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## Preparing Tomorrow's Lawyers to Tackle Twenty-First Century Health and Social Justice Issues

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**Preparing Tomorrow's Lawyers to Tackle Twenty-First Century Health and Social Justice Issues**

# PREPARING TOMORROW'S LAWYERS TO TACKLE TWENTY-FIRST CENTURY HEALTH AND SOCIAL JUSTICE ISSUES

JENNIFER ROSEN VALVERDE<sup>†</sup>

## ABSTRACT

Changing times require changes to the ways in which lawyers define, approach, and address complex problems. Legal education reform is needed to properly equip tomorrow's lawyers with the knowledge and skills necessary to address twenty-first century issues. This Article proposes that the legal academy foster the development of competencies in preventive law, interdisciplinary collaboration, and community engagement to prepare lawyers adequately for the practice of law. The Article offers one model for so doing—a law school-based medical-legal partnership clinic—and discusses the benefits, challenges, and lessons learned from the author's own experience teaching in such a program. However, the Article proposes that the clinic model is merely a starting point, and that law schools should integrate instruction in preventive law, interdisciplinary collaboration, and community engagement throughout the curriculum in a carefully designed progression to achieve the curricular reform needed to properly prepare tomorrow's lawyers.

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## INTRODUCTION

The United States is in the throes of a health and social justice crisis. Proposed cuts to federal funding for vital safety nets—such as public health insurance, low-income home energy assistance, and food assistance programs—significantly endanger the health and well-being of our nation's marginalized populations, namely the indigent, low-income, and working poor.<sup>1</sup> Suggested (and actual) dismantling of environmental protections, the public education system, housing and urban development pro-

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1. See Pam Fessler, *Advocates Say Trump Budget Cuts Will Hurt Country's Most Vulnerable*, NPR (Mar. 17, 2017, 4:27 AM), <http://www.npr.org/2017/03/17/520467050/advocates-say-trump-budget-cuts-will-hurt-countrys-most-vulnerable>; Alana Semuels, *How Trump's Budget Would Impact Cities' Poorest Residents*, ATLANTIC (Mar. 16, 2017), <https://www.theatlantic.com/business/archive/2017/03/trump-budget-hud/519870>.

grams, and community development block grants will exacerbate the adverse effects of structural and social determinants on these populations.<sup>2</sup> Potential reductions in federal financial support for Legal Services Corporation, on top of two decades' worth of diminished funding, will worsen long-existing access to justice issues.<sup>3</sup> These proposals further jeopardize the lives and livelihoods of 100 million Americans who are low-income, approximately thirty percent of the nation's total population<sup>4</sup> and forty-three percent of all U.S. children.<sup>5</sup>

Changing times mandate changes to the ways in which lawyers define, approach, and address complex problems. There never will be enough social justice attorneys to address the legal needs of those who are low income or poor.<sup>6</sup> Moreover, society increasingly has acknowledged that complex individual and social problems require multidimensional, community-engaged problem solving aimed at addressing root causes and their adverse effects, and at preventing them from arising in the first place.<sup>7</sup> Tomorrow's lawyers must be equipped with the tools and skill sets needed to resolve twenty-first century issues. This requires legal education reform.

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2. See Stephenie Johnson et al., *The Trump-DeVos Budget Would Dismantle Public Education, Hurting Vulnerable Kids, Working Families, and Teachers*, CTR. FOR AM. PROGRESS (Mar. 17, 2017, 4:36 PM), <https://www.americanprogress.org/issues/education/news/2017/03/17/428598/trump-devos-budget-dismantle-public-education-hurting-vulnerable-kids-working-families-teachers>; Anya Kamenetz, *Trump's Budget Blueprint Pinches Pennies for Education*, NPR (Mar. 16, 2017, 11:03 AM), <http://www.npr.org/sections/ed/2017/03/16/520261978/trumps-budget-blueprint-pinches-pennies-for-education>; Science News Staff, *NIH, DOE Office of Science Face Deep Cuts in Trump's First Budget*, SCIENCE (Mar. 16, 2017, 12:15 AM), <http://www.sciencemag.org/news/2017/03/nih-doe-office-science-face-deep-cuts-trumps-first-budget>.

3. See Matt Ford, *What Will Happen to Americans Who Can't Afford an Attorney?*, ATLANTIC (Mar. 19, 2017), <https://www.theatlantic.com/politics/archive/2017/03/legal-services-corporation/520083>.

4. See *Basic Statistics*, TALK POVERTY, <https://talkpoverty.org/basics> (last visited Feb. 10, 2018); see also *Child Poverty*, NAT'L CTR. FOR CHILD. POVERTY, <http://www.nccp.org/topics/childpoverty.html> (last visited Feb. 10, 2018) (defining low-income as income less than or equal to twice the federal poverty threshold).

5. *Child Poverty*, *supra* note 4.

6. See, e.g., LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS I (2009); LEGAL SERVS. OF N.J., NEW JERSEY'S CIVIL LEGAL ASSISTANCE GAP: NECESSARY STEPS TO PROVIDE LEGAL REPRESENTATION AND SECURE EQUAL JUSTICE FOR PEOPLE WITH LIMITED MEANS I (2012).

7. See, e.g., Ellen M. Lawton & Megan Sandel, *Investing in Legal Prevention: Connecting Access to Civil Justice and Healthcare Through Medical-Legal Partnership*, 35 J. LEGAL MED. 29, 33 (2014) (stating medical-legal partnership's success as a healthcare delivery model "lies in its cross-disciplinary, leveraging nature, which aligns the legal community with a range of stakeholders and professions that are unified in seeking to improve health conditions and systems for vulnerable populations"); Jane R. Wettach, *The Law School Clinic as a Partner in a Medical-Legal Partnership*, 75 TENN. L. REV. 305, 305 (2008) ("In today's complex and interconnected society, lawyers undeniably must possess the ability to solve problems in an interdisciplinary context.").

Given these concerns, the time is ripe to revisit not only what law schools teach and how but also what they do not teach.<sup>8</sup> Recent amendments to the American Bar Association's (ABA) accreditation standards mandate two significant changes to legal education that support educational reform. First, law schools must develop learning outcomes that include competency in substantive and procedural law; legal analysis, problem solving, and communication; professional responsibility and ethics; and "other professional skills" needed for a student to become a "competent and ethical . . . member of the legal profession."<sup>9</sup> Second, law schools must ensure that each student completes at least six credit hours of experiential courses, which include simulation courses, law clinics, or field placements.<sup>10</sup> These revisions are the result of decades of legal education critique and repeated calls for law schools to better prepare their students for the legal profession.<sup>11</sup> They also pave the way for the addition of three new competencies essential to twenty-first century law practice: preventive law, interdisciplinary collaboration, and community engagement.<sup>12</sup> The benefits of education and training in these areas have been evident to some for years.<sup>13</sup> Yet, few law schools intentionally include instruction in all three competency areas throughout their curricula.<sup>14</sup>

Since their inception, law school clinics have taken the lead in educating students in areas absent from or inadequately emphasized by class-

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8. See Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL'Y 11, 56 (2013) ("Legal education is at a crossroads. Much more remains to be done by law schools to meet the challenge of preparing competent, ethical practitioners who are ready to become professionals.").

9. AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015–2016, at 15–16 (2015).

10. *Id.* at 16–17.

11. See Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & SOC. JUST. 247, 250 (2012) (referencing "almost a century of critique" of the legal education system); see also SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 327–38 (1992) (setting forth recommendations to improve legal education, including that law schools adopt more skills and values instruction in their curricula); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 13, 15–19 (2007) (arguing that law schools' focus on legal reasoning and legal principles is insufficient and they must expand their "educational goals" and commit to prepare students for law practice); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 3, 8 (2007) (finding that law schools should more fully integrate knowledge, skills and values into legal education); Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. 119, 120 (2015) (noting that the struggle over how best to educate law students is far from new); Tokarz et al., *supra* note 8, at 11–12 (asserting that "[t]he clamor for reform in legal education is precipitated by a confluence of factors," including changes in the nature of legal practice, a decrease in legal jobs, changes in economics, a drop in law school applications and admissions, and higher demand for "practice-ready" new attorneys).

12. See *infra* Part II.

13. See *infra* note 56 and accompanying text.

14. This conclusion is based on the author's research.

room instruction that focuses predominantly on the legal analysis of substantive law.<sup>15</sup> For more than half a century, clinics have bridged the worlds of theory and doctrine with live practice, provided law students with instruction in lawyering skills, instilled in students social justice values, and promoted the development of a positive professional identity.<sup>16</sup> As a result, many legal scholars regard clinical legal education as the “most significant reform in American legal education since Langdell’s case method approach.”<sup>17</sup> Some U.S. law schools have developed innovative programs of instruction that integrate legal theory, doctrine, skills, and values across the entire curriculum.<sup>18</sup> However, the majority continue to rely on clinics and, to a lesser extent, externships to develop students’ competencies in the application of legal doctrine to real-life situations, in practical lawyering skills with live clients, and in advancing the pursuit of social justice.<sup>19</sup>

Law school clinics can and should continue to serve at the forefront in educating students in the ever-evolving proficiency standards needed for twenty-first century practice by fostering the development of competencies in preventive law, interdisciplinary collaboration, and community

15. See Tokarz et al., *supra* note 8, at 14 (“[T]he arrival of experiential and clinical education . . . was a corrective intervention in response to perceived deficiencies in the casebook method.”); see also SULLIVAN ET AL., *supra* note 11, at 56–59 (calling attention to the vital role of clinics in educating students in competencies largely absent from traditional classroom courses, e.g., client experience and ethical matters); Barry, *supra* note 11, at 251 (“Many schools have looked to clinical and experiential offerings . . . to address pesky critiques about professional relevance . . . . Clinical programs have given form to consideration of broader competencies . . . .”); Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 61 (2009) (“[C]linical legal education developed in response to legal education’s deficits.”).

16. See Sandefur & Selbin, *supra* note 15 (describing clinics as “the law school sites within which the cognitive, skills and civic dimensions [of legal education] are purportedly iterative and integrated, where students learn and deploy legal skills and encounter the real-life ethical challenges of working directly with clients to diagnose and treat their legal problems”); see also Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 12–15 (2000) (discussing clinical legal education’s dual aims of lawyering skills training and provision of access to justice); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1929–30 (2002) (arguing clinics are “the primary place in the law school where students can learn to be competent, ethical, socially responsible lawyers”).

17. Douglas L. Colbert, *Clinical Professors’ Professional Responsibility: Preparing Law Students to Embrace Pro Bono*, 18 GEO. J. ON POVERTY L. & POL’Y 309, 323 (2011) (citing JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 269–70 (1976)).

18. See, e.g., Tokarz et al., *supra* note 8, at 45–51 (discussing long-existing clinical legal education requirements for law students attending University of Puerto Rico, University of New Mexico, City University of New York, University of District of Columbia, and University of Maryland law schools and noting that twenty-three law schools reported clinic or externship requirements for all students as of October 2013); see also Barry, *supra* note 11, at 256–63 (discussing innovation in legal education at Boston College, Cardozo, Harvard, Stanford, Washington & Lee, U.C. Irvine, and others); Sheldon Krantz & Michael Millemann, *Legal Education in Transition: Trends and Their Implications*, 94 NEB. L. REV. 1, 10–41 (2015) (reviewing innovative legal education programs at Harvard, U.C. Irvine, University of Montana, and Georgetown, among others).

19. See Linda F. Smith, *Fostering Justice Throughout the Curriculum*, 18 GEO. J. ON POVERTY L. & POL’Y 427, 427 (2011) (“[C]linics are the primary way in which law schools foster justice and public service . . . .”); see also William M. Sullivan, *Align Preparation and Assessment with Practice: A New Direction for the Bar Examination*, 85 N.Y. ST. B.J. 41, 42 (2013) (critiquing legal education for “providing an unbalanced curriculum” that ill-prepares students for the practice of law).

engagement. This Article proposes that a law school-based medical-legal partnership (MLP) clinic offers a viable means for so doing. Over the last two decades, the MLP has emerged as a model of collaboration across disciplines (e.g., medicine and health, law, social work, and public health) and with communities, in addressing the health-harming social and legal needs of individuals and populations.<sup>20</sup> The MLP's adoption of a preventive law approach and examination of health issues at the micro and macro levels across multiple discipline perspectives raise fascinating questions about the way we define problems; craft and implement solutions; advance human rights and social justice proactively; and collaborate with clients and communities in the process.

