php?facID=346> (last visited May 19, 2014).

¹⁰⁷ Gilson *supra* note 1, at 303; *see also*, Support from: Steven L. Schwarcz, *Explaining The Value of Transactional Lawyering*, 12 STAN. J.L. BUS. & FIN. 486 (2007) (discussing reduction of regulatory costs as the primary value added by attorneys in business transactions).

¹⁰⁸ Schwarcz, *supra* note 107, at 500.

¹⁰⁹ *See Jones, Innovative Approaches, supra* note 23.

[R]efers to a cluster of applied research methods, namely participatory research, collaborative inquiry, action learning, and community-based research and is a participatory learning method [as well as] a pedagogical approach designed to educate students while helping communities.¹¹⁰

Service learning philosophy “dates back to John Dewey in the early 1900s. As a philosopher and educator, Dewey viewed education as advancing democracy. He encouraged civic involvement, experiential learning, and opportunities for discussion and reflection to aid in the interpretation of non-classroom experience. Jean Piaget, David Kolb, Donald Schon, and Ernest Boyer also made significant contributions in the field of service learning.”¹¹¹ Coined as a term in 1967, service learning was federally funded and promoted along with cooperative education and internships throughout the 1960s and 1970s. Incorporated into college and university curricula under a pedagogical movement called “civic engagement,” this approach has a deep impact and is consistent with the Carnegie Report’s call for more experiential learning opportunities for law students.

Service learning courses result in numerous positive outcomes, including:

[I]ncreased learning and engagement, agency or community impact and impact on faculty development, students’ moral and ethical development, and awareness of mutuality and reciprocity. Students engaged in service learning classes view themselves as more socially competent, demonstrate personal and social responsibility, embrace cultural diversity, and are more likely to act responsibly and feel comfortable helping others. Service learning has the capacity to challenge students’ beliefs and practices, “be they related to poverty, sexual preference, race, gender, environmental issues, religion or any other potentially divisive issue.”¹¹²

In the end, hands-on “academic participation opportunities allow students to engage with their society and affect productive contributions to the development and growth of underserved communities.”¹¹³ Indeed, “many educators believe that colleges and universities have an obligation to teach about social justice” and action research is an effective tool to realize that obligation.¹¹⁴

¹¹⁰ *Id.* at 384.

¹¹¹ *Id.* at 389-90.

¹¹² *Id.* at 389.

¹¹³ *Id.* at 377.

¹¹⁴ *Id.* at 377.

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Although action research and service learning have been used effectively in a variety of educational disciplines, one scholar found that “the legal academy fails to adequately appreciate the educational advantages of the community connections that are available through extern programs and clinics, especially externships and community economic development clinics, strategically placed to help bring law schools into the civic engagement pedagogical movement.”¹¹⁵ Moreover “law school collaborations with other departments such as business can also help to achieve this goal.”¹¹⁶

Service learning is an “integrated part of the course in which students participate in an organized activity outside of the classroom and reflect on it, while broadening their understanding of the discipline, the course content and benefitting a community at the same time.”¹¹⁷ Clinical legal education is the service learning component of legal education and it can be enhanced by action research.

The GW Law SBCED Clinic actively engages in significant action research projects. To illustrate, the clinic produced a white paper on the creative economy for its community partner, Washington Area Lawyers for the Arts. The research for the white paper, based on evidence that the creative economy and creative entrepreneurs are generating jobs in the District of Columbia, included site visits to key stakeholders in the arts and resulted in 12 findings.¹¹⁸ Recognizing that today’s workforce development agenda must include entrepreneurship and microbusiness opportunities, another white paper is underway on workforce development.

Another action research project by the GW Law SBCED Clinic is a regulatory reform and modernization initiative, which sought to ease the regulatory burdens small businesses face.¹¹⁹ This project aimed to collaborate with area clinics on behalf of microbusinesses, small businesses and nonprofit groups, and to partner with local government officials and policy makers on

¹¹⁵ Jones, *Innovative Approaches*, *supra* note 23, at 377, 389-90.

¹¹⁶ *Id.* at 389-90.

¹¹⁷ *Id.*

¹¹⁸ THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL SMALL BUSINESS AND COMMUNITY ECONOMIC DEVELOPMENT CLINIC, IN PARTNERSHIP WITH WASHINGTON AREA LAWYERS FOR THE ARTS, WITH THE GENEROUS SUPPORT OF THE DC COMMISSION ON THE ARTS AND HUMANITIES, PERSPECTIVES ON THE CREATIVE ECONOMY 8 (2011), *available at* <http://waladc.org/2014/07/wala-creative-economy-report-re-released/> [hereinafter PERSPECTIVES ON THE CREATIVE ECONOMY].

¹¹⁹ *Id.* Mindful of the importance of clearing these regulatory hurdles, Professor Jones initiated an Action Research Regulatory Reform Initiative to “transform DC’s corporate registration, licensing, and compliance regime into a more business-friendly system.” In this effort, GW pooled its resources with faculty at UDC-David A. Clark School of Law’s Community Development Clinic to streamline the DC business registration process in an effort to make it more user-friendly. This objective is solidly in line with the efforts of former Mayor Vincent Gray (D) to make DC a business friendly city.

behalf of a shared constituency. Although it will likely take some time for the GW regulatory reform project to accomplish a discernable impact for businesses in the District of Columbia, the project has already taken positive steps by meeting with regulatory program directors to identify and discuss current administrative obstacles and systemic backlogs.

This regulatory reform and modernization initiative rests on encouraging innovation and viable alternatives for a regulatory agency that is open and willing to implement change. Similar projects and united efforts may be realized across the country in other transactional clinics.¹²⁰ While business incubation and technical and legal assistance are extremely helpful resources for prospective small business owners, the best tonic for a less than efficient regulatory system is effective and meaningful change.

The project culminated in a presentation to the Mayor's Business Regulatory Reform Task Force,¹²¹ in 2013. The unfortunate reality is that the District of Columbia ranks number 50 in a study of user-friendly business jurisdictions.¹²² Over several semesters GW Law SBCED Clinic students, colleagues at areas law school clinical programs, and community partners chronicled the obstacles to effective business development including among other things, a non-user-friendly website. Significantly, students were able to share the characteristics and practices of the top business friendly jurisdictions with the Mayor's 32-person appointed task force.¹²³

Incorporating action research into the SBCED Clinic has resulted in a number of significant outcomes. Two examples are noteworthy. First, having learned of the Clinic's action research component, the Clinic attracted new clients who would not otherwise have found out about the Clinic. Second, the process of having students conduct site visits to well-performing nonprofit organizations and key stakeholders expanded students' understanding of the nonprofit sector.

¹²⁰ Jones, *Innovative Approaches*, *supra* note 23.

¹²¹ The Task Force delivered a report including "16 recommendations to improve the District's business environment." Press Release, Executive Office of the Mayor, Mayor Unveils Business Regulatory Reform Task Force Report (Aug. 25, 2014), <http://dcra.dc.gov/release/mayor-unveils-business-reg-reform-task-force-report> (last visited Apr. 29, 2015). The report is available here: http://dcra.dc.gov/sites/default/files/dc/sites/dcra/release_content/attachments/Business_Regulatory_Reform_Task_Force.pdf.

¹²² The Small Business & Entrepreneurship Council's Small Business Survival Index ("Survival Index") of 2011 ranked DC last as the least friendly policy environment for entrepreneurship. The Survival Index ranks the 50 states and DC according to government imposed costs affecting investment, entrepreneurship and business and considers their public policy climates for entrepreneurship. *Small Business Survival Index*, SMALL BUSINESS & ENTREPRENEURSHIP COUNSEL, www.sbecouncil.org/resources/publications/survivalindex2011 (last visited Nov. 7 2014).

¹²³ "As established, the task force is composed of 19 voting members, nine voting ex-officio members and four non-voting members." Press Release, Executive Office of the Mayor, *supra* note 121.

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Students further understood the challenges and constraints encountered by the government and other actors in the arts, nonprofit, and regulatory spheres.¹²⁴ Clinic students were able to help fledgling nonprofit groups by advising them on the attributes of well-performing nonprofit organizations.

The GW Law SBCED Clinic's Action Research Project on Regulatory Reform and Modernization illustrates how transactional legal clinics are well positioned to petition for administrative efficiency and meaningful policy change within regulatory regimes. A city's regulatory system, particularly the administration of that system, can serve to facilitate or hinder business development and growth in the area. In a tri-jurisdictional area, like the District of Columbia with its Maryland and Virginia suburbs, incentives should be in place to entice new business owners to launch their enterprise within the most flexible and responsive jurisdiction. This holds especially true for small and microbusinesses, which typically have fewer resources to spend on regulatory compliance.

PART III. CLIENTS AND COMMUNITIES SERVED

Transactional law clinics teach students lawyering skills, values and ethics through work with real clients in various communities enabling students to learn the attributes of transaction cost engineers. These clinics work with diverse clients – from artists, entertainers and other creative people to immigrants and college students – a few examples follow.

A. Arts and Entertainment

The creative, or arts economy, is an important subsection of economic growth within some communities. In Washington D.C., for example, private employment in this sector accounts for 12 percent of employment in the District.¹²⁵

Arts-centered community development and microbusiness development within creative and innovative industries provide abundant legal issues and related legal work for attorneys.¹²⁶ Since most local and community-based artists do not have the generous financial support of benefactors, or may otherwise not be in a position to leverage their creativity to benefit from angel or venture capital investments, private law firm pro bono assistance and legal clinic representation often serve as vital and in some cases, the sole vehicle for securing legal assistance. Transactional lawyers are particularly helpful in navigating the legal

¹²⁴ Jones, *Innovative Approaches*, *supra* note 23.

¹²⁵ See PERSPECTIVES ON THE CREATIVE ECONOMY, *supra* note 118, at 8.

¹²⁶ Amanda Spratley, *Connecting Law and Creativity: The Role of Lawyers in Supporting Creative and Innovative Economic Development*, 8 HASTINGS BUS. L.J. 221, 237-39 (2012).

work and regulatory compliance issues related to launching and operating for-profit and nonprofit arts entities.¹²⁷

The creative arts and entertainment cases handled by transactional legal clinics across the country are quite varied, with some clinics designating a precise entertainment or arts focus within the particular clinic's design. However, due to the integrated nature of Arts and Entertainment ("A&E"), we use this label here intentionally to incorporate elements from all creative disciplines. The work of the following seven clinics provides insight into some of the deals student attorneys are handling within these specialized A&E transactional programs.¹²⁸

The GW Law SBCED Clinic has worked with Washington Area Lawyers for the Arts (WALA) in a few capacities: 1) by providing direct legal services to the nonprofit organization in a lawyer/client relationship, 2) as a community partner, 3) as volunteer lawyers seeking case referrals from WALA and 4) more recently, as a partner in WALA's new Live Clinic, in which clinic students from American University Intellectual Property Clinic (working under Professor Victoria Phillips) and GW Law SBCED Clinic students (working under Professor Jones) host a two-hour, brief advice, walk-in legal clinic for registered participants.

Other clinics provide arts and entertainment legal services exclusively. To illustrate, the Penn State Arts, Sports and Entertainment Law Clinic is one of the earliest clinics focusing specifically on the arts. Since its inception in 1980, the clinic has exposed students to negotiations involving record deals, music publishing, licensing, merchandising endorsement contracts, and other music law issues.¹²⁹

Another arts-focused clinic is Harvard's Recording Artist Project (RAP) within the Entertainment Law Clinic, which is connected to its transactional clinic program. Students enrolled in RAP handle a full range of legal issues for

¹²⁷ *Id.* at 248.

¹²⁸ As part of their overall clientele, many transactional legal clinics across the country represent artists and entertainers; the clinics highlighted here focus solely on arts and entertainment. As exemplified by the GW Law SBCED Clinic, arts organizations are often represented in standard CED and small business clinics. "Some of the arts-related clients that the Clinic has assisted over the past several years have included: groups in the performing arts such as theatre, dance, and music; for-profit businesses selling products ranging from clothing to greeting cards; literary groups aimed at promoting the literary arts as well as using literary activities to further social missions; and nonprofit organizations promoting arts domestically and internationally for specialized demographic or immigrant communities. The Clinic has also worked with clients whose activities are not easily classifiable within an artistic discipline but fall within the broader context of creative activity." *Id.* at 276.

¹²⁹ *Arts, Sports & Entertainment Law Clinic*, PENN STATE, THE DICKINSON SCH. OF LAW, <https://pennstatelaw.psu.edu/practice-skills/clinics/arts-sports-entertainment-law-clinic> (last visited Oct. 9, 2014).

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artists and entertainers, from recording and publishing agreements to internet distribution and other licensing contracts.¹³⁰

On the west coast, students enrolled in Chapman Law's Entertainment Contracts Law Clinic handle legal work for independent filmmakers, including drafting incorporation documents and employment agreements for cast and crew on feature-length motion pictures.¹³¹ Back east, Cardozo Law School's Indie Film Clinic offers a program geared toward representing independent New York filmmakers, assisting them with a host of pre-production legal documents and issues.¹³²

Two other clinics focused on the abundant intellectual property issues that arise in the representation of artists and entertainers are the Vanderbilt Intellectual Property and the Arts Clinic¹³³ and the Seattle University Arts Legal Clinic. The latter clinic utilizes adjunct intellectual property professors and collaborates with Washington Lawyers for the Arts as part of the one-credit course.¹³⁴

B. Sustainable Agriculture

News stories are increasingly chronicling the local foods movement, as "local farm sales are becoming more stable, predictable and measurable."¹³⁵ With more entrepreneurs invoking the "future is local,"¹³⁶ mantra, it is likely that the local food systems sector will continue to grow.

Consistent with the reality that transactional clinics reflect societal needs, the local foods movement has made its way into the law school curriculum. In the last few years, Stanford, Penn State and Harvard each launched agriculture-related clinics. Stanford's Organizations and Transactions (O&T) Clinic, founded

¹³⁰ *What We Do — Entertainment Law*, HARVARD LAW SCH., <http://www.law.harvard.edu/academics/clinical/tlc/clients/entertainment.html> (last visited July 5, 2012).

¹³¹ *Entertainment Contracts Law Clinic*, CHAPMAN UNIV. SCH. OF LAW, <http://www.chapman.edu/law/legal-clinics/entertainment-contracts.aspx> (last visited July 3, 2012).

¹³² *The Indie Film Clinic*, BENJAMIN N. CARDOZO SCH. OF LAW, <http://cardozo.yu.edu/MemberContentDisplay.aspx?ccmd=ContentDisplay&ucmd=UserDisplay&userid=256> (last visited July 5, 2012).

¹³³ *Intellectual Property and the Arts Clinic*, VANDERBILT LAW SCH., <http://law.vanderbilt.edu/academics/curriculum/elective-courses/intellectual-property-and-the-arts-clinic/index.aspx> (last visited July 5, 2012).

¹³⁴ *Clinic Courses*, SEATTLE UNIV. SCH. OF LAW, http://www.law.seattleu.edu/Academics/Law_Clinic/Clinic_Courses.xml#artslegal (last visited July 5, 2012).

¹³⁵ The New York Times covered the growth in the local foods business model, including the personal \$2 million contribution of a former Microsoft manager for land plots and new farmer training. Kirk Johnson, *Small Farmers Creating a New Business Model as Agriculture Goes Local*, N.Y. TIMES, July 1, 2012, available at http://www.nytimes.com/2012/07/02/us/small-scale-farmers-creating-a-new-profit-model.html?_r=1&pagewanted=print.

¹³⁶ *Id.*

in 2008, was consciously designed to represent food system organizations.¹³⁷ Shortly after launching the clinic within the rich agricultural valleys of Northern California, the clinic's docket represented nearly 30% of local food system organizations.¹³⁸ Professor Mitchell, the program director, explains the transactional benefits of the O&T Clinic:

O&T is targeted at students interested in core commercial and corporate work. The food system projects provided exposure to relevant substantive subject matters. Assignments involving land access and program operations, for example, enabled students to revisit the first year curriculum—property, contracts, and torts—in real world settings.¹³⁹

In 2008, Penn State developed the Rural Economic Development Clinic structured to assist clients seeking opportunities in sustainable agriculture, through the marketing of goods through Community Supported Agriculture,¹⁴⁰ and contracts related to wind and solar energy, or oil and gas extraction.¹⁴¹ At the same time, other law school programs such as Harvard's Food Law and Policy Clinic were created to promote local farming and access to healthy foods.¹⁴²

C. Corporate Laboratory

One issue frequently encountered in discussions of clinical pedagogy is the complexity of the matters being handled by students. Noting the concerns involved in assigning some types of complex matters in a clinical context,

¹³⁷ Jay A. Mitchell, *Getting into the Field*, 7 J. FOOD L. & POL'Y, 69, 85-86 (2011).

¹³⁸ *Id.* at 86.

¹³⁹ *Id.* at 89.

¹⁴⁰ "In basic terms, Community Supported Agriculture (CSA) consists of a community of individuals who pledge support to a farm operation so that the farmland becomes, either legally or spiritually, the community's farm, with the growers and consumers providing mutual support and sharing the risks and benefits of food production." COMMUNITY SUPPORTED AGRICULTURE (CSA): AN ANNOTATED BIBLIOGRAPHY AND RESOURCE GUIDE 1, (Suzanne DeMuth, ed., USDA 1993) available at <http://www.nal.usda.gov/afsic/pubs/csa/csadef.shtml> (excerpt).

¹⁴¹ *Rural Economic Development Clinic*, PENN STATE, THE DICKINSON SCH. OF LAW, http://law.psu.edu/academics/clinics/rural_economic_development_clinic (last visited July 5, 2012).

¹⁴² Harvard Law School launched a Food Law and Policy Clinic in 2010 that operates in collaboration with the Center for Health Law and Policy Innovation. The Clinic focuses in part on increasing healthy food access and assisting small and local farmers to partake in food markets. Some of the projects undertaken by the Food Law and Policy Clinic include the development of best practices for state and local food policy councils in the form of toolkits outlining key food policy issues, and farm to school initiatives supporting a school and local farm exchange, for the mutually beneficial purpose of facilitating school access to fresh, locally grown food products. *Food Law and Policy Clinic*, HARVARD LAW SCH., <http://www.law.harvard.edu/academics/clinical/lsc/clinics/food%20projects.htm> (last visited June 25, 2012).

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including the fact that sophisticated clients engaged in large financial deals are unlikely to be interested in student-led representation. Professor Fleischer observed:

I would not expect a student to draft a good stock purchase agreement without extensive training and supervision. Another problem with extending the clinical model to financial transactions is practical: there are no clients. No client would entrust a multi-million dollar transaction to law students.¹⁴³

Notwithstanding this concern, the University of Chicago Law School has successfully instituted a law school course that works on real problems through its Corporate Lab, a program that exposes students to large corporate transactions during law school. In a departure from the nonprofit, small business and microenterprise transactional work typically handled by law school legal clinics, co-founders David Zarfes and Michael Bloom¹⁴⁴ launched the initiative in 2009 to work “primarily with for-profit, Fortune 500 companies (e.g., Microsoft, JPMorgan Chase, IBM).”¹⁴⁵ The program, recently renamed the Kirkland & Ellis Corporate Lab in recognition of a 5.5 million dollar naming gift,¹⁴⁶ reports students are acknowledging and applauding the opportunity to work on “real contracts, with real companies.”¹⁴⁷ Companies participating in the program such as Baxter International are championing the student-mentoring model, stating “It’s a win-win, we get outside law firm-quality projects done at no cost to us.”¹⁴⁸ This clinic model is reported to be “a law school course that works on real-world

¹⁴³ Victor Fleischer, *Bringing Corporate Transactions into the Law School*, COLUM. BUS. L. REV. 475, 485 (2002).

¹⁴⁴ Dean David Zarfes founded the Corporate Lab in 2009 with Sean Z. Kramer and Michael Bloom, in part to address the deficiencies in practical skills training within law school programs that were highlighted by the Carnegie Report. Bethany Krajelis, *Lab Teaches Real World Skills*, CHI. DAILY LAW BULLETIN (Oct. 21, 2011), <http://www.law.uchicago.edu/news/chicago-daily-law-bulletin-lab-teaches-real-world-skills>.

¹⁴⁵ Posting of Michael L Bloom, Lecturer in Law Executive Director, Corporate Lab Clinic michaelbloom@uchicago.edu, to lawclinic@lists.washlaw.edu (Apr. 5, 2012) (on file with author). More information about the Corporate Lab can be found at <http://www.law.uchicago.edu/corporate-lab> (last visited Oct. 4, 2012).

¹⁴⁶ Karen Sloan, *K&E Foundation Gives \$5.5M to Chicago Law’s Corporate Lab*, THE NAT’L LAW JOURNAL, March 6, 2015, <http://www.nationallawjournal.com/home/id=1202719927948/KEFoundation-Gives-55M-to-Chicago-Laws-CorporateLab?mcode=1202615432217&curindex=1&slreturn=20150301113815>.

¹⁴⁷ See Krajelis, *supra* note 144.

¹⁴⁸ David Scharf, Baxter General Counsel, *quoted in* Sue Reisinger, *An In-House Lab for Future GCs*, CORPORATE COUNSEL (Mar. 1, 2012), *available at* <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202541499731>.

problems.”¹⁴⁹ Professor Michael Bloom has adopted this model at the University of Michigan Law School, where he now directs the Transactional Lab.¹⁵⁰

D. Representing International Clients

Expanded cross border opportunities are also on the rise in the transactional clinic context. The University of Michigan established its International Transactions Clinic in 2008. Co-founded and directed by Professor Deborah Burand,¹⁵¹ the clinic, the first of its kind, focuses on the representation of “socially responsible, double-bottom-line investors who want to see their investments provide both a financial and positive return.”¹⁵²

Following Professor Burand’s efforts to expand the reach of international transactional work among clinical law faculty, cross-institutional collaborations are solidly underway.¹⁵³ The legal clinics at George Washington, Georgetown and Michigan are representing Ashoka, a nonprofit organization, in different capacities to provide legal support to an elected network of close to 3000 Ashoka Fellows in 76 countries.¹⁵⁴ Ashoka, founded by lawyer Bill Drayton in 1980, is a global leader in the social entrepreneurship movement.¹⁵⁵

Ashoka fellows are selected because of their vision and potential to implement sustainable social change and economic development. Based on a successful three-tiered approach it supports social entrepreneurs, promotes group entrepreneurship and builds infrastructure for the sector.¹⁵⁶

¹⁴⁹ Marsha Nagorsky, Assistant Dean for Commc’ns, Univ. of Chi. Law Sch., *quoted in* Reisinger, *supra* note 148.

¹⁵⁰ Professor Michael L. Bloom, Clinical Assistant Professor of Law, University of Michigan Law, <https://www.law.umich.edu/FacultyBio/Pages/FacultyBio.aspx?FacID=bloomich> (last visited Apr. 3, 2015); University of Michigan Law, Transactional Lab course, <http://www.law.umich.edu/CurrentStudents/Registration/ClassSchedule/Pages/AboutClass.aspx?term=2020&classnbr=10048> (last visited Apr. 3, 2015).

¹⁵¹ Professor Burand is an established international transactional attorney with experience in the private, public and nonprofit sectors. See John Minnis, *Sound Transaction: U-M Law Professor Promotes Little Loans with Big Results*, DETROIT LEGAL NEWS at 1 (June 8, 2009), at 1, available at <http://www.law.umich.edu/clinical/internationaltransactionclinic/Documents/LegalNewsDeborahBurandArticle.pdf>.

¹⁵² *Id.*

¹⁵³ Deborah Burand, Susan R. Jones, Jonathan Ng, & Alicia Plerhoples, *Clinical Collaborations: Going Global to Advance Social Entrepreneurship*, 20 INTL. J. CLIN. L. EDUC. (2014).

¹⁵⁴ Ashoka, *How Law Schools and Entrepreneurs Collaborate to Serve Both Students and Innovators*, FORBES (2012), <http://www.forbes.com/sites/ashoka/2012/12/07/how-law-schools-and-entrepreneurs-collaborate-to-serve-both-students-and-innovators> (last visited Nov. 1, 2014).

¹⁵⁵ *Frequently Asked Questions*, ASHOKA, <http://www.ashoka.org/facts> (last visited July 13, 2012).

¹⁵⁶ *Approach*, ASHOKA, <https://www.ashoka.org/approach> (last visited July 13, 2012).