But while the law school-based MLP clinic is a natural *starting point* for developing students' knowledge and skills in preventive law, interdisciplinary collaboration, and community engagement, law students must have opportunities to learn about and use these approaches outside the clinical program as well. To maximize students' development of these twenty-first century competencies, along with myriad other problem-solving, practical lawyering, and professionalism skills typically taught in law school clinics, the legal academy should integrate instruction in them throughout the curriculum.<sup>21</sup> This includes doctrinal courses, skills courses, and clinics, in a carefully designed progression.<sup>22</sup> Only then will the legal academy achieve the curricular reform needed to properly prepare twenty-first century law students for practice.

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20. See Aleah Gathings, *MFY Legal Services, Inc.'s Medical Legal Partnership with Bellevue Hospital Center: Providing Legal Care to Children with Psychiatric Disabilities*, 18 CUNY L. REV. 1, 6 (2014) (describing MLPs as striving "to identify and address . . . health-harming legal needs early on, before those needs become a crisis that may require litigation or have an adverse effect on health"); see also Wettach, *supra* note 7, at 312 (highlighting the interdisciplinary benefit of the MLP model).

21. The development of these competencies should not come at the expense of proper training in legal analysis; however, many legal educators agree that too much time is spent in law school learning this one isolated skill resulting in insufficient education in other areas. See SULLIVAN ET AL., *supra* note 11, at 4, 9; see also Lisa Penland, *The Hypothetical Lawyer: Warrior, Wiseman or Hybrid?*, 6 APPALACHIAN J.L. 73, 79 (2006) (contending the case method approach "teaches a single litigation skill to the exclusion of most others"); Nancy B. Rapoport, *Is "Thinking Like a Lawyer" Really What We Want to Teach?*, J. ASS'N LEGAL WRITING DIRECTORS, Fall 2002, at 91, 103 ("How many courses does a law student need in order to master case analysis? One? Two? Surely, no law student needs nine or ten courses to master this skill."); Krista Riddick Rogers, Comment, *Promoting a Paradigm of Collaboration in an Adversarial Legal System: An Integrated Problem Solving Perspective for Shifting Prevailing Attitudes from Competition to Cooperation Within the Legal Profession*, 6 BARRY L. REV. 137, 155-56 (2006) (noting that while legal analysis is a crucial skill for effective legal practice, other competencies must be integrated into a comprehensive legal education curriculum). Reducing the amount of instructional time spent on case method will allow time to be spent on other competency areas.

22. For a detailed discussion of different models for bridging instruction in competencies across law school curricula, see Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 U.S.F. L. REV. 245, 247-48 (2016); Batt, *supra* note 11, at 122; Krantz & Millemann, *supra* note 18, at 2-4. See also Susan Swaim Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 865 (2012) ("[T]he development of a comprehensive set of lawyering skills in law school should not be left to chance. It should be intentional, purposeful, orderly, obvious, and successful.").



This Article begins with a brief history and description of recent shifts in the legal academy's views on legal education outcomes, competencies, and "professional skills" instruction, setting the stage for curricular review and redesign. Part II provides an introduction to preventive law, interdisciplinary collaboration, and community engagement methodologies and discusses their importance to contemporary law practice.<sup>23</sup> Section III offers an overview of the MLP model and describes H.E.A.L. Collaborative® (Health, Education, Advocacy, and Law) (H.E.A.L. Collaborative or H.E.A.L.), a law school-based medical-legal-social work partnership clinic at Rutgers University School of Law. H.E.A.L. Collaborative integrates these methodologies throughout its work addressing the adverse effects of social determinants on the health and well-being of children and families. Section IV describes some of the ways in which H.E.A.L. Collaborative develops law students' competencies in preventive law, interdisciplinary collaboration, and community engagement, and examines the benefits and challenges of integrating these approaches in legal education.<sup>24</sup> Section V concludes with recommendations for incorporating instruction in these competencies beyond clinics and throughout the law school curriculum. Although this Article showcases a specific type of clinic—i.e., the MLP—the need for new lawyers to be competent in preventive law, interdisciplinary collaboration, and community engagement extends far beyond this venue to diverse areas of law.<sup>25</sup> Furthermore, the benefits, challenges, and lessons learned from our MLP experience apply broadly to other types of law school clinics addressing complex social and

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23. Although the literature abounds with articles on clinical legal education, and includes many articles on preventive law, interdisciplinary collaboration, and community engagement, no one, to date, has examined in detail the intersection of all four methods in one clinical program. For articles regarding the integration of multiple methodologies in a law school clinic, see, for example, Bruce J. Winick & David H. Wexler, *The Use of Therapeutic Jurisprudence in Law School Clinical Education: Transforming the Criminal Law Clinic*, 13 CLINICAL L. REV. 605, 605–07 (2006) (integrating therapeutic jurisprudence, preventive law, and clinical legal education). See also Susan L. Brooks & Rachel E. Lopez, *Designing a Clinic Model for a Restorative Community Justice Partnership*, 48 WASH. U. J.L. & POL'Y 139, 140–41 (2015) (bridging community lawyering with deliberative democracy and relational lawyering (which has its roots in therapeutic jurisprudence, preventive law, restorative justice, and mediation)); Linda F. Smith, *Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community-Based Research*, 10 CLINICAL L. REV. 723, 723–24 (2004) (integrating civic engagement, which includes service learning and community-based research, with clinical legal education); Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL. W. L. REV. 15, 18–20 (1997) (merging preventive law and therapeutic jurisprudence with clinical legal education).

24. The integration of preventive law, interdisciplinary collaboration, and community engagement in a law school-based MLP benefits students of all disciplines who participate, as well as the community. It also poses several challenges. For purposes of this Article, I focus on the benefits and challenges for law students only.

25. See, e.g., *Louis M. Brown Program in Preventive Law*, CAL. W. SCH. L.: NAT'L CTR. FOR PREVENTIVE L., [http://www.preventivelawyer.org/main/default.asp?pid=brown\\_program.htm](http://www.preventivelawyer.org/main/default.asp?pid=brown_program.htm) (last visited Feb. 10, 2018) ("Virtually any forum setting with avoidable legal problems has room for the practice of preventive law."). For a series of essays on the application of principles of preventive law to different areas of law, see *Essays*, CAL. W. SCH. L.: NAT'L CTR. FOR PREVENTIVE L., <http://www.preventivelawyer.org/main/default.asp?pid=essays.htm> (last visited Feb. 10, 2018).

legal issues, and offer some valuable insights for the legal academy as it engages in twenty-first century curricular redesign.

I. CALLS FOR CURRICULAR REVIEW AND REFORM: THE 2014  
AMENDMENTS TO THE *ABA STANDARDS AND RULES OF PROCEDURE FOR  
APPROVAL OF LAW SCHOOLS*

The legal academy long has lagged behind other professionals in this country,<sup>26</sup> and legal educators abroad,<sup>27</sup> in using outcome measures to assess the effectiveness of legal education. Outcome measures assess whether an institution has succeeded in “imparting certain types of knowledge and enabling students to attain certain types of capacities” while advancing the institution’s mission.<sup>28</sup> Historically, the legal academy has relied predominantly on input measures, such as investment in resources (e.g., the number of faculty or the library budget) in its accreditation standards, and examined only two outcome measures—bar passage and job placement.<sup>29</sup> In contrast, higher education institutions began articulating student learning goals (i.e., outcomes) in the early 1970s,<sup>30</sup> with most professional fields having adopted outcome-measures systems by the 1990s.<sup>31</sup>

It was not until 2007 that the ABA Section of Legal Education and Admissions to the Bar Accreditation Committee created a committee to examine “whether and how [the ABA] can use output measures, other than bar passage and job placement, in the accreditation process.”<sup>32</sup> The *Carnegie Report*<sup>33</sup> and the *Best Practices Report*,<sup>34</sup> both well-known for their critiques of legal education for inadequately preparing students for the profession, and for their support of clinical legal education, propelled the legal

26. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, REPORT OF THE OUTCOME MEASURES COMMITTEE 20–22 (2008) [hereinafter OUTCOME MEASURES REPORT]; see also Janet W. Fisher, *Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students*, 35 S. ILL. U. L.J. 225, 227 (2011) (noting the legal academy has been slow to join the “assessment movement”).

27. See OUTCOMES MEASURES REPORT, *supra* note 26, at 11–13.

28. *Id.* at 3.

29. See *id.* at 3, 5.

30. See Fisher, *supra* note 26 (describing undergraduate institutions’ early use of assessment to reshape their curricula).

31. See OUTCOMES MEASURES REPORT, *supra* note 26, at 20; see also Fisher, *supra* note 26, at 228 (stating that “[a]ssessment is well-established in other fields of professional education,” and that accrediting bodies for most professional schools have adopted outcome measures in their standards). Notably, this timeline coincides with the U.S. Department of Education’s 1988 order that all approved accrediting bodies “include ‘evidence of institutional outcomes’ in their standards.” *Id.* at 227–28 (quoting CATHERINE A. PALOMBA & TRUDY W. BANTA, *ASSESSMENT ESSENTIALS: PLANNING, IMPLEMENTING, AND IMPROVING ASSESSMENT IN HIGHER EDUCATION 2* (1st ed. 1999)).

32. OUTCOMES MEASURES REPORT, *supra* note 26, at 1. The Special Committee on Output Measures was charged to “consider methods to measure whether a program is accomplishing its stated mission and goals[,] . . . define appropriate output measures[,] and make specific recommendations as to whether the Section should adopt those measures as part of the Standards.” *Id.*

33. SULLIVAN ET AL., *supra* note 11.

34. STUCKEY ET AL., *supra* note 11, at 1–4.

academy to consider a move to outcomes-based assessment.<sup>35</sup> These reports highlighted the importance of competency-based outcome measures by urging law schools to use ongoing assessments to evaluate student development; shift focus from the assessment of students' "conceptual knowledge" to their "practical competencies . . . and the development of professional identity"; and develop a "unified set of teaching goals" to replace the "*ad hoc* goal setting by individual faculty."<sup>36</sup>

The Committee's 2008 report recommended that the ABA move to an "outcome-oriented approach," finding that such a shift was consistent with the "latest and best thinking of U.S. legal educators,"<sup>37</sup> legal educators abroad, and accrediting bodies in other professional fields.<sup>38</sup> However, another six years passed before the ABA, in 2014, finally approved revisions to the *ABA Standards and Rules of Procedure for Approval of Law Schools (ABA Accreditation Standards)* that incorporate the Committee's recommendations.<sup>39</sup> These revisions call for a "quantum shift"<sup>40</sup> in the legal academy that "put[s] students at the center of education."<sup>41</sup> By "plac[ing] new responsibilities on law schools to better prepare students for practice," the revisions offer some hope that the legal academy finally will respond to decades of calls for legal education reform.<sup>42</sup>

Relevant here, the revisions require an increase in instruction in professional skills and values for law students; the development of measurable learning outcomes that foster student achievement in the competencies needed to practice law; and evaluation of student learning and legal education program.<sup>43</sup> These amendments align with a major conclusion of the ABA's report of the Task Force on the Future of Legal Education (2014) regarding the role of law schools in society:

A given law school can have multiple purposes. But the core purpose common to all law schools is to prepare individuals to provide legal and related services in a professionally responsible fashion. This elementary fact is often minimized. The calls for more attention to skills training, experiential learning, and the development of practice-related competencies have been heard . . . . Yet, there is need to do much more. The balance between doctrinal instruction and focused preparation for

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35. See OUTCOME MEASURES REPORT, *supra* note 26, at 6.

36. *Id.* at 8.

37. See *id.* at 2, 54 (referring to the *Carnegie Report* and *Best Practices Report* as reflecting the "latest and best thinking").

38. See *id.*

39. AM. BAR ASS'N, *supra* note 9, at vii.

40. See OUTCOME MEASURES REPORT, *supra* note 26, at 61.

41. See Fisher, *supra* note 26, at 228.

42. Krantz & Millemann, *supra* note 18, at 6–8.

43. See AM. BAR ASS'N, *supra* note 9, at 15–17, 23–24; see also Roy Stuckey, *The American Bar Association's New Mandates for Teaching Professional Skills and Values: Impact, Human Resources, New Roles for Clinical Teachers, and Virtual Worlds*, 51 WAKE FOREST L. REV. 259, 259 (2016).

the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients.<sup>44</sup>

For example, ABA Standard 303 provides that students must complete six credit hours of experiential coursework as compared to the one credit hour required by the 2012 amendments.<sup>45</sup> The ABA defines “experiential course[work]” liberally to include clinics, simulation courses, or field placements that merge the study of theory and doctrine with skills and ethics, and provide students frequent occasions to practice the professional skills being taught while engaging in self-reflection and evaluation.<sup>46</sup> Standard 302 mandates that law schools develop learning outcomes that include competencies in procedural and substantive law; legal research, reasoning, analysis, problem solving, and communication; professionalism and legal ethics; and “other professional skills needed for competent and ethical participation as a member of the legal profession.”<sup>47</sup> Comments to the standards define “other professional skills” broadly, and each law school determines which additional skill areas to include.<sup>48</sup>

Some legal scholars believe the amendments to the ABA’s accreditation standards will result in a “fundamental shift in legal education, both as it relates to the substance of what is taught in law school and to the way schools develop their curriculum.”<sup>49</sup> Others remain more skeptical about the new mandates’ impact.<sup>50</sup> While the future remains uncertain, the revisions provide a unique opportunity for law schools to engage in thoughtful and comprehensive curriculum review, revision, and redesign to ensure

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44. TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS’N, REPORT AND RECOMMENDATIONS 3 (2014).