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E. Representing Student Entrepreneurs

In 2012, the University of Michigan launched its third transactional clinical program, the Entrepreneurship Clinic, “focusing exclusively on advising University of Michigan (“U-M”) student entrepreneurs.”¹⁵⁷ Michigan’s expansion into the student entrepreneur and technology transfer clinical marketplace reflects a thoughtful approach toward serving students in dual capacities. The program aims to educate and train law students, while serving a student clientele. The clinic is part of an initiative funded by Chicago entrepreneur Sam Zell, a graduate of Michigan’s undergraduate and law programs. Mr. Zell donated 5 million dollars for the Zell Entrepreneurship and Law Program (ZEAL) to assist student entrepreneurs across all educational programs at the University of Michigan.¹⁵⁸

According to U-M’s Entrepreneurship Clinic Director, Professor Dana Thompson, Zell hopes to help launch the next Google or Facebook from the student entrepreneur clientele.¹⁵⁹ Bolstered by the contracted job market for new graduates and the national interest in entrepreneurship, U-M’s clinic has garnered great interest from students and clients, particularly those focused on technology, including mobile applications and medical-related devices. Intellectual property concerns and entity choice issues figure prominently in the early start-up stage; C corporations are often created consistent with venture capital financing practices.¹⁶⁰

U-M’s Clinic is the first to focus exclusively on student entrepreneurs. In light of the economic and institutional realities in a post-recession world, U-M’s focus on the student entrepreneur and entrepreneurship development within its student body is encouraging and will be interesting to watch.

¹⁵⁷ *Entrepreneurship Clinic*, UNIV. OF MICH. LAW SCH., <http://www.law.umich.edu/clinical/entrepreneurshipclinic/Pages/default.aspx> (last visited Oct. 1, 2012).

¹⁵⁸ Zell explained the ZEAL concept, stating “My goal with entrepreneurial ventures at the university has always been to create cross-pollination across multiple disciplines. . .we’ve got top schools in law, engineering, business and medicine. That’s an entrepreneurial jackpot just waiting to be cashed in.” It is noteworthy that while still a student at Michigan, Zell founded a real estate management and investment company. See Karen Sloan, *Zell Invests \$5 Million in Entrepreneurial Law Program at Michigan*, NAT’L LAW JOURNAL (Sept. 8, 2011).

¹⁵⁹ See University of Michigan Entrepreneurial Ecosystem, available at http://innovate.umich.edu/u-m_programs/u-ms-entrepreneurial-ecosystem/ (last visited Jan. 11, 2015); *Michigan Ross and the Zell Lurie Institute Again Named a Top Graduate Program in Entrepreneurship*, available at <http://www.wlox.com/story/26542160/michigan-ross-and-the-zell-lurie-institute-again-named-a-top-graduate-program-in-entrepreneurship> (last visited Nov. 1, 2014).

¹⁶⁰ Telephone Interview with Dana Thompson, Entrepreneurship Clinics Directors, Univ. of Mich. Law Sch. (July 23, 2012).

F. Representing Microbusiness and Microfinance Organizations

In the last 30 years U.S. microbusiness development has become a core part of the alternative financial services industry¹⁶¹ designed to help low and moderate-income entrepreneurs start and grow their businesses. Traditional capital markets are imperfect and were not created to help those within the low and moderate-income brackets. Microenterprise development organizations (MDOs) bridge a market gap by offering microloans or facilitating access to them.

Microbusinesses are typically a subset of small businesses “comprised of one to five people who seek \$500 to \$35,000 in start-up capital.”¹⁶² However, industry experts indicate that “microbusiness’s progressive capital needs may be as high as \$100,000.”¹⁶³

In the U.S., the terminology “microenterprise,” signaling financial and social services beyond “just credit” may serve as “a community economic development, antipoverty, income creation, asset accumulation, and job creation or workforce development strategy designed to create self-employment, primarily for historically underserved populations such as women and minorities.”¹⁶⁴ Recently, industry advocates urge the use of the term “microbusiness” to firmly root very small businesses as a core part of small business.¹⁶⁵

Transactional legal clinics have represented microbusinesses and their supporters, the MDOs. MDOs are usually federally tax-exempt nonprofit corporations. An MDO’s legal needs include help with loan documents and other contracts, commercial lease review, and business negotiations, as well as “regulatory compliance to act as money lenders, tax advice, and intellectual property protection.”¹⁶⁶ At the same time, microbusinesses need help with many legal and business issues. These issues include:

[F]orming legal structures (corporations, limited liability companies, partnerships, and sole proprietorships), drafting and

¹⁶¹ See generally KARL F. SEIDMAN, *ECONOMIC DEVELOPMENT FINANCE* (2005) (describing various development models including revolving loan funds, community based financial institutions such as community development loan funds and community development credit unions and microfinance).

¹⁶² SUSAN D. BENNETT, BRENDA BRATTON BLOM, LOUISE A. HOWELLS, & DEBORAH S. KENN, *COMMUNITY ECONOMIC DEVELOPMENT LAW: A TEXT FOR ENGAGED LEARNING* 173 (2012) (citing Connie Evans, President & CEO, Ass’n for Enterprise Opportunity, Presentation at the Am. Bar Ass’n Forum on Affordable Housing and Community Economic Development Law Annual Conference, May 2010).

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 172.

¹⁶⁵ The Association for Enterprise Opportunity, *Bigger Than You Think: The Economic Impact of Microbusiness in the United States* (2013).

¹⁶⁶ BENNETT ET AL., *supra* note 162, at 176.

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interpreting contracts (leases, service contracts, and licensing agreements), interpreting and complying with zoning laws, protecting intellectual property (copyrights, trademarks, trade secrets, and patents), and obtaining appropriate licenses and permits required to operate legally. These legal services are important because they improve the microbusinesses' survival rates and mitigate lenders' risks.¹⁶⁷

Overall, MDOs make loans to microbusiness owners “who possess the determination, creativity, talent, and drive to turn interests, skills, and hobbies into businesses. These microentrepreneurs not only contribute to individual or family income but they serve as role models, positively impacting the overall economic and social health of communities.”¹⁶⁸ Aware of the economic damage caused by “pay-day” lenders operating in low income communities charging exorbitant interest rates and driving low income people deeper into debt, microenterprise development offers microbusiness owners financial education, chances to repair and build credit, and access to business loans at lower interest rates.¹⁶⁹

While most microenterprises employ the owner and perhaps another family member, leading to their classification as “mom and pop” or lifestyle businesses, some of them grow and employ others. Microbusinesses “include various services and products—from cleaning services to computer technologies, child care, home improvement repair and renovation to environmental products, contributing to a green economy.”¹⁷⁰

The Association for Enterprise Opportunity (AEO), the leading trade organization in the field, believes that microbusinesses serve as the backbone of the U.S. economy. It “estimates that one in six private sector American employees works in a microbusiness,” that “eighty percent of U.S. businesses are microbusinesses,” and that there are more than 24 million microenterprises in the U.S. representing 18% of all private employment and 87% of all businesses.”¹⁷¹

¹⁶⁷ *Id.* at 173 (citing Susan R. Jones & Amanda Spratley, *How Microenterprise Development Contributes to CED*, in *BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR ADVOCATES, LAWYERS AND POLICYMAKERS* 379 (Roger A. Clay, Jr. & Susan R. Jones eds., 2009); and Susan R. Jones, *Women and Microfinance*, in *WOMEN AND POLITICS AROUND THE WORLD: A COMPARATIVE HISTORY & SURVEY*, VOL. I: ISSUES 199 (Joyce Gelb & Marian Lief Palley eds., 2009)).

¹⁶⁸ BENNETT ET AL., *supra* note 162, at 172 (citing *LEGAL GUIDE TO MICROENTERPRISE DEVELOPMENT*, at ix-10).

¹⁶⁹ *Id.* at 173 (citing *Payday Lending, Overview*, CTR. FOR RESPONSIBLE LENDING, www.responsiblelending.org/payday-lending, which reports that Pay-day lenders' interest rates are up to 400 percent).

¹⁷⁰ *Id.* at 176.

¹⁷¹ *Id.*

Advocating for the role of Main Street businesses or microbusiness in American economic recovery, AEO observes that today “more Americans became entrepreneurs than in any time in the last 15 years.”¹⁷² Indeed, “the median net worth of business owners is almost 2.5 times higher than non-business owners.”¹⁷³ Moreover, observing that the power of microbusiness is undervalued, the “odds of turning a venture-backed start-up into a billion dollar business are at best 1 in 20,000.”¹⁷⁴ Remarkably, AEO opines, “If just one in three microenterprises hired a single employee the U.S. would be at full employment.”¹⁷⁵

Microbusinesses are especially important to communities of color. “AEO posits that microenterprise development is a proven pathway to business ownership for underserved entrepreneurs comprising 60 percent women, 50 percent people of color and 50 percent rural residents.”¹⁷⁶

In general, the industry’s future is bright. Microbusinesses are on a continuing rise because of technological advances. Peer-to-peer (P2P) microlending,¹⁷⁷ “a \$647 million industry,”¹⁷⁸ and crowdfunding,¹⁷⁹ made popular by websites such as Kiva.org, Microplace, and Kickstarter.com, link microentrepreneurs in need of small loans with lenders supportive of their businesses.¹⁸⁰

¹⁷² ASS’N FOR ENTER. OPPORTUNITY, *THE POWER OF ONE IN THREE: CREATING OPPORTUNITIES FOR ALL AMERICANS TO BOUNCE BACK 1* (2011), available at http://www.aeoworks.org/pdf/one_in_three.pdf (based on 2010 data).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Association for Enterprise Opportunity, *Top Ten Reasons Why Microenterprise Matters More than Ever to America*, ASS’N. FOR ENTER. OPPORTUNITY, available at http://cfed.org/assets/documents/sma_toolkit/10_reasons_med_matters.pdf, (last visited Nov. 1, 2014).

¹⁷⁷ “In its most general form, online P2P lending can be defined as any transaction arranged using the Internet in which one or more individuals lend money to one or more other individuals. “Traditional” lending, by contrast, involves an institutional lender such as a commercial bank, credit union, and the like, lending money to an individual. The cornerstone of P2P lending is that individuals, rather than institutions, stand on both sides of the transaction.” See Eric C. Chaffee & Geoffrey C. Rapp., *Regulating Online Peer-to-Peer Lending in the Aftermath of Dodd-Frank: In Search of an Evolving Regulatory Regime for an Evolving Industry*, 69 WASH. & LEE L. REV. 485, 491 (2012).

¹⁷⁸ Ian Galloway, *Peer-to-Peer Lending and Community Development Finance*, CMTY. INV., Winter 2009/2010, at 18.

¹⁷⁹ Crowd funding or crowdfunding (alternately crowd financing, equity crowdfunding or hyper funding) describes the collective effort of individuals who network and pool their resources, usually via the Internet, to support efforts initiated by other people or organizations. See Andrea Ordanini et al., *Crowd-Funding: Transforming Customers Into Investors Through Innovative Service Platforms*, 22 J. SERV. MGMT. 443, 443 (2011).

¹⁸⁰ See Galloway, *supra* note 178, at 18; see also Jane J. Kim, *Q&A: ‘Bringing Together George Bailey and Gordon Gekko’*, WALL ST. J. (Mar. 12, 2008), available at <http://online.wsj.com/article/SB120525138644627455.html>.

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At the same time, fueled by economic downturn, electronic freelance service providers such as E-Lance,¹⁸¹ LiveOps,¹⁸² ODesk,¹⁸³ and Freelancer.com¹⁸⁴ represent a “new generation of online service marketplaces giving small companies more opportunities [. . .] to find specialized expertise and affordable labor.”¹⁸⁵ Indeed, marketing experts believe that there are 12 million home-based, fulltime, freelancers working as independent contractors, and that this number could grow to 14 million by 2015.¹⁸⁶

Popular crowdfunding websites, such as Kickstarter, are changing the way microbusinesses are funded.¹⁸⁷ Legislators recently began addressing some of the issues inherent in the crowdfunding movement. In March 2012, Congress passed the Jumpstart Our Business Startups, or “JOBS,” Act that provides several important exemptions from federal securities regulation, with one of the core tenets of the act addressing crowd funding.¹⁸⁸ Federal securities law contains several registration requirements, imposed by securities laws, which affect individual or organizational efforts to raise capital for a new start up. One of the fundamental shifts imposed by the JOBS Act was a general exemption from standard registration protocols for crowd funding transactions.¹⁸⁹

¹⁸¹ Elance-ODesk allows companies to hire workers for internet-based projects. It matches contractors with potential job opportunities exclusively through the internet-based cloud, and businesses are able to contract out tasks or entire projects. *See About, ELANCE-ODESK*, <https://www.elance.com/q/about-elance> (last visited Sept. 21, 2012).