45. See AM. BAR ASS’N, *supra* note 9, at 16.

46. See *id.*

47. *Id.* at 15.

48. See *id.* at 16 (“Other professional skills are determined by the law school and may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.”).

49. Niedwiecki, *supra* note 22, at 247; see *id.* at 249 (noting the change in the ABA Accreditation Standards’ focus from input measures to output measures is a “fundamental change”).

50. See, e.g., Stuckey, *supra* note 43, at 261–62 (arguing the ABA’s failure to require law schools to organize their programs of instruction into a structured and coordinated curriculum and law schools’ inability to define “competence” weaken the potential impact of the amendments to the ABA Accreditation Standards). Many scholars believe the six-credit hour experiential education minimum is insufficient and that at least fifteen-credit hours are needed to produce an impact on students’ experiential skill development. See *id.* at 260. Still others argue that simulations and field placements are not comparable to clinical experiences for they cannot replace the benefits of live client experiences and the opportunities for performance and reflection gained through clinical legal education. See *id.* at 267; see also Tokarz et al., *supra* note 8, at 13–14 (“[O]nly clinical courses, where students learn in role with real clients who have complex, real-world problems, present the indeterminate situations necessary for students to develop judgment; to incorporate professional knowledge, skills, and values; to internalize the attorney role; to comprehend client responsibility; and to learn how to learn from experience.”). For additional discussion comparing the pros and cons of in-house clinics, externships, and simulation/skills instruction, see, for example, Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1464 n.10, 1469 n.44 (1998).

that students develop the competencies needed for twenty-first century legal practice.<sup>51</sup> In so doing, law schools should consider the range of skills that lawyering requires so that students are properly equipped with the tools needed both to prevent and to resolve today's social and legal problems. To best match learning outcomes with essential competencies for legal practice, one must examine the current foundations needed for entry-level lawyers to succeed and distill the educational competencies that form the basis for those foundations.<sup>52</sup>

## II. PREVENTIVE LAW, INTERDISCIPLINARY COLLABORATION, AND COMMUNITY ENGAGEMENT: DEFINING THE METHODOLOGIES AND THEIR IMPORT TO TWENTY-FIRST CENTURY LAW PRACTICE

Legal practice in the twenty-first century requires a wider range of skills and competencies than typically taught in most law schools.<sup>53</sup> A recent study on new attorneys' preparation for effective practice reported that fewer than twenty-five percent of legal practitioners believe recent graduates have the skills needed to practice law.<sup>54</sup> Another reported that ninety-five percent of hiring partners and associates believe new graduates "lack key practical skills at the time of hiring."<sup>55</sup> Still others have examined the competencies needed for effective legal practice and found that law schools commonly fail to instruct students in many key areas, including strategic planning, providing advice and counsel, and working with others.<sup>56</sup> Such findings led the authors of one study to conclude that new lawyers are most likely to succeed in practice when "they come to the job with a much broader blend of legal skills, professional competencies, and characteristics that comprise the whole lawyer."<sup>57</sup>

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51. Many clinical programs, separate and apart from the law schools in which they are housed, have developed outcomes-focused assessments of student learning following critiques in the *Carnegie Report* and *Best Practices Report*. See Smith, *supra* note 19, at 436–37; Sandefur & Selbin, *supra* note 15, at 70–71. In this manner, clinics once again are at the forefront in implementing best practices for legal education. See Douglas A. Blaze, *Déjà Vu All over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 942–43 (1997). But see Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807, 807–08 (2007) (criticizing clinical legal educators for "fail[ing] to articulate and demonstrate the important learning that occurs uniquely or can be accomplished best in clinical courses").

52. See ALLI GERKMAN & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 1 (2016); see also Barry, *supra* note 11, at 276 ("Choices about what to teach, when to teach, and how to teach must be tied to clear goals. These goals should have the primary effect of preparing students for the profession they are entering.").

53. See Herb D. Vest, *Felling the Giant: Breaking the ABA's Stranglehold on Legal Education in America*, 50 J. LEGAL EDUC. 494, 496 (2000) ("[M]odern legal practice demands an increasingly wide array of skills—some of them 'practical,' but many of them ranging beyond the law to encompass business, technological, problem-solving, and other skills.").

54. See GERKMAN & CORNETT, *supra* note 52, at 4 (citing 2014 *State of the Field Legal Survey*, BARBRI (Mar. 5, 2015), <https://www.thebarbrigroup.com/2014-state-of-the-legal-field-survey>).

55. See *id.* (citing LEXISNEXIS, WHITE PAPER: HIRING PARTNERS REVEAL NEW ATTORNEY READINESS FOR REAL WORLD PRACTICE 1 (2015)).

56. See, e.g., Daicoff, *supra* note 22, at 822–24.

57. GERKMAN & CORNETT, *supra* note 52, at 5.

In 2016, the ABA's Commission on the Future of Legal Services reported on the results of a two-year study on "meaningful access to legal services" in the United States.<sup>58</sup> The report sheds light on the competencies needed for current and future law practice.<sup>59</sup> Guided by the legal profession's core values of "serving the interests of the public and ensuring justice for all," the commission sought to determine why so many Americans are unable to obtain meaningful legal assistance.<sup>60</sup> Among its findings, the commission reaffirmed what legal services lawyers long have known: the legal needs of most people living in poverty, and a majority of those living in moderate-income households, go unmet;<sup>61</sup> people frequently do not receive help due to insufficient financial resources or inadequate knowledge that they have a legal problem and need legal assistance to resolve it;<sup>62</sup> and the legal profession's tendency to resist change creates barriers to innovation.<sup>63</sup> It issued twelve recommendations to improve access to and delivery of legal assistance, at least six of which may be advanced by the legal academy.<sup>64</sup> Three such recommendations incorporate principles of preventive law, interdisciplinary collaboration, and community engagement,<sup>65</sup> yet law students seldom receive deliberate instruction in or exposure to these approaches. A description of each of these competency areas and their significance to contemporary legal practice follows. To avoid repetition, I will use the term "twenty-first century competencies" interchangeably with "preventive law, interdisciplinary collaboration, and community engagement" when referencing these three competency areas together.

### A. Preventive Law

The origins of preventive law date back to the 1950s when Louis Brown, Professor of Law at University of Southern California, proposed

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58. See COMM'N ON THE FUTURE OF LEGAL SERVS., AM. BAR ASS'N, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 1 (2016) [hereinafter FLS REPORT].

59. See *id.*

60. *Id.*

61. *Id.* at 11.

62. *Id.* at 14.

63. *Id.* at 17.

64. *Id.* at 37–57 (describing twelve recommendations for improving access to and delivery of legal services). Recommendations that may be advanced by law schools include: (1) "The legal profession should support the goal of providing some form of effective assistance for essential civil legal needs to all persons otherwise unable to afford a lawyer"; (3) "All members of the legal profession should keep abreast of relevant technologies"; (4) "Individuals should have regular legal checkups, and the ABA should create guidelines for lawyers, bar associations, and others who develop and administer such checkups"; (7) "The legal profession should partner with other disciplines and the public for insights about innovating the delivery of legal services"; (10) "Resources should be vastly expanded to support long-standing efforts that have proven successful in addressing the public's unmet needs for legal services"; and (11) "Outcomes derived from any established or new models for the delivery of legal services must be measured to evaluate effectiveness in fulfilling regulatory objectives." *Id.* at 37, 43, 49, 54, 56.

65. See *id.* at 43–45, 49–50, 56 (describing recommendation (4) incorporating principles of preventive law, recommendation (7) incorporating principles of interdisciplinary collaboration, and recommendation (11) incorporating principles of community engagement).

that lawyers better serve clients through consultation and planning as opposed to relying on litigation as the primary vehicle to address legal problems.<sup>66</sup> Brown recognized that while litigation is an essential tool in the lawyering toolkit, “the fact that one ends up in an adversarial proceeding may be evidence of a lack of planning or communication.”<sup>67</sup> Since that time, preventive law has evolved into a proactive method of legal practice that seeks to minimize legal disputes and litigation risks, to “secure more certainty as to legal rights and duties,”<sup>68</sup> and to “increase life opportunities” through legal planning.<sup>69</sup>

The preventive lawyer’s primary role as “planner” and “counselor” is analogous to a physician’s role in preventive health.<sup>70</sup> “Just as preventive medicine [originates] from the premise that keeping people healthy constitutes a better allocation of resources than treating people who become sick, preventive law [derives] from the premise that preventing legal disputes is less costly than litigation.”<sup>71</sup> Thus, in preventive law, lawyers aim “to ‘fast forward’ client situations to predict and foresee ‘legal soft spots’ or situations which may lead to future litigation” and then “strategically plan ahead” to prevent disputes from arising.<sup>72</sup> Despite the importance of prevention in both medicine and law, “[t]he health sector is decades ahead of the legal profession in terms of thinking about prevention.”<sup>73</sup> American society largely continues to treat symptoms (i.e., legal problems) instead of proactively stopping the underlying disease (i.e., root causes) from arising in the first place.<sup>74</sup> The prioritization of addressing

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66. J. Kim Wright & Dolly M. Garlo, *Law as a Healing Profession*, OR. ST. B. BULL., Apr. 2003, at 9, 12; see Dennis P. Stolle & David B. Wexler, *Therapeutic Jurisprudence and Preventive Law: A Combined Concentration to Invigorate the Everyday Practice of Law*, 39 ARIZ. L. REV. 25, 27 (1997) (describing preventive law as a “practice that seeks to minimize and avoid legal disputes and to increase life opportunities through legal planning”). For additional information on preventive law, see generally LOUIS M. BROWN & EDWARD A. DAUER, PERSPECTIVES ON THE LAWYER AS PLANNER (1978); LOUIS M. BROWN & EDWARD A. DAUER, PLANNING BY LAWYERS: MATERIALS ON A NONADVERSARIAL LEGAL PROCESS (1978); Louis M. Brown & Edward A. Dauer, *A Synopsis of the Theory and Practice of Preventive Law*, in AM. BAR ASS’N, THE LAWYERS HANDBOOK, at A3-1 (Garth C. Grissom et al. eds., rev. ed. 1975).

67. Wright & Garlo, *supra* note 66 (describing the premise of preventive law).

68. Stolle et al., *supra* note 23, at 16 (quoting Edward D. Re, *The Lawyer as Counselor and the Prevention of Litigation*, 31 CATH. U. L. REV. 685, 692 (1982)).

69. *Id.* at 16–17 (quoting Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L.Q. 421, 440 (1994)).

70. *Id.* at 16–17, 23.

71. *Id.* at 16.

72. Daicoff, *supra* note 22, at 859 (quoting Thomas D. Barton & James M. Cooper, *Preventive Law and Creative Problem Solving: Multi-Dimensional Lawyering*, CAL. W. SCH. L.: NAT’L CTR. FOR PREVENTATIVE L. 3, 20–21, [http://preventivelawyer.com/content/pdfs/Multi\\_Dimensional\\_Lawyer.pdf](http://preventivelawyer.com/content/pdfs/Multi_Dimensional_Lawyer.pdf) (last visited April 11, 2018)).

73. Lawton & Sandel, *supra* note 7, at 37; see also Ritchie Eppink, *A Case for Public Legal Health: Are We Missing Something?*, OR. ST. B. BULL., Jun. 2009, at 38, 39–40 (noting that lawyers never have “tackled ‘preventive law’ the way that the health professions have tackled preventive medicine”).