¹⁸² LiveOps is a contact center platform for virtual call center outsourcing with at-home agents for inbound and outbound calls. *See LIVEOPS*, <http://www.liveops.com/> (last visited Sept. 21, 2012).

¹⁸³ ODesk allows businesses to hire contractors for specific tasks or projects and track their work online. Businesses pay per hour or per project depending on the agreement specified. *See How It Works, ODESK*, <https://www.odesk.com/info/howitworks/client/> (last visited Oct. 2, 2012).

¹⁸⁴ Freelancer allows business to outsource work to designers, programmers, and content writers, and businesses are only required to pay for satisfactory service. Most projects start at \$30 and average under \$200. *See FREELANCER*, <http://www.freelancer.com> (last visited Oct. 2, 2012).

¹⁸⁵ Kermit Pattison, *Enlisting a Global Work Force of Freelancers*, N.Y. TIMES, June 24, 2009; *see also* Sarah E. Needleman, *Managing at a Distance*, WALL ST. J., June 21, 2010; Howard Greenstein, *Virtual Workers as a Start-Up Resource*, START-UP TOOLKIT (Apr. 28, 2010), www.inc.com/howard-greenstein/virtual-workers-as-a-start-up-resource.html.

¹⁸⁶ *Work in the Digital Age: A Clouded Future*, THE ECONOMIST, May 13, 2010 at 7.

¹⁸⁷ Kickstarter is a well-known funding vehicle for creative projects, *see The 10 Most Funded Kickstarter Campaigns Ever*, <http://www.entrepreneur.com/article/235313> (last visited Nov. 25, 2014), however additional crowd funding sites include WeFunder, Startup Addict, Rocket Hub, Quirky, CoFolio, and Start Some Good. *See Top 10 Crowdfunding Sites for Entrepreneurs*, PLAN TO START, <http://plantostart.com/10-crowdfunding-websites-entrepreneurs/http://plantostart.com/10-crowdfunding-websites-entrepreneurs/> (last visited Sept. 6, 2012).

¹⁸⁸ The JOBS Act is composed of discrete bills, including H.R. 3606, discussed above, and the Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012 (“CROWDFUND Act”), which amended Section 2(a) of the Securities Act of 1933 to include a transaction exemption of \$1 million from registration. Jumpstart Our Business Startups Act, Pub. L. No. 112-106, § 101(a), 126 Stat. 306 (2012).

¹⁸⁹ *Id.* § 101(a)(1)(2)(A).

In the last decade, companies seeking to go public have faced increased expenses, directly related to Sarbanes-Oxley (“SOX”),¹⁹⁰ which created substantial compliance costs that make it more expensive for companies to go public and stay public.¹⁹¹ With those costs come benefits, including increased access to investors and equity markets.¹⁹² Due to technological advances and the increasingly global marketplace there are new and distinct methods for raising capital.¹⁹³ For example, Kiva Microfunds, a non-profit organization, leverages a global network of microfinance institutions to create opportunities around the world, specifically targeted at alleviating poverty.¹⁹⁴ Another emerging trend is the broader use of the Internet, through websites like Kickstarter,¹⁹⁵ to raise capital for business and nonprofit ventures.¹⁹⁶ Until the enactment of the JOBS Act, concern existed regarding SOX compliance issues.¹⁹⁷ While concerns linger about the potential for fraud in a crowdfunding platform, ongoing analysis and troubleshooting may help allay some of these concerns.¹⁹⁸ Thus, crowdfunding will likely continue to emerge as a key startup and formation issue to be analyzed by law students working in transactional legal clinics. By all accounts, microbusinesses will continue to grow and fuel the economy. As growing businesses they will have ongoing legal needs.

¹⁹⁰ The Sarbanes-Oxley Act of 2002 was an Act to “protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws.” Sarbanes-Oxley Act, Pub. L. No. 107-204, § 1, 116 Stat. 745, 745 (2002).

¹⁹¹ See, e.g., Amy Feldman, *What Does Sarbanes-Oxley Mean for Companies That Want to Go Public?*, INC. (Sept. 1, 2005), available at <http://www.inc.com/magazine/20050901/surviving-so-si-debar.html>.

¹⁹² “An IPO is one of the most significant events in the life of a business. The capital raised through a successful public offering boosts a business’ ability to expand into new markets or grow through acquisitions.” <http://www.inc.com/guides/preparing-for-initial-public-offering.html> (last visited Nov. 1, 2014).

¹⁹³ See Kristen Moy & Alan Okagaki, *Changing Capital Markets and Their Implications for Community Development Finance*, CAPITAL XCHANGE—THE BROOKINGS INST. (July 2001), at 2, available at <http://www.brookings.edu/research/articles/2001/07/metropolitanpolicy-moy>.

¹⁹⁴ See KIVA, <http://www.kiva.org/about> (last visited July 26, 2012).

¹⁹⁵ Kickstarter is a well-known platform specifically geared toward funding creative projects. See *The 10 Most Funded Kickstarter Campaigns Ever*, *supra* note 187.

¹⁹⁶ See Nikki D. Pope, *Crowdfunding Microstartups: It’s Time for the Securities and Exchange Commission to Approve a Small Offering Exemption*, 13 U. PA. J. BUS. L. 973, 977 (2011).

¹⁹⁷ See Joan MacLeod Heminway & Sheldon Ryan Hoffman, *Proceed at Your Peril: Crowdfunding and the Securities Act of 1933*, 78 TENN. L. REV. 878, 882 (2011).

¹⁹⁸ As Senator Bernie Sanders (VT), tweeted after the JOBS Act passage, “Now the same people who caused this horrible recession are telling us that more Wall Street deregulation will create jobs.” Tom Szaky, *Crowdfunding and Social Entrepreneurs*, N.Y. TIMES, Mar. 26, 2012.

G. Immigrant Entrepreneurs

Immigrant entrepreneurs consist of two categories: those who start small businesses in the service industry and in the retail and wholesale distribution of commercial goods (such as clothing and food stores), and those who come to the U.S. to study at colleges and universities, often in the technology and science fields with an interest in developing their own companies.¹⁹⁹

The fact that “52% of Silicon Valley startups are founded by immigrants,”²⁰⁰ could lead to the conclusion that this latter brand of immigrant entrepreneur is not typically encountered in academic legal clinics. However, the number of immigrant entrepreneurs, especially at research universities, is on the rise throughout the country.²⁰¹ With this reality comes the need for appropriate legal services to address the specialized needs of entrepreneurs with related immigration concerns. It is not uncommon for transactional law clinics to receive inquiries from undergraduate and graduate students with developed start-up business concepts and tailored business plans, but whose time in the U.S. is restricted by nonimmigrant visas.²⁰² These situations require separate consultations with immigration counsel skilled at analyzing the feasibility of pursuing longer-term temporary or permanent visas.²⁰³

¹⁹⁹ See VIVEK WADHWA, BEN RISSING, ANNALEE SAXENIAN & GARY GEREFI, EDUCATION, ENTREPRENEURSHIP AND IMMIGRATION: AMERICA’S NEW IMMIGRANT ENTREPRENEURS, PART II, June 11, 2007, at 3 (most immigrant founders of engineering and tech companies came to the U.S. as students).

²⁰⁰ *New Kauffman Videos Feature America’s Great Job Creators: Immigrant Entrepreneurs*, KAUFFMAN FOUND. (July 11, 2012), <http://www.kauffman.org/newsroom/new-kauffman-videos-feature-americas-great-job-creator-immigrant-entrepreneurs.aspx> (last visited July 29, 2012).

²⁰¹ Immigrant entrepreneurs, in general, experience a variety of roadblocks including language barriers and broader concerns such as access to services, leading some to call for a clearinghouse service model. Pablo Ormachea & William Langer, *Delivery of Legal Services to Immigrant Small Business Owners: The Problems and a Model to Solve Them*, 3 DEPAUL J. SOC. JUST. 213, 214 (2009) (citing Patricia S. Abril, “Acoustic Segregation” and the Hispanic Small Business Owner, 10 HARV. LATINO. L. REV. 1, 1 (2007); Julian S. Lim, *Tongue-Tied in the Market: The Relevance of Contract Law to Racial-Language Minorities*, 91 CAL. L. REV. 579, 579 (2003)).

²⁰² The authors have direct experience fielding these types of inquiries from entrepreneurial law students on temporary student visas. See generally, Anthony Luppino, John Norton, Malika Simmons, Ewing Kauffman Foundation, *Reforming Immigration Law to Allow More Foreign Student Entrepreneurs to Launch Job-Creating Ventures in the United States* (August 2012), available at http://www.kauffman.org/~media/kauffman_org/research%20reports%20and%20cov%20ers/2012/08/kauffmanimmigrationreform.pdf (last visited Nov. 2, 2014).

²⁰³ A video produced by the Kauffman Foundation is instructive on the visa and immigration roadblocks frequently encountered by this population. See Videotape AMERICA’S GREAT JOB CREATORS: IMMIGRANT ENTREPRENEURS (Kauffman Foundation), available at <http://www.kauffman.org/KauffmanMultimedia.aspx?VideoId=1723649277001&type=R&tag=job%20creators> (last visited July 29, 2012).

In light of the fact that this new well-educated immigrant class²⁰⁴ outpaces other immigrant groups, a trend that is likely to continue, transactional legal clinics that assist immigrant entrepreneurs would be timely. These clinics could identify best practices and other opportunities for representing immigrant entrepreneurs and serve as a resource for both the clinical community and this surging population of entrepreneurs.

PART IV. TRANSACTIONAL LAWYERING MODELS

When Professor Gilson described lawyers as transaction cost engineers he articulated a specific value they provide.²⁰⁵ In fact, transactional lawyers can play a number of roles with clients. This section explains some of them.

One lawyering model, known as community lawyering, is “an approach to the practice of law centered on building sustainable and enduring relationships with clients and communities.”²⁰⁶ It has also been described as a “prominent commitment among progressive legal scholars and clinical teachers.”²⁰⁷ Many areas of law are associated with community lawyering practice, both in the academy²⁰⁸ and within social service organizations addressing legal needs. Community lawyering can and often does exist outside the realm of direct legal

²⁰⁴ Asian Americans are reportedly the largest immigrant group in the U.S. “Drawing on Census Bureau and other government data as well as telephone surveys from Jan. 3 to March 27 of more than 3,500 people of Asian descent, the 214-page study found that Asians are the highest-earning and best-educated racial group in the country. Among Asians 25 or older, 49 percent hold a college degree, compared with 28 percent of all people in that age range in the United States. Median annual household income among Asians is \$66,000 versus \$49,800 among the general population.” See Kirk Semple, *In a Shift, Biggest Wave of Immigrants is Now Asian*, N.Y. TIMES, June 18, 2012, available at <http://www.nytimes.com/2012/06/19/us/asians-surpass-hispanics-as-biggest-immigrant-wave.html>.

²⁰⁵ Gilson, *supra* note 1, at 253. “When markets fall short of perfection, incentives exist for private innovations that improve market performance. As long as the costs of innovation are less than the resulting gains, private innovation to reduce the extent of market failure creates value. It is in precisely this fashion that opportunity exists for business lawyers to create value.”

²⁰⁶ BENNETT ET AL., *supra* note 162, at 236.

²⁰⁷ Paul R. Tremblay, *Counseling Community Groups*, 17 CLINICAL L. REV. 389, 391 (2010) (citing Pionelli, *Foucault's Approach to Power: Its Allure and the Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395, 398, n.6., in part for the observation that community lawyering is known by several terms including “rebellious lawyering, critical lawyering, facilitative lawyering, and collaborative lawyering”).

²⁰⁸ “Clinical faculty who identify themselves as community lawyers, their clinics as community lawyering clinics, or community lawyering as an aspect of their clinics, engage in a range of different practice areas, including workers’ rights, immigration, children’s rights, public benefits, environmental rights, community economic development, and intellectual property.” Karen Tokarz, Nancy L. Cook, Susan Brooks, and Brenda Bratton Blom, *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J. L. & POL’Y 359, 362 (2008), available at http://openscholarship.wustl.edu/law_journal_law_policy/vol28/iss1/11.