74. Thomas H. Gonser & Forrest S. Mosten, *The Case for a National Legal Health Strategy*, PREVENTIVE L. REP., Fall 1993, at 31, 31 (“[O]ur preoccupation with addressing a litany of seemingly unrelated individual ‘crises’ in our legal environment has precluded our ability to focus on the root

legal problems over preventing them is no surprise as legal professionals and the public commonly perceive the law as reactive and employ it reactively.<sup>75</sup> As a result, we fail to “use common legal sense to prevent legal problems the way most of us already use common health sense to prevent colds and [the] flu.”<sup>76</sup>

Preventive lawyers use the “legal checkup” as their principal tool.<sup>77</sup> Proponents of the legal checkup posit that the breadth of solutions broadens as client consultation explores “updates on a client’s life events”<sup>78</sup> and other areas of client need and purpose, examining not only the legal risks but also the client’s “total welfare” including well-being.<sup>79</sup> This exploration of the client in context prevents lawyers from mislabeling problems as legal when they are not, thereby avoiding the situation where: “If the only thing you have is a hammer, then everything looks like a nail.”<sup>80</sup> It also enables lawyers to identify potential nonlegal solutions with clients and guide them accordingly.<sup>81</sup> The challenge in preventive lawyering is that, “incipient legal problems—as opposed to existing litigation—are very often non-symptomatic . . . . It is [the preventive lawyer’s] job to help clients identify the symptoms of legal risks in time to deal with them.”<sup>82</sup>

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causes.”); see Lawton & Sandel, *supra* note 7, at 37 (“Both surgery and litigation always will be necessary in some cases, but prevention can ensure that reliance on surgery or litigation is lessened by reallocating resources toward prevention activities.”).

75. Thomas D. Barton, *Preventive Law for Multi-Dimensional Lawyers*, PREVENTIVE L. REP., Spring 2001, at 29 (asserting lawyers and the legal system are reactively oriented to the past—“what . . . happened, and who is to blame”—and the adversary process serves to reconstruct past events, evidencing a “traditional rewind mentality”). For example, the public typically seeks legal assistance after a legal problem has arisen, less so before. Lawton & Sandel, *supra* note 7, at 38 (“[I]t is an axiom of civil legal aid service provision that by the time clients realize that they have a legal problem, it is likely so far along that prevention is impossible.”). Further, the law mandates that legal issues cannot be heard unless ripe. See *Nat’l Park Hosp. Ass’n v. Dep’t of the Interior*, 538 U.S. 803, 804–08 (2003) (“Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.”) (quoting *Abbot Labs. v. Gardner*, 387 U.S. 136, 148–49 (1967)). Thus lawyers seldom have the impetus to devote time and energy to problems unless they are full-blown legal problems.

76. Eppink, *supra* note 73, at 41 (describing Canada’s success in resolving the public’s legal concerns by applying common-sense legal strategies to prevent problems in the same manner as common sense health strategies are used to prevent simple illnesses).

77. Stolle et al., *supra* note 23, at 27.

78. *Id.* at 16–17 (quoting Mosten, *supra* note 69).

79. *Id.* at 36.

80. *Id.* at 35 (quoting humanistic psychologist, Abraham Maslow).

81. See *id.*

82. *Id.*



To date, the preventive law movement has failed to generate a large following,<sup>83</sup> at least overtly. Interestingly, many practicing attorneys “unknowingly use” preventive law every day but are “unaware” of so doing.<sup>84</sup> Instances include corporate in-house counsel who strive to identify and address potential legal issues before they become legal problems; estate attorneys who ensure that executors follow the probate code when administering an estate to avoid liability; and transactional attorneys who, when developing contracts, seek to limit potential liability for the represented party. Countless examples exist of attorneys engaging in the planning and counseling functions of preventive law across a wide variety of legal specialties, such as corporate and transactional law,<sup>85</sup> family law,<sup>86</sup> employment law,<sup>87</sup> alternative dispute resolution,<sup>88</sup> and poverty law (i.e., legal services practice).<sup>89</sup> Moreover, due to “the expenditure of vast amounts of time and money on litigation and the enormous backlog of cases in the judicial system, the need for ‘preventive-lawyering’ techniques is more crucial than ever.”<sup>90</sup>

The benefits of preventive law in the private sector extend to the public sector as well.<sup>91</sup> Changes in consumer demand for legal assistance, including more accessible, low-cost, user-friendly legal services,<sup>92</sup> coincide with and are advanced by preventive law’s focus on careful front-end planning to prevent back-end disputes. The ABA’s Commission on the Future

83. See *id.* at 17 (“Preventive law has generated considerable interest . . . . Yet the movement has its critics, and it has failed to convert large numbers of lawyers.”). Some critics argue preventive law is “impossible” to do while adding, “I already do it anyway,” whereas others disparage it as an “improper solicitation[] of business” or for causing clients to pay the lawyer “more than was anticipated to deal with problems that they didn’t know they had.” *Id.* Even some supporters contend that its application is limited because routine legal checkups typically are unavailable to persons of limited means. See Mary Jo Eyster, *Preventive Law in the Emergency Room: Poor People Don’t Get Check-ups*, CAL. W. SCH. L.: NAT’L CTR. FOR PREVENTIVE L., <http://www.preventivelawyer.org/main/default.asp?pid=essays/eyster.htm> (last visited Feb. 10, 2018).

84. John J. Copelan, Jr. & Barbara S. Monahan, *Preventive Law: A Strategy for Local Governments in the Nineties*, 44 SYRACUSE L. REV. 957, 958 (1993).

85. See, e.g., Z. Jill Barclift, *Preventive Law: A Strategy for Internal Corporate Lawyers to Advise Managers of Their Ethical Obligations*, 33 J. LEGAL PROF. 31, 32 (2008) (highlighting the importance of competency in preventive law for in-house corporate lawyers).

86. See, e.g., Mosten, *supra* note 69, at 422 (discussing the benefit of preventive law in the family law context to minimize the risk of future disputes).

87. See, e.g., Stolle & Wexler, *supra* note 66, at 30 (stating that “discrimination and other employment-related problems could, with planning, be ‘lessened dramatically[]’” with the preventive law (quoting MARK S. SENAK, HIV, AIDS, AND THE LAW: A GUIDE TO OUR RIGHTS AND CHALLENGES 111 (1996))).

88. See, e.g., Andrea Kupfer Schneider, *The Intersection of Therapeutic Jurisprudence, Preventive Law, and Alternative Dispute Resolution*, 5 PSYCHOL. PUB. POL’Y & L. 1084, 1095–96 (1999) (discussing the integration of preventive law with alternative dispute resolution to promote therapeutic outcomes for clients).

89. See, e.g., FLS REPORT, *supra* note 58, at 43–45.

90. Copelan & Monahan, *supra* note 84, at 966.

91. See *id.*

92. Mosten, *supra* note 69, at 449.

of Legal Services recently recommended the use of periodic “legal check-ups,” preventive law’s principal tool, to improve access to legal services.<sup>93</sup> The commission concluded: “Legal checkups are an underused resource to help solve individuals’ problems and expand access to legal services”; and that, since many people do not know that they have civil legal problems, the checkups will “help to inform people of their legal needs and to identify needed legal assistance,” as well as serve as a “prophylactic measure[]” to prevent legal problems from arising.<sup>94</sup> Thus, just as the American College of Physicians recommends that all adults receive periodic preventive health checkups by a physician,<sup>95</sup> so too should one receive periodic legal checkups.

Significantly, legal checkups need not be performed by attorneys alone. Providers of free and low-cost legal services should build preventive law screenings into their regular practice *as well as* collaborate with agencies and professionals with whom low-income persons routinely come into contact (e.g., health clinics, soup kitchens/food pantries, homeless shelters) on the performance of preventive checkups.<sup>96</sup> Preventive law partnerships with other disciplines and communities enable attorneys to help those in legal crisis now, while actively working to reduce the chances of future crises for those same persons and others who may not even recognize they have a legal problem or a social problem that could result in a legal one.<sup>97</sup>

Despite the critical societal functions of lawyer as planner and counselor, and the need for a national strategy of legal reform that focuses on preventing disputes from arising, the study of preventive law is largely

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93. See FLS REPORT, *supra* note 58, at 6, 43 (“Recommendation 4: Individuals should have regular legal checkups, and the ABA should create guidelines for lawyers, bar associations, and others who develop and administer such checkups.”).

94. *Id.* at 43–45.

95. See Yul D. Ejnes, *The Annual Visit: What’s the Evidence?*, AM. C. PHYSICIANS, [https://www.acponline.org/system/files/documents/about\\_acp/chapters/ri/14mtg/ejnes.pdf](https://www.acponline.org/system/files/documents/about_acp/chapters/ri/14mtg/ejnes.pdf) (last visited Feb. 10, 2018); see also MASS. HEALTH QUALITY PARTNERS, ADULT PREVENTIVE CARE GUIDELINES 1 (2016) (recommending periodic health evaluations for adults every one to three years depending upon age).

96. Lawyers can educate agency personnel on screening for social and legal needs, triaging matters, providing information and guidance, and making referrals to legal services where needed. See, e.g., Bharath Krishnamurthy et al., *What We Know and Need to Know About Medical-Legal Partnership*, 67 S.C. L. REV. 377, 380 (2016) (discussing collaboration between health care and civil legal aid that allows for clinical health staff to screen for health-harming legal needs and make referrals to legal aid).

97. See Lawton & Sandel, *supra* note 7, at 37 (“Both surgery and litigation always will be necessary in some cases, but prevention can ensure that reliance on surgery or litigation is lessened by reallocating resources toward prevention activities.”); see also Eppink, *supra* note 73, at 40–41 (stating that “[o]ver and over, research on meeting the public’s legal needs has identified community legal education as a key strategy and a giant missing piece” to improve public health, and describing Canada’s creation of a “nationwide network of government-funded nonprofit organizations devoted exclusively to preventive, public legal education” to help the public resolve many legal questions without direct attorney assistance); FLS REPORT, *supra* note 58, at 43–45.

absent from law school curricula.<sup>98</sup> The legal academy's continued reliance on the Langdellian case method as the dominant form of instruction denies law students the opportunity to gain the analytical and problem-solving skills needed to help clients identify and prevent future problems, and arrange their future affairs where facts, situations, and even the law, are dynamic.<sup>99</sup> Edward A. Dauer, former Dean of the University of Denver Sturm College of Law and President of the National Center for Preventive Law, bemoaned the legal academy's failure to focus on prevention and planning in favor of substantive legal subjects and litigation/advocacy more than twenty-five years ago.<sup>100</sup> Arguing that the Langedellian method "makes all law [school] look like advocacy," Dauer concluded: "Advocacy, it would seem, is regarded as an activity amenable to description by a set of general theories. But in our curricula, planning and prevention are apparently not."<sup>101</sup>

Although far more attorneys function as "counselors-at-law" rather than litigators,<sup>102</sup> law schools' "skills" curricula continue to "skew[] toward litigation practice and give short shrift to transactional practice."<sup>103</sup> Similarly, clinical law programs seldom offer direct instruction in preventive law.<sup>104</sup> Just as with doctrinal legal education, clinical legal education tends to subordinate the planning and counseling functions of lawyers in

98. This conclusion is based on the author's research. *But see, e.g., Welcome to the NCPL, CAL. W. SCH. L.: NAT'L CTR. FOR PREVENTIVE L.*, <http://www.preventivelawyer.org/main/default.asp> (last visited Feb. 10, 2018).

99. See Paul Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, L. & CONTEMP. PROBS., Summer/Autumn 1995, at 5, 7; see also *id.* at 5 (noting legal education has failed to change "to meet the needs of a changing society").

100. See Center for Public Resources, *Put Preventive Law Courses in Curriculum, Scholar Says*, 9 ALTERNATIVES TO HIGH COST LITIG. 18, 18 (1991).

101. *Id.*

102. See Richard D. Freer, *Exodus from and Transformation of American Civil Litigation*, 65 EMORY L.J. 1491, 1492 (2016) (noting an exodus from resolving claims in litigation to resolving them in alternative dispute resolution).

103. Katherine R. Kruse, *Legal Education and Professional Skills: Myths and Misconceptions About Theory and Practice*, 45 MCGEORGE L. REV. 7, 22 (2013) (quoting Eric J. Gouvin, *Teaching Business Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead*, 78 UMKC L. REV. 429, 430 (2009)).