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services, in the form of lobbying activities, advocacy, and community organizing.²⁰⁹ Community lawyering is a perennial focus within clinical legal education, originally conceived, in part, through Gary Bellow's²¹⁰ call to action, and continually executed and reimagined in subsequent waves²¹¹ of legal education.

Similar to the many manifestations of community lawyering in a litigation context, the concept of community lawyering in transactional clinical practice takes many forms. Traditionally, the substantive focus of "transactional community-centered lawyering has been on affordable housing development, job training programs, and childcare."²¹²

Professor Michael Diamond of Georgetown University Law Center urged the transactional bar to fully engage "in organizing and developing client groups and in developing and implementing strategies that increase the long-term political power of clients."²¹³ Professor Diamond's observations are significant,

²⁰⁹ "Attracting and maintaining affordable housing in low-income communities is often a primary goal, and to that end, community lawyers often work with non-profit community development organizations, government agencies, legislators, tenant groups, and private developers[.]" Robert Rubinson, *A Theory of Access to Justice*, 29 J. LEGAL PROFESSOR 89, 152 (2004/2005); see also, Anthony V. Alfieri, *Fidelity to Community: A Defense of Community Lawyering*, 90 TEX. L. REV. 635, 638 (2012) ("By community lawyering, I mean neighborhood-based representation on behalf of underserved individuals, groups, and organizations in the form of direct-service, impact, or test-case litigation, legislative law reform, transactional counseling, and legal-political organizing").

²¹⁰ Known as an inspiring clinician and extraordinary lawyer, Gary Bellow's was recognized for his early involvement in the poverty law movement and his vigorous attempts to remedy historical inequity and injustice. His support for clinical legal education was based, in part, on his belief that "the separation of law study from law practice may make both legal education and professional activity much less effective, informed, and self-critical than it might otherwise be." Charles J. Ogletree, Jr., *A Tribute to Gary Bellow: The Visionary Clinical Scholar*, 114 HARV. L. REV. 421, 426 (2000). And as another Harvard colleague intoned: "What perhaps remains elusive in my effort to define political lawyering is a quality Gary Bellow himself best illustrates: the profound willingness and ability to learn about and respond to the complexity of real human beings in ever-shifting legal, economic, and social worlds. . . Such a deeper sense of complexity necessarily leads to more acute moral perceptions, rather than passivity or paralysis." Martha Minow, *Political Lawyering: An Introduction*, 31 HARV. C.R.-C.L. L. REV. 287, 289 (1996).

²¹¹ Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education For This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 4 (Fall 2000). "The interpretation of past events is dependent on one's point of view, and we acknowledge that the benefit of using the concept of waves as an organizational device may be offset by the resistance this categorization evokes in those who view the past through different interpretational lenses."

²¹² Laurie Hauber, *Promoting Economic Justice Through Transactional Community-Centered Lawyering*, 27 ST. LOUIS U. PUB. L. REV. 3, 20 (2007).

²¹³ Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 68 (2000). "The foundation of the activist lawyer model consists of being prepared to take on roles that more closely fit the multifaceted needs of the community. These roles can only be defined by the contexts in which the activist lawyer functions. The paradigm of the rebellious lawyer must expand to accommodate that reality. Certainly the activist lawyer must bring to the table his or her "legal" skills. These skills may be why the client approached the

particularly when coupled with distinctions between conventional transactional lawyering from the work performed by activist lawyers. Activist lawyers emphasize the differences in the background and education of clients while traditional transactional lawyers typically represent sophisticated, deal-oriented clients. Similarly, “the activist lawyer, in contrast, often faces a client with no realistic options, who neither sought nor is prepared for the major changes that the transaction will entail.”²¹⁴

Community lawyering in clinical legal education will likely continue to be a central tenet of clinic design and implementation and a centerpiece of clinical pedagogy discourse. However, it is possible, with continued technological advancements, that the execution of targeted community lawyering will innovate in ways currently unimagined.

Another lawyering model, virtual lawyering, has contributed significantly to changes in the ways attorneys practice today. Virtual lawyering, which is fueled by technology, encompasses an array of online legal services including legal advice and counseling as well as document drafting and review.²¹⁵

Recent trends in the delivery of legal services include virtual law practice,²¹⁶ e-lawyering,²¹⁷ and unbundled legal services,²¹⁸ three distinct but often inter-related concepts.²¹⁹ Branded as the future of the legal profession,

attorney in the first place. But, as we have seen, the chronic problems in low-income communities are not strictly, or even primarily, legal. The need is to create community institutions capable of marshaling and utilizing power.” *Id.* at 131.

²¹⁴ *Id.* at 127-28 n.217.

²¹⁵ LAWYERING TASK FORCE, AM. BAR ASS’N, SUGGESTED MINIMUM REQUIREMENTS FOR LAW FIRMS DELIVERING LEGAL SERVICES ONLINE, A.B.A., (Oct., 2009), available at http://meetings.abanet.org/webupload/commupload/EP024500/relatedresources/Minimum_Requirements_for_Lawyers_2009_10_24.pdf.

²¹⁶ “Virtual law practice is a professional law practice that exists online through a secure portal and is accessible to both the client and the lawyer anywhere the parties may access the Internet. Legal services are delivered online using this method. The lawyers and their clients have the ability to securely discuss matters online, download and upload documents for review, create legal documents, and handle other business transactions related to the delivery of legal services in a secure digital environment.” STEPHANIE L. KIMBRO, VIRTUAL LAW PRACTICE: HOW TO DELIVER LEGAL SERVICES ONLINE 4 (Am. Bar Ass’n ed. 2010).

²¹⁷ “[A]ll the ways in which lawyers can do their work using the Web and associated technologies. These include new ways to communicate and collaborate with clients, prospective clients and other lawyers, produce documents, settle disputes and manage legal knowledge. Think of a lawyering verb – interview, investigate, counsel, draft, advocate, analyze, negotiate, manage, and so forth – and there are corresponding electronic tools and techniques.” *Id.*

²¹⁸ “A practice in which the lawyer and client agree that the lawyer will provide some, but not all, of the work involved in traditional full service representation. Simply put, the lawyers perform only the agreed upon tasks, rather than the whole ‘bundle,’ and the clients perform the remaining tasks on their own.” *Definitions: Unbundled Legal Services*, N.Y. CITY CIVIL COURT, <http://www.nycourts.gov/courts/nyc/civil/definitions.shtml#u> (last visited July 20, 2012).

²¹⁹ See Abe Krash, *The Changing Legal Profession*, WASH. LAWYER, (Jan. 2008), available at <http://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/january-2008-law->

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virtual law practice connotes a more efficient form of law practice, especially in transactional or non-litigation matters that enables lawyer-client interactions using a secure platform, thereby replacing traditional law office meetings.²²⁰

E-lawyering refers to the many ways lawyers practice on the Internet and use related technologies to investigate, interview, counsel, and communicate with clients, as well as negotiate deals, advocate for clients, settle disputes and manage legal practice. E-lawyering includes virtual lawyering, but is broader than virtual law practice, as it involves any use of the Internet to perform legal work, as opposed to in-office meetings and telephone conferences.²²¹ It has gained popularity because of the high cost of legal services and the rise in pro-se litigants. Significantly, the ABA reports that a majority of low-income households try to either handle legal problems on their own or they fail to take any action at all, despite existing legal problems that would benefit from legal intervention.²²²

Unbundled legal services are a “project-to-project” reduced cost method of legal services delivery that serves as an alternative to traditional full-service law office representation.²²³ Virtual lawyers may provide unbundled legal services.

Virtual law practice and unbundled legal services gained momentum in the later part of the 1990s and early 2000s when access to legal information and Internet resources became prevalent. Online document service providers, such as Legal Zoom, entered the market to provide low-cost access to legal documents.²²⁴

Virtual law practice, e-lawyering, and unbundled legal services are important to transactional law practice in three ways. First, these practices are the

changes.cfmfor_lawyers/resources/publications/washington_lawyer/january_2008/changes.cfm;
see also RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 22 (2008).

²²⁰ KIMBRO, *supra* note 216, at 4.

²²¹ *Id.*

²²² CONSORTIUM ON LEGAL SERV. & THE PUB., AM. BAR ASS'N, *LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS, MAJOR FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY* 29 (1994).

²²³ Kevin Chern, *Unbundling Legal Services: What Are They, Who Are They for, and How Do I Get Started?*, LAW TRENDS & NEWS: PRACTICE AREA NEWSLETTER (ABA General Practice, Solo & Small Firm Division), Spring 2010, available at http://www.americanbar.org/content/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/10_spring_pm_feat1.html (last visited Aug. 9, 2011).

²²⁴ “In our knowledge-driven economy, many services once available only from professionals are now easily accessible to everyone who needs them. For example, online provider Legal Zoom now offers legal documents to individuals for simple business formations, trusts, wills, name changes, prenuptial agreements, leases, trademarks, and estate planning. A similar organization, Rocket Lawyer, provides a similar service to small businesses and also includes access to a network of attorneys to consult with. In 2012 Rocket Lawyer generated more than \$20 million in annual revenue, which in many markets would make it a mid-sized law firm.” Michael F. Moore, *Profit Patterns: Maximizing Opportunities in Your Practice*, 86 WIS. LAWYER 30, 33 (Nov. 2013).

wave of the future, and new lawyers are and will be engaged in them.²²⁵ Second, transactional clinicians have witnessed the limitations of legal document providers, such as Legal Zoom. They are unable to provide the legal advice and counseling that is sorely needed by businesses and entrepreneurs along with attributes associated with “transaction cost engineers” and serving as “reputational intermediaries.”²²⁶ Third, these issues are ethical. For example, with respect to unbundled legal services, Model Rule of Professional Responsibility 1.2(c) provides that “[a] lawyer may limit the scope or representation if the limitation is reasonable under the circumstances and the client gives informed consent.”²²⁷ This type of limited scope representation may not be appropriate in complex legal matters and is more appropriate for matters deemed to be straightforward.²²⁸ Lawyers typically learn about the scope of a client’s legal problem in a thorough initial consultation. Thus, students learn the importance of their initial client interviews to understanding larger ethical issues.

PART V. FUTURE OPPORTUNITIES FOR CLINIC DESIGN

There are a number of important societal issues ripe for transactional clinical practice that give added meaning to the role of lawyers as transaction cost engineers and reputational intermediaries. Although a few legal clinics may have begun to address the issues discussed below, given their societal impact and legal importance, there is a need for a more systematic treatment.

Transactional clinics can play an important role in alleviating poverty and closing the racial wealth gap by representing community groups and individual entrepreneurs who are actively trying to end poverty and wealth disparities. They can also engage in action research law and policy initiatives, such as those described earlier, which make an impact. Historically, transactional pro bono opportunities were created to foster CED activities including poverty alleviation, and to create ways for transactional lawyers to serve clients in their area of expertise.²²⁹

²²⁵ See, e.g., *Our Process, Philosophy & Tips of Online Flat Rate Legal Services for Entrepreneurs*, LANTERN LEGAL SERVICES, http://www.lanternlegal.com/our_vision.php (last visited Aug. 16, 2012). Moshe Lapin participated in the GW Law School SBCED Clinic.

²²⁶ See Robert R. Statchen, *Clinicians, Practitioners, and Scribes: Drafting Client Work Product in a Small Business Clinic*, 56 N.Y.L. SCH. L. REV. 233, 241 (2011).

²²⁷ MODEL RULES OF PROF’L CONDUCT R. 1.2 (2012), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer.html (last visited Aug. 9, 2011).

²²⁸ Moore, *supra* note 224.

²²⁹ Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 44 (2004) (“Referral organizations focused on linking transactional business lawyers with nonprofit and small for-profit organizational clients have gained increased attention within the pro bono system. This is the result

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Building on the work of Dr. Martin Luther King Jr., antipoverty advocates have called on lawyers to be poverty abolitionists cognizant that “homelessness and poverty are, for our era, the equivalent of slavery and segregation: institutions that blight and stunt human life, causing misery, illness and death,” and, “who recognize that ‘the battle against homelessness and poverty is in several ways a continuation of the movements to abolish slavery and de jure and de facto segregation.’”²³⁰

A number of prominent legal and policy organizations have identified a racial gap in business development, observing that “[o]wning a business has been the most effective way to build wealth in America and the wealthiest individuals in communities of color have traditionally been business owners.”²³¹ Indeed, researchers report that the escalating wealth gap “between white and African-American families has more than quadrupled over the course of a generation” and is now a “stampede.”²³² A research paper produced by Brandeis University’s Institute on Assets and Social Policy states:

Wealth, what you own minus what you owe, allows people to start a business, buy a home, send children to college, and ensure an economically secure retirement. Without wealth, families and communities cannot become and remain economically secure. Recognizing the importance of building wealth over a lifetime, our nation has created public policies that provided incentives and subsidies for asset building activities. However, reforms are needed to ensure that such opportunities and rewards are distributed equally.²³³

of the convergence of two trends: The expansion of corporate practices within large law firms during the high-tech boom of the 1990s increased the supply of transactional attorneys, who have traditionally done little pro bono work, while the growth of community economic development as an antipoverty field increased the demand for corporate, real estate, and tax law assistance from community-based organizational clients.”).

²³⁰ Susan R. Jones, *Dr. Martin Luther King, Jr.’s Legacy: An Economic Justice Imperative*, 19 WASH. U. J.L. & POL’Y. 39, 48 (2005) (citing Florence Wagman Roisman, *The Lawyer as Abolitionist: Ending Homelessness and Poverty in Our Time*, 19 ST. LOUIS U. PUB. L. REV. 237 (2000)).

²³¹ POLICY BRIEF: THE RACIAL GAP IN BUSINESS DEVELOPMENT, INSIGHT CTR. FOR CMTY. ECON. DEV. (June 2009), <http://www.insightcced.org/uploads/CRWG/Racial-Gap-Biz-Dev-6-09.pdf> (last visited Aug. 8, 2012). *See generally*, W. SHERMAN ROGERS, *THE AFRICAN AMERICAN ENTREPRENEUR: THEN AND NOW* xvi (2010).

²³² THOMAS M. SHAPIRO, TATJANA MESCHUDE & LAURA SULLIVAN, INST. ON ASSETS AND SOCIAL POLICY, BRANDEIS UNIVERSITY, RESEARCH AND POLICY BRIEF: THE RACIAL WEALTH GAP INCREASES FOURFOLD 1 (May 2010) http://iasp.brandeis.edu/pdfs/2010/RWG_FourFold.pdf (last visited Dec. 29, 2013).

²³³ *Id.*

Other antipoverty advocates call for wealth building supports in entrepreneurship and economic security public policy. Transactional legal clinics can support these efforts by representing a range of clients along a small business continuum from microenterprises to high tech businesses,²³⁴ especially those owned by entrepreneurs of color, businesses engaged in social enterprise or otherwise supporting the expansion of minority entrepreneurship and job creation in disadvantaged communities.

Many minority businesses serve community and niche markets and employ people of color. Given the chance to grow, they could help to expand the minority business sector, and contribute to America's competitiveness in global markets. This is especially true in the emerging economies of Asia, Africa and Latin America where minority businesses may have "country of origin" connections and/or insights.²³⁵

Entrepreneurs of color weather a myriad of challenges in starting and growing small businesses, stemming from structural and informal racism and discriminatory treatment. Accordingly, the Insight Center for Community Economic Development (Insight Center), a national research, consulting and legal organization dedicated to building economic health in disenfranchised communities, created a Closing the Racial Wealth Gap Initiative.²³⁶ Through that effort, a number of important policy briefs on race and wealth disparity have been written.²³⁷ The Insight Center notes:

Structural barriers, primarily unequal access to capital resulting from discriminatory treatment in both the public and private sectors, cause minority firms to lag behind White businesses in the areas of capital financing, size, industry diversity and profit. Education, training, networking and mentorship opportunities are often absent or limited, making it hard for budding entrepreneurs

²³⁴ See generally, Deborah Austin & Susan R. Jones, *Learning from HUD: A Continuum of Service for the Small Business Community*, 9 J. AFFORDABLE HOUSING & DEV. L. 119 (2000) (discussing a model for improving efficiency in small business legal service delivery based on spending for homeless and affordable housing).

²³⁵ See POLICY BRIEF: THE RACIAL GAP IN BUSINESS DEVELOPMENT, *supra* note 231.

²³⁶ *Id.* (stating that the Initiative is "a national effort to close the racial wealth gap for the next generation by injecting over 140 members of the Experts of Color Network into the national debate on America's Future"). Professor Jones is a member of the Network.

²³⁷ See, e.g., INSIGHT CTR. FOR CMTY. ECON. DEV., POLICY BRIEF: THE RACIAL GAP IN DEBT AND CREDIT (June 2009), available at <http://www.insightccd.org/uploads/CRWG/Racial-Gap-Debt-Credit-6-09.pdf>; INSIGHT CTR. FOR CMTY. ECON. DEV., FACT SHEET: THE RACIAL GAP IN SAVINGS AND INVESTMENTS (Spring 2009), available at <http://www.insightccd.org/uploads/CRWG/Racial%20Gap%20in%20Savings%20and%20Investments%20Spring%202009.pdf>; INSIGHT CTR. FOR CMTY. ECON. DEV., FACT SHEET: LOW-INCOME IMMIGRANT WOMEN AND WEALTH BUILDING (June 2009), available at <http://www.insightccd.org/uploads/CRWG/ImmigrantWomen-and-Wealth-Factsheet-Spring2010.pdf>.

to be on the cutting edge of business development. Weakened or poorly enforced public programs to promote minority business inclusion also keep entrepreneurs of color from moving to the next level.²³⁸

In addition to limited access to capital, minority entrepreneurs may not meet bank credit approval criteria. Significantly, these criteria do not reflect an entrepreneur's ability to repay the loan.²³⁹ A discriminatory practice known as redlining, in which banks fail to lend money to ethnic minorities and racial groups, is persistent.²⁴⁰ Minority-owned banks are more likely to lend to people of color but they are too few in number to significantly bridge minority entrepreneurs' access to capital.²⁴¹ Moreover, federal government support for minority businesses suffers from a "lack of interest or benign neglect."²⁴² Accordingly, entrepreneurs of color are "disconnected from the business supply chain and government procurement opportunities."²⁴³

The Insight Center recommends corrective measures to bridge the racial wealth gap in business. These measures include increasing funding in loan programs to entrepreneurs of color and helping them participate in high growth "fields such as Information Technology (IT), financial and insurance services, pharmaceuticals, and green industries through targeted loans and grants."²⁴⁴

The training needs of current and future minority entrepreneurs must also be a national priority. In the end, "society as a whole would benefit from the higher level of competition and innovation that would result from an expansion of business opportunities."²⁴⁵ At the same time, cooperative and microbusinesses also deserve more government funding.²⁴⁶

Depending on the clinical program's mission and capacity, transactional clinicians, as teachers and scholars would do well to teach their students about these critical issues of poverty alleviation and wealth disparity, in addition to representing an array of clients. Indeed, the next generation of lawyers may confront these issues as Americans, world citizens, federal, state, and local legislators, policy advisors, or in other capacities.

²³⁸ POLICY BRIEF: THE RACIAL GAP IN BUSINESS DEVELOPMENT, *supra* note 231.

²³⁹ *Id.*

²⁴⁰ DANIEL IMMERGLUCK, CREDIT TO THE COMMUNITY: REINVESTMENT AND FAIR LENDING POLICY IN THE UNITED STATES 13 (2004) (arguing that redlining and discrimination are persistent, even inherent, in the credit market).

²⁴¹ POLICY BRIEF: THE RACIAL GAP IN BUSINESS DEVELOPMENT, *supra* note 231.

²⁴² *Id.* (recognizing that the U.S. Supreme Court decisions in *Adarand Constructors v. Peña* and *City of Richmond v. J.A. Croson Co* have severely impacted affirmative action initiatives).

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *See id.*

A. *Returning Citizens (also known as “Formerly Incarcerated Persons”)*

Assisting formerly incarcerated persons is part of a comprehensive CED strategy for building healthy communities. Transactional clinics committed to social justice can make a significant contribution by representing individual ex-offenders seeking to start a microbusiness or small business, helping groups form worker cooperatives and helping workforce development organizations representing citizens returning to communities after a period of incarceration.²⁴⁷ This micro level representation has macro level impact. Statistics show, on any given day, that one-in-eight black men in their 20s is in prison or in jail. These “trends have been intensified by the disproportionate impact of the ‘war on drugs’ in which three-fourths of all persons in prison for drug offenses are people of color.”²⁴⁸ At the same time, the communities ex-offenders return to struggle with high unemployment. Post incarceration, the barriers to employment are well known: lack of identification or driver’s license; substance abuse; life skills/job readiness; lack of childcare; health and mental health concerns; transportation; limited education & skills; limited computer skills; lack of affordable housing; family responsibilities and, of course, criminal background.

In her compelling and provocative New York Times bestseller book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander of Ohio State University School of Law provides a foundation for why it’s important to consider alternatives to traditional employment for formerly incarcerated people. Alternatives include self-employment in a microbusiness or a small businesses and worker-owned cooperatives. She urges that a “human rights nightmare is occurring on our watch”²⁴⁹ and argues that “mass incarceration is metaphorically the New Jim Crow and that all those who care about social justice should fully commit themselves to dismantling this new racial caste system.”²⁵⁰

²⁴⁷ See NICOLE LINDAHL WITH ASSISTANCE FROM DEBBIE A. MUKAMAL, PRISONER REENTRY INST. AT JOHN JAY COLL. OF CRIM. JUSTICE, VENTURING BEYOND THE GATES: FACILITATING SUCCESSFUL REENTRY WITH ENTREPRENEURSHIP (Summer 2007) (discussing entrepreneurship as promising means of facilitating successful reentry into society for formerly incarcerated persons); ANTHONY C. THOMPSON, RELEASING PRISONERS, REDEEMING COMMUNITIES: RACE, RE-ENTRY AND POLITICS 2 (2008).

²⁴⁸ See *Facts About the Mass Incarceration of People of Color in U.S.* (June 19, 2013), available at, <https://afsc.org/story/facts-about-mass-incarceration-people-color-us>; *Racial Disparity*, THE SENTENCING PROJECT, <http://www.sentencingproject.org/template/page.cfm?id=122> (last visited Oct. 2, 2012); see also, PAUL BUTLER, LETS GET FREE: A HIP-HOP THEORY OF JUSTICE (2009); THOMPSON, *supra* note 247 at 352.

²⁴⁹ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS*, REVISED EDITION, NEW PRESS 15 (rev. ed. 2012).

²⁵⁰ *Id.* at 11.

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A felon's legal rights are severely limited. They have a very difficult time finding gainful employment, especially in a down economy.²⁵¹ Professor Alexander writes:

The United States now has the highest rate of incarceration in the world dwarfing the rates of nearly every developed country, even surpassing those in highly repressive regimes like Russia, China, and Iran. In Germany, 93 people are in prison for every 100,000 adults and children. In the United States, the rate is roughly eight times that, or 750 per 100,000.²⁵² The racial dimension of mass incarceration is its most significant feature. No other country imprisons so many of its racial or ethnic minorities. The United States imprisons a larger percentage of its black population than South Africa did at the height of apartheid. In Washington, D.C., our nation's capital, it is estimated that three out of four young black men (and nearly all those in the poorest neighborhoods) can expect to serve time in prison. Similar rates of incarceration can be found in black communities across America.²⁵³

Alexander observes that a complex web of informal rules, regulations and laws "are powerfully reinforced by social stigma" to keep ex-offenders "confined to the margins of mainstream society [and deny them] access to the mainstream economy."²⁵⁴ Lack of employment is lack of access to America's mainstream economy, and as Professor W. Sherman Rogers of Howard University Law School points out:

Studies confirm that the pursuit of entrepreneurial endeavors plays an important role in bringing prosperity to disadvantaged groups and underdeveloped countries. The success of various

²⁵¹ See generally Robb Mandelbaum, *U.S. Push on Illegal Bias Against Hiring Those with Criminal Records*, N.Y. TIMES, June 21, 2012. The article notes that using criminal records in employment decisions might be discrimination, but that an employer can exclude applicants with criminal convictions provided it can demonstrate that the exclusion is "job related" for the position in question and "consistent with business necessity." New guidance from the U.S. Equal Employment Opportunity Commission "requires companies to establish new procedures to show they are not using criminal records to discriminate by race or national origin." *Id.* Employers can best show compliance with the law by considering the nature of the job, nature of the crime and the time elapsed. *Id.*

²⁵² ALEXANDER, *supra* note 249, at 6.