104. Even with the merger of preventive law with therapeutic jurisprudence, few clinicians intentionally instruct students in this methodology. Therapeutic jurisprudence, introduced by Professor David Wexler in the late 1980s, is the study of law as a therapeutic agent, i.e., "the study of law's impact on the mental and physical health of the people it affects." Mary Berkheiser, *Frasier Meets CLEA: Therapeutic Jurisprudence and Law School Clinics*, 5 PSYCHOL. PUB. POL'Y & L. 1147, 1149 (1999). Some believe that therapeutic jurisprudence provides preventive law with a needed framework and foundation to promote its usage. See, e.g., Bruce J. Winick, *The Expanding Scope of Preventive Law*, 3 FLA. COASTAL L.J. 189, 190 (2002) ("Preventive law offered therapeutic jurisprudence practical law office procedures and client counseling approaches that would help to achieve therapeutic jurisprudence's mission of increasing psychological wellbeing through law and provide an existing structure through which the law could be applied more therapeutically. Therapeutic jurisprudence offered preventive law an analytical framework for justifying emotional wellbeing as an important priority in legal planning and could provide it with a much-needed interdisciplinary perspective and a firmer empirical and theoretical foundation grounded in an already rich body of social science and law research.").

favor of a reactive litigation focus.<sup>105</sup> Even with the growth of transactional law clinics in recent years, few clinicians intentionally<sup>106</sup> educate students in preventive law.<sup>107</sup>

Preventive law enables lawyers to serve as both “creative problem solvers” and creative “problem avoider[s],”<sup>108</sup> and thus is an essential competency for twenty-first century law practice that must be taught. Primarily used in the context of individual and corporate client representation,<sup>109</sup> it is also a useful tool for work with communities to prevent and address large-scale, complex conditions and problems that cannot be resolved through advocacy on behalf of individual clients alone.<sup>110</sup> The “[i]ndividual cases . . . serve as diagnostic tools for failed policies,” which can be addressed preventatively on a macro scale by an integrated team.<sup>111</sup> For example, in a Georgia MLP, pediatricians expressed concern that children (ages six to nine) were experiencing severe seat belt related injuries; their partnering attorneys discovered that state law on child restraints did not comport with national safety advisories.<sup>112</sup> Together they engaged in joint preventive legislative advocacy, which resulted in a statutory change to the age requirement for using booster seats that protects all of Georgia’s young children.<sup>113</sup> Because individual and societal problems are frequently interdisciplinary in nature, new law graduates require competency in interdisciplinary collaboration as well.

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105. See Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLINICAL L. REV. 445, 493–94 (2002).

106. “Intentional” is defined as where a professor deliberately includes the competency as a learning or practice goal for students.

107. This is not to say that no preventive practice occurs in law school clinics. See *supra* note 98 and accompanying text. However, the lack of instruction in preventive law illustrates that law schools typically do not consider prevention an important competency.

108. See Winick, *supra* note 104, at 202, 204 (“If we can transform law into a helping profession in these ways, one that values the lawyer’s role as wise counselor, problem solver and problem avoider, and peacemaker and healer, we can do much to transform the lives of our clients and ourselves and the society in which we live.”).

109. See, e.g., Barclift, *supra* note 85; Mosten, *supra* note 69, at 427; Schneider, *supra* note 88, at 1087; Stolle & Wexler, *supra* note 66.

110. See Krishnamurthy et al., *supra* note 96, at 386 (“Preventive law presents an opportunity to help move from individual legal interventions to broader systemic impact at the institutional and community levels.”).

111. *Id.*

112. Robert Pettignano et al., *The Health Law Partnership: A Medical-Legal Partnership Strategically Designed to Provide a Coordinated Approach to Public Health Legal Services, Education, Advocacy, Evaluation, Research and Scholarship*, 35 J. LEGAL MED. 57, 73–75 (2014).

113. *Id.* In another example, attorneys and doctors provided joint testimony at a hearing regarding overly burdensome documentation required of chronically ill patients to prevent utility shutoffs; the testimony resulted in a *macro-level population health change* that included a reduction in recertification frequency and permission for nonphysician health professionals to provide the needed documentation. See *MLP in Action: A Utilities Case Study*, NAT’L CTR. FOR MED. LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/response/utilities-case-study> (last visited Feb. 10, 2018).

### B. Interdisciplinary Collaboration

Complex individual and societal problems, such as achieving change in public education or community health, require multidimensional exploration, insight, and resolution.<sup>114</sup> The wide range of knowledge and skills needed to address complex problems can be achieved only with collaboration among professionals and across disciplines, as well as with the affected individuals and communities.<sup>115</sup> Different perspectives broaden the understanding of conditions and widen the problem-solving lens.<sup>116</sup> Thus, lawyers must “expand their traditional approaches to problem solving if they are to be of real service to their clients.”<sup>117</sup>

Collaboration<sup>118</sup> is a methodology that relies on the use of difference to improve both work process and product.<sup>119</sup> It comprises a sharing of knowledge, expertise, experiences, perspectives, and shared decision making to achieve a common goal.<sup>120</sup> Elements of a successful collaboration typically include a common purpose, investment or buy in by involved parties, open communication, an understanding of group process, an

114. See Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 474 (1993) (“The collaborative learning literature confirms that complex tasks that require higher thinking benefit the most from collaborative work.”); John Kania & Mark Kramer, *Collective Impact*, STAN. SOC. INNOVATION REV., Winter 2011, at 36, 39 (“Social problems arise from the interplay of governmental and commercial activities, not only from the behavior of social sector organizations. As a result, complex problems can be solved only by cross-sector coalitions that engage those outside the nonprofit sector.”); Elizabeth Tobin Tyler, *Allies Not Adversaries: Teaching Collaboration to the Next Generation of Doctors and Lawyers to Address Social Inequality*, 11 J. HEALTH CARE L. & POL’Y 249, 271 (2008) (“[I]nterdisciplinary training [i]s critical to preparing professionals for the increasingly complex legal and health care systems in which they will practice.”); Wettach, *supra* note 7 (“In today’s complex and interconnected society, lawyers undeniably must possess the ability to solve problems in an interdisciplinary context.”).

115. See V. Pualani Enos & Lois H. Kanter, *Who’s Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 84 (2002) (“Clients dealing with complex and multidimensional problems need service providers who approach problem-solving in a way that is client-centered, client-empowering, and incorporates multidisciplinary and community-based solutions and resources.”); see also Linda Morton et al., *Teaching Interdisciplinary Collaboration: Theory, Practice, and Assessment*, 13 QUINNIPIAC HEALTH L.J. 175, 175 (2010) (noting lawyers increasingly recognize the need to collaborate with other professionals to solve complex problems).

116. See Bryant, *supra* note 114, at 472.

117. Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 WASH. L. REV. 319, 319 (1999); see also Thomas D. Morgan, *Economic Reality Facing 21st Century Lawyers*, 69 WASH. L. REV. 625, 634 (1994) (“Skills of lawyering will more and more become skills of problem-solving and will call upon what we now describe as interdisciplinary training.”).

118. “Collaboration” here connotes moving beyond the twentieth century lawyer-expert witness paradigm to true interdisciplinary problem solving, which requires a level playing field where lawyers recognize that not all problems are purely legal in nature; that even if they are legal, solutions in law may not be in the client’s best interest; that one single problem may be defined in multiple ways and require input from multiple disciplines and the client/community to best resolve; and that lawyers have valuable skills and insights to contribute to this process. See Bryant, *supra* note 114, at 460–61.

119. *Id.* at 462.

120. See *id.* at 460.

awareness of self and others, accountability, and leadership skills.<sup>121</sup> Studies of collaboration have revealed enhanced productivity, problem solving, and creativity.<sup>122</sup> Reasons for improvements in work product as a result of collaboration include: “the people who are closest to the facts and the problems are involved in the decision making; . . . people with a variety of perspectives have made the decisions; and . . . the people who must implement the decisions have participated in making them.”<sup>123</sup>

While collaboration and teamwork among those with the same or similar knowledge base and experience is hard, *interdisciplinary* collaboration is even harder, particularly for those studying or engaged in the practice of law.<sup>124</sup> Here, I adopt Professor Janet Weinstein’s definition of “interdisciplinary” as requiring consideration or inclusion of two or more disciplines *and* encompassing “communication and understanding among . . . team members.”<sup>125</sup> One professional’s knowledge and use of other disciplines when problem solving is not enough to constitute interdisciplinary collaboration.<sup>126</sup> Rather, the term embraces the “teamwork spirit”—namely “the understanding that no one discipline has the knowledge or skills to provide single-handedly the most effective assistance to the client.”<sup>127</sup>

Collaboration is a skill that does not come automatically for many, and thus must be taught.<sup>128</sup> Yet unlike schools of nursing, business, and social work,<sup>129</sup> law schools typically do not offer instruction in collaboration, an opportunity to learn or work collaboratively, or time to reflect on the success or failure of collaborative work.<sup>130</sup> Professor Weinstein attributes this lack of instruction to the study of law’s “emphasis on competition,

121. See Weinstein, *supra* note 117, at 327; see also Morton et al., *supra* note 115, at 185–86; Diane R. Bridges et al., *Interprofessional Collaboration: Three Best Practice Models of Interprofessional Education*, TAYLOR & FRANCIS ONLINE: MED. EDUC. ONLINE (Apr. 8, 2011), <http://www.tandfonline.com/doi/full/10.3402/meo.v16i0.6035>.

122. Bryant, *supra* note 114, at 472.

123. *Id.*

124. See Alan M. Lerner & Erin Talati, *Teaching Law and Educating Lawyers: Closing the Gap Through Multidisciplinary Experimental Learning*, 9 INT’L J. CLINICAL LEGAL EDUC. 96, 103 (2006) (“Compared to other . . . disciplines, historically, the legal academy has not been considered the collaborative type.”).

125. Weinstein, *supra* note 117, at 352–53.

126. See *id.* at 322.

127. *Id.* at 327–28.

128. Bryant, *supra* note 114, at 461; see Weinstein, *supra* note 117, at 327.

129. See Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36, 43 (2013) (explaining that several types of professional schools explicitly teach teamwork to students).

130. Brest, *supra* note 99, at 15 (explaining that while collaboration is a skill that students can learn, “law schools have not traditionally offered students many opportunities to work collaboratively, let alone to reflect systematically on their success and failures in team efforts”); see Anita Weinberg & Carol Harding, *Interdisciplinary Teaching and Collaboration in Higher Education: A Concept Whose Time Has Come*, 14 WASH. U. J.L. & POL’Y 15, 18–21 (2004) (arguing that law schools have been reluctant to collaborate across disciplines); Weinstein et al., *supra* note 129, at 44–45 (noting that while the last decade has witnessed an increase in faculty teaching teamwork and a proliferation of teamwork-related articles that “invoke the platitudes of collaborative education,” few have “develop[ed] methodology for implementation”).

its solitary learning experience, its lack of emphasis on communication skills, and its narrow focus on linear thinking.”<sup>131</sup> She adds that law schools encourage the development of negative interpersonal characteristics in students that form barriers to collaboration, including a focus on individual success, inflexibility, aggressiveness, and poor self-awareness.<sup>132</sup>

The professional socialization process, through which one learns the norms, values, and role of a profession,<sup>133</sup> occurs outside the law school as well. Law students often witness lawyers who presume professional superiority and believe there is no need for collaboration, thereby creating the “illusion that every client problem can be” resolved via “knowledge of . . . law and procedure.”<sup>134</sup> As a result, students develop a “narrow conception of the lawyer as the lone problem-solver” who is limited to legal interventions, which prevents them from working with those in other disciplines and with clients to identify nonlegal solutions.<sup>135</sup> The client-centered lawyering movement, adopted by many, if not most, clinical law programs, has served as a counter to the traditional lawyer-as-all-knower and client-as-passive-follower legal representation model by ensuring that clients are empowered, their stories are told, their voices are heard, and they actively engage and participate in the problem-solving and decision-making processes.<sup>136</sup> Yet the collaborative skill set gained through the client-centered model has not translated to collaborative work with other disciplines, and thus students’ (mis)perception of the law and legal skills as superior to other disciplines in problem solving persists.<sup>137</sup> Incorporating interdisciplinary collaboration as a legal education competency can remedy this deficiency.

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131. Morton et al., *supra* note 115, at 183; see Bryant, *supra* note 114, at 463 (suggesting that the professional norms of lawyers imparted by the legal academy are based on an outdated “atomistic image” of the “solo practitioner representing individual clients”).

132. Morton et al., *supra* note 115, at 183.

133. John O. Calmore, “Chasing the Wind”: Pursuing Social Justice, Overcoming Legal Mis-education, and Engaging in Professional Re-socialization, 37 LOY. L.A. L. REV. 1167, 1178 (2004) (defining professional socialization as “a process by which we learn to become members of our profession through internalizing the norms and values of the profession, and also by learning what our roles are and how to perform those roles”).

134. Enos & Kanter, *supra* note 115, at 86–87.

135. *Id.* at 87.

136. See, e.g., Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 507–10 (1990) (comparing and contrasting the traditional legal counseling and client-centered counseling models); see also Stolle et al., *supra* note 23, at 16–17 (explaining that, in client-centered lawyering, updates on a client’s “life events (not limited to disputes)” enables the lawyer to “assist the client to improve decision making and planning to prevent problems” and “engage in a joint decision making process . . . [that] contemplates the client’s long term goals and interests and how best to achieve them while minimizing exposure to the risk of legal difficulties” (quoting Mosten, *supra* note 69)).

137. This conclusion is based on the author’s experience working with students in an interdisciplinary collaborative environment for the last decade. See Bryant, *supra* note 114, at 485–86; Enos & Kanter, *supra* note 115, at 88 (quoting Barry et al., *supra* note 16, at 70); Weinstein, *supra* note 117, at 322–24.

Despite the significant time it has taken for the legal academy to begin to accept interdisciplinary collaboration as an appropriate methodology for use in law schools, let alone recognize it as a necessary skill set for law students to learn, the concepts of cross-disciplinary teaching and collaboration are not new to the field of law.<sup>138</sup> In the early 1900s, legal educators such as Roscoe Pound and Dean Harlan Fisk Stone of Columbia Law School understood the importance of social and economic conditions, and by extension the study of social science and economics, to the law.<sup>139</sup> However, as with clinical legal education,<sup>140</sup> interdisciplinary collaboration in law was an idea that came well before its time. Attempts to merge other disciplines into legal education have come in a variety of forms: “adding social scientists to the law school faculty,” supporting collaboration across university schools and departments, offering joint seminars open to students of more than one discipline, and creating dual degree programs in law and other disciplines.<sup>141</sup> Not until the mid-1990s, however, did a number of interdisciplinary law school-based clinics emerge, accompanied by a large body of scholarship on the topic.<sup>142</sup> Although focus on interdisciplinary collaboration has increased in recent years, the methodology remains on the periphery of law school curricula.<sup>143</sup>

In contemporary legal practice, however, interdisciplinary collaboration is a critical skill. While “[s]ociety cannot expect lawyers to have the knowledge or skills that would allow them to identify each aspect of, and . . . solve, problems from a multi-dimensional perspective[,] . . . it can expect lawyers to know how to work with people who together have the knowledge and skills required to assist a client in this way.”<sup>144</sup> For example, lawyers and social workers routinely collaborate in diverse areas of

138. Weinberg & Harding, *supra* note 130, at 18–19 (“[A]s far back as 1907, American legal educators postulated about the importance of interdisciplinary understanding and the challenges faced when seeking knowledge and information outside the law.”).

139. *See id.* at 19.

140. *See* Amy M. Colton, *Eyes to the Future, Yet Remembering the Past: Reconciling Tradition with the Future of Legal Education*, 27 U. MICH. J.L. REFORM 963, 973–74, 977–78 (1994) (describing how 1930s legal realist, Jerome Frank, posited that every law school should have a clinic where students learn the true relationship between casebooks and practice, yet clinics did not begin to emerge until the 1960s).

141. Weinberg & Harding, *supra* note 130, at 20–21.

142. *See, e.g.*, Kathleen Coulborn Faller & Frank E. Vandervort, *Interdisciplinary Clinical Teaching of Child Welfare Practice to Law and Social Work Students: When World Views Collide*, 41 U. MICH. J.L. REFORM 121, 121–23, 128 (2007) (arguing that social work students and law students “should be trained together, both in the classroom and in clinical settings” and discussing the University of Michigan Law School’s Child Advocacy Law Clinic); Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work’s Empowerment Approach*, 13 CLINICAL L. REV. 459, 459–60 (2006) (discussing the author’s disability clinic and discussing the use of clinic work to introduce students to social justice issues); Rose Voyvodic & Mary Medcalf, *Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor*, 14 WASH. U. J.L. & POL’Y 101, 101, 103, 114, 131–32 (2004) (discussing the University of Windsor’s Clinical Law Program at Legal Assistance of Windsor and the importance of social justice in clinical work).

143. Weinberg & Harding, *supra* note 130, at 21.

144. Weinstein, *supra* note 117, at 320.



law such as criminal law, juvenile justice, and child advocacy;<sup>145</sup> lawyers and business professionals work together in corporate and transactional law matters;<sup>146</sup> and lawyers and healthcare professionals partner in a variety of civil legal areas through the MLP model.<sup>147</sup> Comments to the revised *ABA Accreditation Standards* specifically name collaboration when listing other “professional skills” that law schools may include in their learning outcomes and competencies.<sup>148</sup> One study on the competencies needed for legal practice identified “working with others” as a key area needed for effective practice.<sup>149</sup> Another study found, “nearly three in four respondents (73%) indicated that the ability to work collaboratively as part of a team was necessary in the short term,” for a new lawyer to succeed, defining “new lawyer” as one who is “embarking on their first year of law-related work.”<sup>150</sup>

Furthermore, the ABA’s Commission on the Future of Legal Services identified interdisciplinary collaboration as necessary to address insufficient access to legal services in the United States.<sup>151</sup> Finding that “[o]ther disciplines . . . have important insights to share on improving access to and the delivery of legal services,” the commission concluded “lawyers will achieve greater innovation and increased efficiencies if they embrace interdisciplinary collaborations and work closely with people from other fields.”<sup>152</sup> The commission went so far as to recommend that law schools offer students greater opportunity to study other disciplines, deeming interdisciplinary knowledge “critical” to areas of legal practice such as criminal law.<sup>153</sup>

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145. See Frank P. Cervone & Linda M. Mauro, *Ethics, Cultures, and Professions in the Representation of Children*, 64 *FORDHAM L. REV.* 1975, 1975 (1996) (discussing recommendations such as lawyers cooperating with social workers to assist the lawyer’s relationship with a child client); Faller & Vandervort, *supra* note 142, at 121–22 (describing how child welfare cases require interdisciplinary collaboration between lawyers and social workers); Kim Taylor-Thompson, *Taking It to the Streets*, 29 *N.Y.U. REV. L. & SOC. CHANGE* 153, 166 (2004) (noting that defense attorneys collaborate with social workers to understand the criminal issues their clients’ face).

146. See Jill I. Gross & Ronald W. Filante, *Developing a Law/Business Collaboration Through Pace’s Securities Arbitration Clinic*, 11 *FORDHAM J. CORP. & FIN. L.* 57, 74 (2005); see also Schneider, *supra* note 88, at 1088 (discussing the benefits of preventive law).

147. See Lisa Pilnik, *Practicing Preventative Law: A Day in the Life of a Medical-Legal Partnership Attorney*, 27 *CHILD L. PRAC.* 14, 14 (2008); Elizabeth Tobin Tyler, *Teaching Social Justice and Health: Professionalism, Ethics, and Problem-Solving in the Medical-Legal Classroom*, 38 *J.L. MED. & ETHICS* 701, 701, 704 (2010); see also Pettignano et al., *supra* note 112, at 57–58.

148. *AM. BAR ASS’N*, *supra* note 9.

149. Daicoff, *supra* note 22, at 823 (quoting Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 *L. & SOC. INQUIRY* 620, 625 (2011)).

150. GERKMAN & CORNETT, *supra* note 52, at 6, 20.

151. See *FLS REPORT*, *supra* note 58, at 6–7, 49–50 (“Recommendation 7[.] The legal profession should partner with other disciplines and the public for insights about innovating the delivery of legal services.”); see also Michael A. Cooper et al., Round Table Discussion, *Delivery of Legal Services to the Poor in the Twenty-first Century*, 3 *CUNY L. REV.* 191, 191 (2000) (stating that “there is an increasingly pressing need for collaboration and for cooperation” regarding delivery of legal services to the poor).

152. *FLS REPORT*, *supra* note 58, at 49.

153. *Id.* at 49–50.

Lawyering in the twenty-first century requires “changes in forms of law practice” that include “more interdisciplinary and broad-ranging competencies among lawyers.”<sup>154</sup> As with preventive law, a mismatch exists between the curricula offered in most law schools and the interdisciplinary collaboration skills needed for legal practice. The legal academy’s failure to develop in new law graduates competency in interdisciplinary collaboration affects their ability to problem solve with other disciplines as well as with their clients, be they individuals or communities. “[A]chieving effective social and economic change in partnership with community members almost always requires collaboration with individuals of different educational backgrounds who share a common purpose.”<sup>155</sup> In this manner, proficiency in interdisciplinary collaboration dovetails well with the third competency needed for problem solving in today’s legal world—community engagement.

### C. Community Engagement

The Carnegie Foundation for the Advancement of Teaching defines community engagement as the “collaboration between institutions of higher education and their larger communities (local, regional/state, national, global) for the mutually beneficial exchange of knowledge and resources in a context of partnership and reciprocity.”<sup>156</sup> This definition recognizes that knowledge and expertise are found not only in the academic setting but also in the community, and that community knowledge is critical to resolution of the complex, multidisciplinary societal problems we face today.<sup>157</sup> Traditional higher education institutions view faculty as teachers, students as learners, and the community as a laboratory or a set of needs requiring exploration and resolution.<sup>158</sup> In contrast, community-engaged campuses recognize faculty, students, and the community *all* “as learners and teachers in shared efforts to seek solution-focused outcomes to society’s intractable ‘wicked’ problems.”<sup>159</sup>

The application of community engagement methodology to the practice of law has its roots in the “second wave” of clinical legal education scholarship that emerged during the 1980s and 1990s.<sup>160</sup> Professors Gerald

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154. Daicoff, *supra* note 22, at 818.

155. Karen Tokarz et al., *Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359, 379–80 (2008).

156. *How Is “Community Engagement” Defined?*, NEW ENG. RESOURCE CTR. FOR HIGHER EDUC., [http://nerche.org/index.php?option=com\\_content&view=article&id=341&Itemid=92#CEdef](http://nerche.org/index.php?option=com_content&view=article&id=341&Itemid=92#CEdef) (last visited Feb. 10, 2018).

157. Hiram E. Fitzgerald et al., *The Centrality of Engagement in Higher Education*, J. HIGHER EDUC. OUTREACH & ENGAGEMENT, Sept. 2012, at 7, 10–11, 17–18.

158. *Id.* at 17–18 (quoting Barbara A. Holland, *Reflections on Community-Campus Partnerships: What Has Been Learned? What Are the Next Challenges?*, in HIGHER EDUCATION COLLABORATIVE FOR COMMUNITY ENGAGEMENT AND IMPROVEMENT 10, 11 (Penny A. Pasque et al. eds., 2005)).

159. *Id.* (quoting Holland, *supra* note 158, at 11).

160. See Barry et al., *supra* note 16, at 30–31.

Lopez and Lucy White began to argue for a shift in clinical legal education's focus from "regnant lawyer[ing]"<sup>161</sup> to the "egalitarian collaboration between attorneys and lower-income clients."<sup>162</sup> Lopez, White, and others contended that "regnant" lawyering practices disserve low-income clients through power differentials and by perpetuating views of the poor as "subordinate, dependent, and helpless."<sup>163</sup> Instead, they argued for a more collaborative, cooperative, and empowering forms of lawyering<sup>164</sup> to maximize opportunities for collective action. "Social change can only be lasting when it is led and directed by the people most affected."<sup>165</sup>

These "non-regnant" lawyering approaches have come to be known by several names, including "rebellious . . . lawyering,"<sup>166</sup> "collaborative lawyering,"<sup>167</sup> "community lawyering,"<sup>168</sup> "civic engagement,"<sup>169</sup> and

161. See GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* 23–24 (1992) (describing the "regnant lawyer[ing]" as focused on litigation, detached from the community, viewing him/herself as the preeminent problem solver, and believing that subordination can be fought with lawyers at the helm).

162. See Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 *CLINICAL L. REV.* 427, 432 (2000).

163. *Id.* at 439.

164. See, e.g., LOPEZ, *supra* note 161, at 37 ("In this idea—what I call the rebellious idea of lawyering against subordination—lawyers must know how to work with (not just on behalf of) women, low-income people, people of color, gays and lesbians, the disabled and the elderly. They must know how to collaborate with other professional and lay allies rather than ignoring the help that these other problem-solvers may provide in a given situation. They must understand how to educate those with whom they work . . . and, at the same time, they must open themselves up to being educated by all those with whom they come in contact, particularly about the traditions and experiences of life on the bottom and at the margins.").

165. Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 *LOY. J. PUB. INT. L.* 375, 384 (2013).

166. See LOPEZ, *supra* note 161, at 37.

167. See Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 *CLINICAL L. REV.* 157, 157–58 (1994) (defining "collaborative lawyering" as "third dimension[] lawyering" that is "focused on poor people's own political consciousness" and has as its goal enabling "poor people to see themselves and their social situation in ways that enhance their world-changing powers," while seeking to "change the attitudes and self-concepts of lawyers themselves," so that lawyering no longer is viewed as a "unidirectional 'professional service,'" but rather as a "collaborative communicative practice"); see also Piomelli, *supra* note 162, at 441, 447–48 (defining "collaborative lawyering" as lawyering that emphasizes "a joint problem-solving partnership with clients," whereby "lawyers and clients will learn from each other and teach each other, and . . . will work together to develop and carry out persuasive strategies").