²⁵³ *Id.* at 6-7. Given these D.C. statistics, mass incarceration in the city is a growing concern in general and one of particular concern to the authors. Claire Duggan & Laura Donnelly-Smith, *GW Hosts Job Creation Summit*, GW MAGAZINE, available at http://www.gwu.edu/~magazine/2012_la_w_winter/dept_lawbriefs.html (quoting Susan R. Jones, Remarks at Major Projects Lab: Ward 8, Sept. 20, 2011).

²⁵⁴ ALEXANDER, *supra* note 249 at 4.

microenterprise programs and innovative efforts, such as the Prison Entrepreneurship Program, serve to buttress these findings.²⁵⁵

Furthermore, he explains the historical realities of racial discrimination as the primary cause for the wealth and income gap between African Americans and whites. He asserts that an increase in African American entrepreneurship is the most efficient route to economic equality.²⁵⁶ Given these realities, transactional clinics interested in social and economic justice can make a significant contribution by providing representation to the entrepreneurial endeavors of the formerly incarcerated.

Other overarching reasons exist to assist formerly incarcerated persons. The first is tied to American public safety. Discharged ex-offenders are returning to the communities they left upon incarceration, and studies make clear that mass incarceration does not result in public safety.²⁵⁷ Indeed, Professor Thompson reports “an explosive situation of individuals [returning] to communities that, for the most part, are barely surviving.” These communities, he observes, are “already in dire need of health care, affordable housing, drug treatment, social services, and, most of all, jobs draw even closer to the precipice when they are inundated by recent parolees who have not been prepared for reentry into society.”²⁵⁸ Second, the release of nonviolent offenders and harsh sentence reduction schemes²⁵⁹ is one way that cash strapped states can reduce budget deficits in lean economic times.²⁶⁰ Anticipating this trend, transactional clinics can represent individuals, community partners and community-based organizations working with ex-offenders to have larger community impact.

B. Youth Entrepreneurship

Youth unemployment acutely affects those from low-income and minority communities.²⁶¹ Youth entrepreneurship, however, can serve to empower this subset of entrepreneurs, 16 to 24-year-olds who wish to create their

²⁵⁵ W. SHERMAN ROGERS, *THE AFRICAN AMERICAN ENTREPRENEUR: THEN AND NOW* xvi (2010).

²⁵⁶ *Id.*

²⁵⁷ *See, e.g.*, JUSTICE POLICY INST., *INVESTMENTS IN PUBLIC SAFETY: MASS INCARCERATION AND LONGER SENTENCE FAIL TO MAKE US SAFER* (2007), available at http://www.justicepolicy.org/images/upload/07-02_FAC_MassIncarceration_AC-PS.pdf.

²⁵⁸ THOMPSON, *supra* note 247, at 2.

²⁵⁹ ALEXANDER, *supra* note 249, at 14.

²⁶⁰ THOMPSON, *supra* note 247, at 2.

²⁶¹ Dorcas R. Gilmore, *Expanding Opportunities for Low-Income Youth: Making Space for Youth Entrepreneurship Legal Services*, 18 J. AFFORDABLE HOUS. & CMTY. DEV. L. 321, 323 (2009).

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own businesses.²⁶² For youth from low-income communities, often racial and ethnic minorities historically underrepresented in business, overcoming the various hurdles to entrepreneurship can be nearly impossible without methodical guidance and active mentoring.²⁶³ Youth in this demographic often do not perceive entrepreneurship as a possibility for personal and financial progress.²⁶⁴ Conversely, better-educated youth with greater access to resources, and financial, familial, and mentoring support, are well positioned to dynamically pursue entrepreneurship goals.²⁶⁵

While it may be true that the “knowledge and skills of a successful entrepreneur can be taught,”²⁶⁶ currently few opportunities exist to bring entrepreneurship to this underserved segment of American youth. Colleges across the country have answered the call to add course offerings on entrepreneurship.²⁶⁷ However, without formal programs squarely focused on urban and minority youth, the lost potential for progress is palpable.

Consequently, more should be done, at an earlier stage, to promote youth entrepreneurship. As evidenced in the ex-offender reentry section, above, successful mentoring of individuals historically excluded and underrepresented in business and entrepreneurship is not only possible, but also timely and vital to continued community economic development writ large.

C. *The “Graying” Entrepreneur/Entrepreneurs of Advanced Age*

While successful business ventures with young principals, like Facebook and Twitter, garner a great deal of press due in part to the youth and relative

²⁶² It is appropriate to acknowledge the inherent limitations involving minors, related both to employability due to underage status and the inability to enter into a legally binding contract under the age of 18. The Fair Labor Standards Act (FLSA) typically sets 14 as the minimum age of employment, although there are different rules to taper the law the different scenarios and where federal and state laws overlap, the more restrictive law will govern. *Youth & Labor: Age Requirements*, U.S. DEPT. OF LABOR, <http://www.dol.gov/dol/topic/youthlabor/agerequirements.htm> (last visited Aug. 2, 2012).

²⁶³ See generally Gilmore, *supra* note 261 (discussing barriers to entrepreneurship among low-income youth and proposing solutions to overcome those barriers).

²⁶⁴ *Id.*

²⁶⁵ During the Spring 2012 semester, the George Washington University hosted Karen Mills, Administration Chief for the U.S. Small Business Administration (SBA), to discuss strategies and best practices for entrepreneurial success. The event was attended by a wide range of GW students, including undergraduate, MBA and law students. During the event, Administrator Mills conducted an informal poll, which strongly supported the contention that students with parents or family members who operated their own small business exhibited a strong willingness and active interest in pursuing their own business venture.

²⁶⁶ Carl Schramm, *Expanding the Entrepreneur Class*, HARV. BUS. REV., July–Aug. 2012, at 40.

²⁶⁷ See *id.* (“At least 600,000 college students take a class in entrepreneurship every year. Ten years ago their number was negligible.”).

inexperience of their founders, it is the over 40 set who lead the entrepreneur class. The Kauffman Foundation observes that the median age of startup founders is 40²⁶⁸ and further acknowledges the importance of this segment of emerging entrepreneurs:

Understanding how entrepreneurs develop, the circumstances that can foster or induce entrepreneurship, and the mindset and beliefs of entrepreneurs could prove helpful both in supporting the existing class of entrepreneurs and in augmenting the ranks of entrepreneurs.²⁶⁹

Legal clinics assisting entrepreneurs will likely have the opportunity to represent many young entrepreneurs, particularly in the technology sector. However, it will also be telling to see what start up trends occur following the economic downturn which has fostered “necessity entrepreneurship,”²⁷⁰ a phenomenon impacting increasing numbers of workers in their 40’s and 50’s who find themselves unemployed or underemployed.²⁷¹ Appreciating the discrete needs and scope of issues presented by aging entrepreneurs, as well as the distinct demands of very young entrepreneurs will help facilitate the thoughtful development of a broad range of legal and business services that transactional clinics can offer, thereby increasing their impact.

D. Special Opportunities in Tax Law

The formation of a new enterprise, even a small business, involves numerous issues, including entity selection, soliciting and securing capital, leasing space, product branding, advertising, intellectual property protections, the distribution of labor, and related worker classification issues. Additionally, a tax

²⁶⁸ See VIVEK WADHWA, RAJ AGGARWAL, KRISZTINA “Z” HOLLY & ALEX SALKEVER, THE ANATOMY OF AN ENTREPRENEUR: FAMILY BACKGROUND AND MOTIVATION 51 (2009) (stating most immigrant founders of engineering and tech companies came to the U.S. as students).

²⁶⁹ *Id.* at 4.

²⁷⁰ BusinessWeek defined “necessity entrepreneurship” as “people starting businesses because other income opportunities are gone,” and noted that the phenomenon “increased sharply” during the recession. John Tozzi, *Revisiting the Face of ‘Necessity Entrepreneurship’*, BLOOMBERG BUSINESSWEEK (Mar. 9, 2010), available at http://www.businessweek.com/smallbiz/content/mar2010/sb2010039_995571.htm. The recession has driven many into microenterprise, but microenterprise appears to have the potential to alleviate the effects of the recession: if one out of every three microbusinesses in the United States hired one employee, the country would be at full employment. ASS’N FOR ENTER. OPPORTUNITY, *supra* note 172, at 1.

²⁷¹ “A basic dividing line is age 50. . . You lose a good job at age 50, the chances of getting another is small, so you do something else—you start your own business.” Chris Farrell, *Older Entrepreneurs Start Companies Too*, BLOOMBERG BUSINESSWEEK, Apr. 30, 2012, <http://www.businessweek.com/articles/2012-04-30/older-entrepreneurs-start-companies-too> (quoting CUNY Economist Edward G. Rogoff).

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consequence exists for nearly every business decision. Given the important role of tax, every owner must organize a new business in order to gain advantages, or avoid disadvantages, embedded in the Federal Tax Code.

Entity election issues, for example, present an early tax problem for many microbusinesses because deciding the most preferable business form is often executed without necessary tax information and with little to no professional guidance. Young companies are left to determine which entity best captures their financial goals and, in some cases, their social objectives.²⁷²

Low Income Taxpayer Clinics (LITCs) dominate the tax clinic landscape, largely due to the federal funding available through the IRS LITC Program.²⁷³ However, small business tax issues cannot be addressed within the context of the LITC program due to statutory constraints preventing the representation of entities.²⁷⁴

Transactional legal clinics provide an ideal environment in which to develop small business tax clinics, including tax controversy²⁷⁵ and tax policy work.²⁷⁶ Law students would benefit from exposure to small business tax policy and practice issues, both from pedagogical and professional training perspectives. Small business owners who would not otherwise qualify for LITC representation

²⁷² Susannah Camic Takh, *Crossing the Tax Code's For-Profit/Non-Profit Border*, 118 PENN ST. L. REV. 489 (Winter 2014). A recent article discusses the intricacies behind the entity type - tax treatment paradigm, arguing for greater tax code flexibility in classifying for profit and non-profit organizations, noting: "Arrangements such as corporate social responsibility, for-profit philanthropy, and social enterprise illustrate this recent trend. Through these arrangements, for-profit organizations are beginning to embrace social goals, while nonprofit organizations have started to use methods more traditionally associated with efficient business organizations."

²⁷³ The 2015 LITC Grant Application is available here: <http://www.irs.gov/pub/irs-pdf/p3319.pdf> (last visited Mar. 29, 2015). An explanation of the LITC program, the 2014 LITC Program Report, and information regarding the 2015 grant application cycle is here: <http://www.taxpayeradvocate.irs.gov/Tax-Professionals/Low-Income-Taxpayer-Clinics> (last visited Mar. 29, 2015).

²⁷⁴ The only entities that may be represented by LITCs are single member entities, and these entities are often ineligible for legal services due to strict LITC income guidelines. *See* I.R.C. § 7526 (only "low-income taxpayers" whose incomes do not exceed 250% of the poverty level are eligible clients).

²⁷⁵ Although tax controversy work sometimes involves litigation before the U.S. Tax Court, a great deal of the work performed is transactional in nature. These clinics could handle compliance and controversy matters ranging from audits to appeals and tax court litigation.

²⁷⁶ Writing this from the nation's capital, it is easy to imagine the possibilities for law students to engage in high-level and deeply impactful tax policy projects. There are an array of tax policy issues that would be ideal for law student practice, including federal tax law advocacy projects, as well as state and local tax advocacy work in support of small and microbusinesses. There are also some who would call for an increase in and creation of special tax incentives for microbusinesses and entrepreneurs: "Public policymakers in urban areas have an important role to play in reducing the legal costs of doing business and in considering partial and complete exemption from regulation and taxation in certain circumstances." *See* Susan R. Jones, *Supporting Urban Entrepreneurs: Law, Policy, and the Role of Lawyers in Small Business Development*, 30 W. NEW ENG. L. REV. 71, 88-89 (2007).

and who cannot afford private counsel would be able to secure legal representation under this model.²⁷⁷ Even if representation were limited in scope, depending on the complexity of the legal and tax questions, it is more assistance than business owners would receive in the absence of a small business tax clinic.