168. See Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 *CLINICAL L. REV.* 333, 339 (2009) (defining "community lawyering" as "a social justice lawyering practice that places commitment to something called 'community' (a term, of course, easy to contest) at its core"); see also Michael Diamond, *Community Lawyering: Introductory Thoughts on Theory and Practice*, 22 *GEO. J. ON POVERTY L. & POL'Y* 395, 395, 397 (2015) (describing "community lawyering" as including: "an expansive view of the role of a lawyer; a particular type of relationship with the client; a knowledge of the community in which the lawyer works, and of its leadership; and a theory of action, which has both legal and political features, with a goal of improving for its residents the physical and social environment of the community").

169. See Smith, *supra* note 23, at 734 (quoting Thomas Ehrlich, *Preface to CIVIC RESPONSIBILITY AND HIGHER EDUCATION*, at v, vi (Thomas Ehrlich ed., 2000)) (defining "civic engagement" as "working to make a difference in the civic life of our communities and developing the combination of knowledge, skills, values, and motivation to make that difference" (quoting Ehrlich, *supra*)).

“collective mobilization.”<sup>170</sup> While each approach has nuances, all rely on principles of community engagement. For purposes of this Article, I draw on the similarities in these approaches along with higher education’s community engagement definition when using the term “community-engaged lawyering.” Thus, community-engaged lawyering is an approach that encompasses: collaboration and partnership with individuals and communities in the problem-solving process, from identifying and defining problems to development and implementation of strategies and solutions;<sup>171</sup> sharing of knowledge by participants who learn from and teach each other;<sup>172</sup> recognition that people and problems are inherently intertwined with context and cannot be considered in isolation;<sup>173</sup> active engagement of individuals and communities to their capacity in self-help, self-determination, and collective action aimed at promoting social justice and change;<sup>174</sup> and ongoing evaluation and analysis to evaluate and improve upon the collaborative process and outcomes.<sup>175</sup>

Generally speaking, law schools have “failed to connect to essential theories about the mission of higher education in service to the community.”<sup>176</sup> The legal academy typically pigeonholes community engagement work in the public service realm of the tripartite mission,<sup>177</sup> which frequently translates into clinical legal education and public interest programming. In the nonclinical classroom setting, law students traditionally focus on legal and textual analysis, rather than social context, in problem solving.<sup>178</sup> As a result, legal education “unconsciously indoctrinates students into faith in the current fairness of the law” and the “apparent neutrality” of the legal process.<sup>179</sup> Law schools largely ignore the adverse effects of social, political, and economic structures on context and access to justice, the legal system’s inherent unfairness for the “have-nots,” and the need for

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170. See Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 405–08 (2008) (defining “collective mobilization” as lawyering that fosters the “[c]onstruction of clients in solidarity,” embraces race and resistance, focuses on politics not therapeutics, and “support[s] resistance movements and . . . help[s] build the power of poor people’s collectives”).

171. See Piomelli, *supra* note 162, at 440–41, 476 (discussing the work of Gerald Lopez on rebellious lawyering and Lucy White on collaborative lawyering).

172. See *id.* at 447–48 (defining collaborative lawyering).

173. See *id.* at 488–90 (discussing the need to put “a problem in its full context” to solve it, for context enables one “to draw connections to other bodies of knowledge, other ways of interpreting a situation,” requires historical context, mapping “web of relationships” in which problem arises, and exploration of “structural and institutional dimensions” and “societal structures of power”).

174. See *id.* at 477 (discussing the benefits that collaboration provides when applied to problems facing low-income people).

175. See Smith, *supra* note 23, at 732–39 (discussing the importance of research in civic engagement).

176. *Id.* at 725.

177. See Margaret Martin Barry et al., *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLINICAL L. REV. 401, 453 (2012).

178. Smith, *supra* note 19, at 433–34.

179. *Id.* at 434 (quoting ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 213 (2007)).

reform.<sup>180</sup> While many, if not all, have as part of their mission the pursuit of social justice or the common good, beyond clinics and public interest programs this aim “has rarely translated into strategies for collaboration with those struggling to gain footing in our society.”<sup>181</sup> Notwithstanding the proliferation of literature since the late 1980s on rebellious lawyering, collaborative lawyering, community lawyering, and the like, little guidance exists on how to teach community-engaged lawyering, especially outside of clinics.<sup>182</sup> Consequently, students “lack the legal background and lawyering experience [needed to] help . . . conceptualize problems more broadly . . . [Yet] grappling with bigger social problems may be the best way to position [students] to be[come more] responsible members of the legal profession.”<sup>183</sup>

Clinical law programs often do little better in developing students' competency in community engagement. Many programs restrict the teaching and practice of community-engaged lawyering to certain types of clinics (e.g., community law or community development) and fail to recognize that community engagement principles extend far beyond traditional “community lawyering” work.<sup>184</sup> Those clinics that engage in rebellious lawyering or community lawyering typically focus on responding to situations of crisis and crisis response.<sup>185</sup> Examples of such “reactive” community engagement include law schools' responses to the Newark riots, which gave birth to the clinical legal education social justice movement;<sup>186</sup> Hurricanes Katrina and Sandy, and other natural disasters,<sup>187</sup> and, more

180. *Id.* Integration of legal realism and critical legal theory in doctrinal courses helps expose students to the idea that law is not fair or neutral for all and enhances student learning and participatory learning experiences (i.e., live client experiences that expose students to the unfairness of law firsthand are essential to student learning). *See, e.g.,* Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 330–31 (1982) (explaining that andragogy, or adult learning theory, favors experiential and participatory learning).

181. Barry et al., *supra* note 177, at 453.

182. Elssesser, *supra* note 165, at 377 (adding that this may result from practitioners' humility, as they are “painfully aware how far their practice strays from ideal community lawyering”).

183. Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLINICAL L. REV. 405, 432 (2002).

184. This conclusion is based on the author's review of the literature.

185. *See, e.g.,* Judith Fox, *Consumer Law Clinics: Community-Based Lawyering—A Social Justice Response to the Financial Crisis*, 20 GEO. J. ON POVERTY L. & POL'Y 517, 521–27 (2013) (discussing various law school clinics' responses to the foreclosure crisis caused by the Great Recession); Janine Sisak, *If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 FORDHAM URB. L.J. 873, 880 (1998) (providing examples of nonprofits engaging in collaboration to solve community issues).

186. *See* MARY JO PATTERSON, ON THE FRONTLINES OF FREEDOM: A CHRONICLE OF THE FIRST 50 YEARS OF THE AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY 46–47 (2012) (stating that Newark's Rutgers School of Law “curriculum offered clinics that allowed students to address important societal needs while studying the law: the Urban Legal Clinic [was] created in response to the Newark riots”).

187. *See, e.g., Pro Bono and Volunteer Opportunities: Disaster Relief Projects*, CARDOZO L., <https://cardozo.yu.edu/academics/public-service-law/pro-bono-and-volunteer-opportunities> (last visited Feb. 10, 2017); *Storm Relief: Student Support Victims of Hurricane Sandy*, SETON HALL L., [http://law.shu.edu/About/News\\_Events/Program\\_Highlight/program-highlight-spotlight.cfm?customel\\_datapageid\\_4661=313240](http://law.shu.edu/About/News_Events/Program_Highlight/program-highlight-spotlight.cfm?customel_datapageid_4661=313240) (last visited Feb. 10, 2018); *Touro Law Center's Disaster Relief*

recently, the well-publicized deaths of Freddie Gray, Philando Castile, and Alton Sterling at the hands of police.<sup>188</sup> Less frequent are examples of law school clinics proactively collaborating with communities to identify and address conditions before they become legal problems.<sup>189</sup> Thus, it appears that few clinical programs have integrated community engagement with preventive law to effect social change.

Also largely absent from the community engagement work of clinical programs and law schools at large is the evaluation of process and outcomes to measure engagement efforts, efficiency, and effectiveness. This is not surprising, as most attorneys and law professors are neither educated nor experienced in performing nontraditional forms of legal research, such as studies using the scientific method and empirical (i.e., quantitative and qualitative) analysis. Community-based research, defined as “a partnership of students, faculty and community members who collaboratively engage in research with the purpose of solving a pressing community problem or effecting social change,” is a key component of community engagement.<sup>190</sup> The research enables community-engaged lawyers to ensure that the concerns of the community are heard and identified, that remedial interventions are properly tailored, and that the community partakes in all stages of the problem-solving process.

The concept of community engagement applies far beyond the confines of higher education institutions. The ABA’s Commission on the Future of Legal Services highlighted the importance of assessment by recommending the development and measurement of outcomes for improving access to justice and the delivery of legal services.<sup>191</sup> Acknowledging the scarcity of empirical evidence to demonstrate which legal innovations succeed and which do not, the commission urged law schools and other legal entities to “collaborate to measure the outcomes, impact, and effectiveness of ongoing and emerging models of delivering legal services, and identify the potential improvement to those models.”<sup>192</sup> Thus, if lawyers are to have any success in helping to remedy complex social problems of individuals,

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*Clinic*, TOURO C.; JACOB D. FUCHSBERG L. CTR., <http://www.tourolaw.edu/tlcheart/default.aspx?pageid=710> (last visited Feb. 10, 2018).

188. See, e.g., *New Maryland Carey Law Course Examines Causes of and Solutions to Baltimore’s Recent Civil Unrest*, U. MD.: FRANCIS KING CARY SCH. OF L., [http://www.law.umaryland.edu/about/features/feature\\_details.html?feature=411](http://www.law.umaryland.edu/about/features/feature_details.html?feature=411) (last visited Feb. 10, 2018).

189. Examples include performance of community social and legal needs assessments, listening tours, etc. *But see* Brooks & Lopez, *supra* note 23, at 148–49 (discussing the success of an open house community outreach by Drexel University’s law school).

190. See Smith, *supra* note 19, at 438 (quoting KERRY STRAND ET AL., COMMUNITY-BASED RESEARCH AND HIGHER EDUCATION: PRINCIPLES AND PRACTICES 3 (2003)); *id.* at 438–39 (providing examples of community based research, including action research, participatory research, and participatory action research).

191. FLS REPORT, *supra* note 58, at 7, 56 (“Recommendation 11[:] Outcomes derived from any established or new models for the delivery of legal services must be measured to evaluate the effectiveness in fulfilling regulatory objectives.”).

192. See *id.* at 56.

communities and populations in the twenty-first century, they must develop the skills needed to evaluate their engagement of and collaboration with clients and communities in the problem-solving process as well as the outcomes of such engagement.

Many practitioners call for an increase in community engagement in legal work as well, particularly with poor and low-income communities.<sup>193</sup> Community-engaged practice requires involving clients more in lawyering<sup>194</sup>—if the community is “the locale of the problem,” then it should be “an integral part of the development and implementation of the solutions.”<sup>195</sup> This principle applies not only to work with community clients but also to work with individuals; for example, an individual’s definition of their own health problem and buy-in to proposed solutions is critical to the success of the problem-solving process<sup>196</sup> just as is community input into a population health issue.

The legal academy must better prepare twenty-first century lawyers to assume the many roles required to address the multidimensional needs of clients and communities, including the nonlegal “social, political, and economic aspects of community action.”<sup>197</sup> Community engagement enables attorneys to better understand the client and community narrative, and problem definition within the context of the economic and political framework.<sup>198</sup> Skills of collaboration are a critical component of community-engaged lawyering when working with individuals, communities, and professionals in the same and other disciplines who have different perspectives on problem definition and problem solving.<sup>199</sup> So, too, is competency in preventive law, for the ultimate goal in community engagement is not to “fix” problems, but to work together to prevent them from arising in the first place.<sup>200</sup> Together, these twenty-first century competencies enable

193. See, e.g., Matthew Diller, *Lawyering for Poor Communities in the Twenty-first Century*, 25 *FORDHAM URB. L.J.* 673, 678 (1998) (describing the goal and benefit of community lawyering as helping poor communities to increase their power and gain a voice in society); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 *OHIO N.U. L. REV.* 455, 455–56 (1994) (identifying community organizing as “the essential element of empowering organizational advocacy” for the “poor and powerless” (emphasis omitted)).

194. See Cooper et al., *supra* note 151, at 204, 208–09 (discussing the importance of engaging with communities as a civil rights and human rights issue, and noting that this requires the legal profession to better understand the community’s needs and “translate” the community’s understanding of their needs in a way that the larger mainstream can understand).

195. Robin S. Golden, *Collaborative as Client: Lawyering for Effective Change*, 56 *N.Y.L. SCH. L. REV.* 393, 405 (2011/12) (quoting Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 *CLINICAL L. REV.* 147, 147–48 (2000)).

196. See DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* 1–3 (1977) (describing the importance of client ownership of problems and solutions); see also Dinerstein, *supra* note 136, at 523.