Due to the large incentive of federal funding for LITC programs, few options exist for the creation of small business tax controversy, or tax policy, clinical programs. Outside of private philanthropy, the alternative to federal funding for small business focused tax clinics overwhelmingly points to law schools. The law school mission, with an increased focus on experiential learning and community service, provides the perfect backdrop for the development of these small business tax clinic models.²⁷⁸

E. Special Opportunities in Government Contracts

State and local governments have long incentivized the participation of small businesses in the public procurement market through the use of set-asides and sheltered market initiatives.²⁷⁹ Like their federal counterparts, local business preference laws are often driven by socioeconomic policies and initiatives to address institutional discrimination targeted at women and minority-owned businesses, fair labor objectives, and environmental protection.²⁸⁰ Moreover, the Insight Center has found that “greater economic inclusion [of small business in local procurement efforts] corresponds with more robust economic growth for the entire population.”²⁸¹ As a lucrative and, in some cases, sole source of business for

²⁷⁷ “A “taxpayer” eligible for assistance from a clinic is an individual rather than an entity. However, if the individual owns a sole proprietorship, and the sole proprietorship has a tax controversy (e.g., employment tax, excise tax), a clinic may provide assistance with the tax controversy, as the individual is ultimately the taxpayer responsible for the tax liability. Similarly, if an individual is the sole shareholder in an S corporation and the S corporation has a tax controversy, which impacts the individual’s income tax liability, the clinic may provide assistance.” I.R.S. Publ. 3319, at 6 (Rev. 5) (Aug. 23, 2012).

²⁷⁸ The small business tax clinic curriculum would generally require prerequisites prior to enrolling, such as Federal Tax and Corporations. Co-requisites would likely include Corporate Tax, Partnership Tax, and Business Organizations. Students would receive exposure to payroll tax, 941 trust fund penalty cases, the carried interest issues in partnership agreements, advisory memos on entity choice and its tax benefits/disadvantages, as well as worker classification and related tax treatment.

²⁷⁹ Small business preferences are “the largest procurement preference programs in the U.S.” The concept of “preference purchasing” has been employed by “cities, states, and counties . . . for more than 200 years.” Glen Cummings et al, *State and Local Procurement Preferences: A Survey*, 9 J. PUB. PROCUREMENT 371,373 (2009) available at http://ippa.org/jopp/download/vol19/issue-3-4/Art 3 Procurement_Preferences.pdf. (last visited Apr. 30, 2014).

²⁸⁰ See *id.* at 373.

²⁸¹ INSIGHT CENTER FOR COMMUNITY ECONOMIC DEVELOPMENT, *Economic Development in Diverse Communities: Inclusive Procurement by Cities and Counties*, <http://www.insightccd.org/uploads/publications/assets/econ-dev-diverse-communities.pdf> (last visited Apr. 28, 2014).

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small companies, government contracting presents a number of legal and business considerations that may be ripe for transactional clinical practice.

Teaming arrangements – where two or more contractors agree to combine resources and expertise as a joint venture or contractually - are an important strategy for small and large companies looking to bolster their qualifications and competitiveness to win government work.²⁸² The most common teaming arrangements are achieved contractually and are often governed by a teaming agreement.²⁸³ As a pre-cursor to subcontracts, teaming agreements capture essential terms of the arrangement such as work share distribution, non-disclosure, and exclusivity, and are intended to dictate the rights and responsibilities of both the prime contractor and subcontractor before and after a contract award by the government.²⁸⁴ Drafting such key provisions are well within the general abilities of transactional clinics but students also stand to develop significant high-level drafting and advising skills by factoring strategic flexibility into these documents. Whether proposed as a potential prime contractor or subcontractor, small businesses may seek to negotiate special terms. These terms may address the exact scope of the subcontractor's right to control the contents of the final proposal documents prior to submission to the government, limit liability as it relates to certain representations made by the prime to the government, as well as establish a method for the subcontractor to reconcile terms in the subcontract with that in the resulting prime contract itself. Additionally, the teaming agreement may provide that the larger company assist the smaller company in achieving certain broader business goals such as acquiring special government clearances; cover the circumstances under which the parties may solicit the other's personnel for employment opportunities both during and after the contract; and specify how the parties will treat follow-on work issued by the client.²⁸⁵ Furthermore, with the recent concerns surrounding

²⁸² The Federal Acquisitions Regulation (FAR) defines "Contractor team arrangement" as "an arrangement in which – (1) [t]wo or more companies form a partnership or joint venture to act as a potential prime contractor; or (2) [a] potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program." FAR, 48 C.F.R. § 9.601; "Contractor team arrangements may be desirable from both a Government and industry standpoint in order to enable the companies involved to –(1) Complement each other's unique capabilities; and (2) Offer the Government the best combination of performance, cost, and delivery for the system or product being acquired." FAR, 48 C.F.R. § 9.602 (2006).

²⁸³ U.S. Department of Defense Office of Small Business Programs, *Guidebook For Facilitating Small Business Team Arrangements* 15 (Sept. 2007), http://www.acq.osd.mil/osbp/docs/dod_OSBP_Guidebook_for_Facilitating_Small_Business_Team_Arrangements.pdf (last visited Nov. 2, 2014) ("The prevailing federal teaming business model, as it relates to small business, is one in which large businesses are motivated to seek out small businesses as team members. These team members act as subcontractors if the team is awarded a contract.").

²⁸⁴ *Id.* at 16-17 (laying out the elements of a teaming agreement).

²⁸⁵ *Id.* at 17.

the general enforceability of teaming agreements in certain jurisdictions, clinic students would be instrumental in counseling small business clients on favorable ‘choice of law’ terms.²⁸⁶

Government contracting also comes with its fair share of ethical requirements, and contractors who violate or otherwise fall short of these standards can face serious consequences like suspension and debarment.²⁸⁷ Small businesses also run the risk of reputational damage, which can be just as debilitating as the termination of current or future contracts.²⁸⁸ Moreover, small businesses are not typically in a position to afford the specialized counsel often needed to navigate the unique considerations inherent in many suspension and debarment cases and to successfully challenge these proposed sanctions.²⁸⁹ Bearing in mind the requirements of their state and local government, which often mirror those found at the federal level, transactional clinics may assist small businesses with legal research and implement best practices scaled to the organization.²⁹⁰ As recommended by the General Services Administration (“GSA”), this may include establishing policies and procedures that facilitate conflicts checks for key personnel, verify company certifications and other disclosures, and ensure investment in proper ethical training of employees.²⁹¹

²⁸⁶ In 2013, a U.S. District Court found a teaming agreement, executed by two incumbent contractors looking to re-compete for a cyber-security services and program management contract with the Office of Personnel Management, was unenforceable under Virginia law. The Court explained that “any ‘writing in which the terms of the future transaction or later, more formal agreement are set out is presumed to be an agreement to agree rather than a binding contract.’” The Court noted further that “calling an agreement something other than a contract or subcontract, such as a teaming agreement or letter of intent, implies ‘that the parties intended it to be a nonbinding expression in contemplation of a future contract.’” *Cyberlock Consulting, Inc. v. Info. Experts, Inc.*, 939 F.Supp.2d 572, 582 (E.D. Va. Apr. 3, 2013).

²⁸⁷ “Debarment and suspension are drastic sanctions, precluding a company or individual from contracting with executive agencies. Debarments are defined as actions which ‘exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period.’ Suspensions are temporary exclusions ‘pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government’s interest.” JOHN CIBINIC, JR. ET AL, *FORMATION OF GOVERNMENT CONTRACTS* 457 (4th ed. 2011) (citing to Federal Acquisition Regulation (FAR), 48 C.F.R. § FAR 2.101; 9.407-1(b)(1)).

²⁸⁸ Once a contractor is proposed for debarment, this information is updated in the Excluded Parties List System (“EPLS”) – an internet database operated by the General Services Administration. Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.404.; General Services Administration, *Could Suspension and Debarment Happen to You?*, <http://www.gsa.gov/portal/getMediaData?mediaId=193423> (hereinafter referred to as “GSA S&D Presentation”); Jessica Tillipman, *A House of Cards Falls: Why “Too Big to Debar” is All Slogan and Little Substance*, 80 *FORDHAM L. REV.* 49 (2012), available at http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1007&context=res_gestae (last visited Nov. 2, 2014).

²⁸⁹ GSA S&D Presentation, *supra* note 288.

²⁹⁰ *Id.*

²⁹¹ *Id.*

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As transactional clinics explore the world of government contracts and establish themselves as bona fide resources for small business contractors, there may be opportunities for law school clinics to join the many other university programs currently serving contractors through special government-sponsored initiatives. The Mentor-Protégé Programs (“MPP”) are highly selective, agency-specific initiatives that incentivize larger, more experienced firms (the “mentors”) to assist small businesses (the “protégés”) in evolving their technical and overall business infrastructure.²⁹² Numerous federal organizations, including NASA and the Department of Defense, have formed strategic partnerships with universities, namely Historically Black Colleges and Universities (“HBCU”) and other Minority Institutions (“MI”), to help implement the MPP programs.²⁹³ MPP protégés are assisted with building and refining the policies and procedures that will shape all of the essential back-office practices for government contractors: Contracts Management, Proposal Development, Pricing Research, Human Resources, and Business Development.²⁹⁴ Business schools from participating universities often facilitate process management audits and professional trainings for the protégé’s personnel.²⁹⁵ These highly collaborative environments, where students assess the areas most vital to growing enterprises, mirror most transactional clinic models. Clinics can contribute to the “knowledge transfer” mission of these MPP programs.²⁹⁶ The education of small business contractors on the ever-changing rules, regulations and policies that specifically impact their organizations; and the common legal pitfalls that small business may face in

²⁹² ROBERT JAY DILGER AND KATE M. MANUEL, U.S. CONGRESSIONAL RESEARCH SERVICE, SMALL BUSINESS MENTOR-PROTÉGÉ PROGRAMS, R41722 (June 4, 2012) *available at* <http://fas.org/sgp/crs/misc/R41722.pdf> (last visited Nov. 2, 2014) (hereinafter CRS MPP Report). The following agencies offer notable Mentor Protégé Programs: U.S. Small Business Administration <http://www.sba.gov/content/mentor-protége-program>; Department of Homeland Security <http://www.dhs.gov/mentor-prot%C3%A9g%C3%A9-program>; General Services Administration <http://www.gsa.gov/portal/content/105301>; Department of Defense <http://www.acq.osd.mil/osbp/sb/programs/mpp/>; Department of Energy <http://www.energy.gov/osdbu/mentor-protége-program>; NASA <http://osbp.nasa.gov/mentor.html>.

²⁹³ CRS MPP Report, *supra* note 292, at pp. 12, 17-18; DEPARTMENT OF THE ARMY OFFICE OF SMALL BUSINESS PROGRAMS, MENTOR-PROTÉGÉ PROGRAMS <http://www.sellingtoarmy.info/content/mentor-protége-programs> (last visited Nov. 2, 2014).

²⁹⁴ Information on the particulars of university involvements in the MPP programs are covered in presentation overviews available across various websites: Morehouse University http://www.acq.osd.mil/osbp/sb/programs/mpp/2012presentations/Wednesday/Leveraging%20HBCU_MIs%20and%20HPO_Breakout/Bussey_Breakout_LeveragingHBCU_HPO.pdf (hereinafter “Morehouse MPP”), Army Office of Small Business Programs http://www.sellingtoarmy.info/sites/default/files/Army_SB_Seminar_2014_AUSA_Pamela_Monroe_Mentor_Protege.pdf.

²⁹⁵ Morehouse MPP, *supra* note 294, at p. 10.

²⁹⁶ The Knowledge Transfer component of the MPP is achieved through a number of mediums (e.g. conferences, training and certification programs, and workshops,) that allow the protégé to expand its technical and professional practices including marketing, business research, financial management, and project management.

various contracting scenarios, are just some of the many valuable elements that transactional clinics can conceivably introduce to MPP and similar government-sponsored programs.

CONCLUSION

This article is a reflection on the influence Professor Gilson's seminal work has had on transactional clinical legal education, as well as an overview of the vast developments in transactional clinical pedagogy in the 30 years since his article was first published. Transactional legal clinics, now numbering more than 150, have grown substantially in the past three decades and while transactional clinic design models vary, there are discernible patterns.

This article is also a companion to *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, and discusses areas of clinical transactional practice, models and funding, industry sectors represented, clients served, transactional lawyering models, and future opportunities. Given the surge in transactional clinics at American law schools and emerging scholarship in the field, a comprehensive discussion and analysis of design trends and opportunities is timely.