197. Diamond, *supra* note 168, at 131 (describing the roles, skills, and knowledge base of an activist lawyer).

198. See Seielstad, *supra* note 105, at 450 (describing the relevance of community and culture to lawyering).

199. See Kruse, *supra* note 183, at 438–39.

200. See Smith, *supra* note 23, at 734, 738 (citing Barbara A. Holland, *From Murky to Meaningful: The Role of Mission in Institutional Change*, in *COLLEGES AND UNIVERSITIES AS CITIZENS* 48, 48–72 (Robert Bringle et al. eds., 1999)).

lawyers to collaborate with clients, the community, and other professionals to develop legal and nonlegal enduring solutions to problems of the present and those that may arise in the future. Thus, the benefits of developing law students' proficiencies in all three areas become eminently clear.

### III. THE MEDICAL-LEGAL PARTNERSHIP AND H.E.A.L. COLLABORATIVE® AS A MODEL FOR THE INTEGRATION OF TWENTY-FIRST CENTURY COMPETENCIES IN A CLINICAL LAW PROGRAM

The MLP model, as implemented by H.E.A.L. Collaborative, provides a vehicle for demonstrating the integration of twenty-first century competencies in a clinical law program. Descriptions of the MLP model and H.E.A.L. Collaborative serve to contextualize this Article's subsequent discussion of examples of, and pros and cons resulting from, this integration.

#### A. *The Medical-Legal Partnership Model*

The MLP is an interprofessional<sup>201</sup> healthcare delivery model that aims to address the nonmedical causes of health problems by integrating "legal care" into the health care toolkit.<sup>202</sup> The model promotes early detection and treatment of "health-harming legal need[s],"<sup>203</sup> and thereby incorporates a preventive law approach. Health-harming legal needs are social or legal conditions that adversely affect patient health or patient access to health care, and are better addressed through joint medical, legal, and social care as opposed to through clinical medical treatment alone.<sup>204</sup> These needs typically derive from social determinants of health, which Healthy People 2020 explains as follows:

[H]ealth is . . . determined in part by access to social and economic opportunities; the resources and supports available in our homes, neighborhoods, and communities; the quality of our schooling; the safety of our workplaces; the cleanliness of our water, food, and air; and the nature of our social interactions and relationships. The condi-

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201. See Emily A. Benfer, *Educating the Next Generation of Health Leaders: Medical-Legal Partnership and Interprofessional Graduate Education*, 35 J. LEGAL MED. 113, 113–14 (2014). Health fields typically use the term "interprofessional" when discussing programs of education and collaborative work that are interdisciplinary; as a health-based program, the MLP uses this term. *Id.*

202. Gathings, *supra* note 20, at 4 (describing MLPs as a "health care delivery model that integrates the expertise of health and legal professionals to identify, address, and avert a health-harming legal need"); Lawton & Sandel, *supra* note 7 (describing MLPs as "a healthcare delivery model that integrates legal assistance as a vital component of healthcare").

203. Gathings, *supra* note 20, at 5–6.

204. *Id.* at 4 (stating examples of health-harming legal needs include, "food insecurity, housing instability, unhealthy housing, insufficient income, and lack of access to health insurance").



tions in which we live explain in part why some Americans are healthier than others and why Americans more generally are not as healthy as they could be.<sup>205</sup>

Significantly, as much as sixty percent of health is shaped by social, environmental, and behavioral determinants.<sup>206</sup> “Health and health equity might not be the aim of all social and economic policies, but they will be a fundamental result.”<sup>207</sup>

The MLP model grew out of recognition that although healthcare professionals are on the front lines and thus well-positioned to screen for social determinants of health, they often are ill-equipped to address the social, economic, environmental, and legal needs of patients.<sup>208</sup> In the 1990s, Dr. Barry Zuckerman, a former Chair of Pediatrics at Boston University Medical Center, aware of and frustrated by his inability to address the non-medical, health-harming needs of his patient population, set the stage for the MLP model by hiring an attorney to provide “specialized treatment.”<sup>209</sup> Since that time, more than 300 healthcare institutions in forty-two states have adopted some form of MLP model.<sup>210</sup> The MLP evolved into a movement with the establishment of the National Center for Medical-Legal Partnership in 2006. The center aims to lead those in the fields of health, public health, and law in an integrated and “upstream”<sup>211</sup> approach to address health-harming social and legal conditions, and thereby improve health and well-being.<sup>212</sup>

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205. *Social Determinants of Health*, HEALTHY PEOPLE 2020, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health> (last visited Feb. 10, 2018).

206. See Steven A. Schroeder, *We Can Do Better—Improving the Health of the American People*, 357 *NEW ENG. J. MED.* 1221, 1222 (2007).

207. Michael Marmot et al., *Comm’n on Soc. Determinants of Health, Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health*, 372 *LANCET* 1661, 1661 (2008).

208. See Barry Zuckerman et al., *Why Pediatricians Need Lawyers to Keep Children Healthy*, *PEDIATRICS*, July 2004, at 224, 225.

209. See *id.* at 225–26 (discussing the benefits of “on-site legal services” and providing examples from Boston University Medical Center).

210. See *Partnerships Across the U.S.*, NAT’L CTR. FOR MED. LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/partnerships> (last visited Feb. 10, 2018).

211. “Upstream” health interventions focus on “policy approaches that can affect large populations” by improving social and economic conditions in which people live, access to health care, and health care quality and delivery. Ross C. Brownson et al., *Measuring the Impact of Public Health Policy*, *PREVENTING CHRONIC DISEASE*, July 2010, at 1.

212. See *National Center Co-Director Appointed to Health People 2030 Advisory Committee*, NAT’L CTR. FOR MED. LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/national-center> (last visited Feb. 10, 2018). Led by a team of experts in health care, public health, law, evaluation, and communications, the Center provides technical assistance to MLPs, fosters the development and sharing of best practices, develops and implements performance measures, and engages in systemic policy and fundraising initiatives. See *id.*

Both the ABA and the American Medical Association have passed resolutions in support of MLPs.<sup>213</sup> The ABA resolution specifically encourages partnerships between lawyers and health care professionals “to help identify and resolve diverse legal issues that affect patients’ health and well-being.”<sup>214</sup> The health section notes that through MLPs “the legal profession can advance a ‘preventive law’ strategy for addressing clients’ social and economic problems and thereby improve clients’ health and well-being, especially those from low-income and other under-served communities.”<sup>215</sup> This position aligns closely with that expressed in the ABA Commission’s *2016 Report on the Future of Legal Services in the United States* (discussed *supra*).<sup>216</sup> Moreover, the health section’s report identifies law schools as offering a “good opportunity” to promote this type of partnership because the *ABA Accreditation Standards* require them to provide “real-life practice” opportunities and pro bono service.<sup>217</sup> “By partnering with health care providers and thereby offering a holistic approach to clients’ problems, law schools can increase the effectiveness of their clinical programs as well as foster a spirit of interdisciplinary cooperation among the professions.”<sup>218</sup>

An MLP typically has three core components: provision of legal advice and assistance to patients (i.e., treatment); implementation of internal improvements within health care systems to promote early detection and response to legal and social needs that adversely impact patient health (i.e., training and transformation of clinical practice); and promotion of systemic change outside the health care system to improve the overall health and well-being of vulnerable populations (i.e., prevention).<sup>219</sup> The composition of MLP partners varies in the different programs across the country with hospitals, federally qualified health centers, and outpatient clinics serving as the health care partner; legal services, pro bono legal counsel, and law schools serving as the legal partner; and a mix of other disciplines including nursing, social work, and public health. Moreover, the professional makeup of MLP teams and the focus, methods, and delivery of services can vary greatly depending upon the needs and circumstances of the

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213. See PAUL R. DEMURO, AM. BAR ASS’N, REPORT TO THE HOUSE OF DELEGATES 120A, at 1 (2007), [http://www.americanbar.org/content/dam/aba/images/probono\\_public\\_service/ts/med-legal/120a.pdf](http://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/med-legal/120a.pdf); REBECCA J. PATCHIN, AM. MED. ASS’N, REPORT OF THE BOARD OF TRUSTEES 15-A-10: MEDICAL-LEGAL PARTNERSHIPS TO IMPROVE HEALTH AND WELL-BEING (RESOLUTION 7, I-09) (2009), <http://medical-legalpartnership.org/wp-content/uploads/2014/02/American-Medical-Association-MLP-Resolution.pdf>.

214. DEMURO, *supra* note 213.

215. *Id.* at 4.

216. Compare *id.* at 4 (“[T]he legal profession can advance a ‘preventive law’ strategy for addressing clients’ social and economic problems and thereby improve clients’ health and well-being, especially those from low-income and other under-served communities.”), with FLS REPORT, *supra* note 58, at 11–13 (advocating for increased legal assistance for low-income individuals).

217. DEMURO, *supra* note 213, at 4.

218. *Id.*

219. See Krishnamurthy et al., *supra* note 96, at 379; see also *The Response*, NAT’L CTR. FOR MED. LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/mlp-response> (last visited Feb. 10, 2018) (providing scenarios illustrating the benefits of medical-legal partnerships).

partners and community.<sup>220</sup> A description of H.E.A.L. Collaborative, Rutgers University's version of the MLP model, follows.

### B. H.E.A.L. Collaborative®

H.E.A.L. Collaborative® is a joint project of Rutgers Law School's Education and Health Law Clinic<sup>221</sup> and the Pediatrics Primary Care Clinic at Rutgers-New Jersey Medical School.<sup>222</sup> The project is situated in the center of the City of Newark, New Jersey, and serves the greater Newark community.<sup>223</sup>

#### 1. Neighborhood Context: The City of Newark, New Jersey

The City of Newark is the largest in New Jersey with a population of 280,000.<sup>224</sup> According to 2014 data, approximately fifty-one percent of all Newark children are African-American and forty-one percent are Hispanic,<sup>225</sup> nearly twenty-six percent of Newark residents, or 72,000, are under age eighteen.<sup>226</sup> It is estimated that 24,000 undocumented immigrants reside in Newark.<sup>227</sup> Nearly seventy percent of Newark children under age eighteen live in low-income households, defined as having a gross income at or below two hundred percent of the Federal Poverty Level (FPL); forty percent of all Newark children under age eighteen live in poverty (with a household income that is less than or equal to 100% FPL defined, in 2014, as annual income of no more than \$23,850 for a family of four), and eighteen percent live in extreme poverty, defined as earning less than or equal to one-half the FPL.<sup>228</sup> The median income of Newark families is \$31,000 per year, compared with a median of \$89,000 for the state of New Jersey.<sup>229</sup>

220. See *Partnerships Across the U.S.*, NAT'L CTR. FOR MED. LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/partnerships> (last visited May 16, 2018) (demonstrating the different makeups of the various MLP teams).

221. Rutgers Law School's Education and Health Law Clinic was formerly known as the Special Education Clinic. See *Catalogs*, RUTGERS: ST. U.N.J., [http://catalogs.rutgers.edu/generated/law\\_current/pg226.html](http://catalogs.rutgers.edu/generated/law_current/pg226.html) (last visited Apr. 11, 2018).

222. *H.E.A.L. Collaborative, Education and Health Law Clinic*, RUTGERS HELPS NJ RESOURCE GUIDE, [https://www.rutgershelpsnj.org/organization.528114-HEAL\\_Collaborative\\_Education\\_and\\_Health\\_Law\\_Clinic\\_Rutgers\\_U\\_School\\_of\\_Law](https://www.rutgershelpsnj.org/organization.528114-HEAL_Collaborative_Education_and_Health_Law_Clinic_Rutgers_U_School_of_Law) (last visited Apr. 8, 2018). Rutgers-New Jersey Medical School was formerly known as the New Jersey College of Medicine and Dentistry. See *Timeline*, RUTGERS N.J. MED. SCH., [http://njms.rutgers.edu/about\\_njms/timeline.cfm](http://njms.rutgers.edu/about_njms/timeline.cfm) (last visited Apr. 11, 2018).

223. See *H.E.A.L. Collaborative, Education and Health Law Clinic*, *supra* note 222.

224. See *Quick Facts: Newark City, New Jersey*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/3451000> (last visited Feb. 10, 2018); see also ADVOCATES FOR CHILDREN OF N.J., *NEWARK KIDS COUNT: A CITY PROFILE OF CHILD WELL-BEING 5* (2016), [http://acnj.org/downloads/2016\\_08\\_01\\_newark\\_kids\\_count.pdf](http://acnj.org/downloads/2016_08_01_newark_kids_count.pdf).

225. ADVOCATES FOR CHILDREN OF N.J., *supra* note 224.

226. *Id.*

227. RAUL HINOJOSA-OJEDA, *THE ECONOMIC BENEFITS OF EXPANDING THE DREAM: DAPA AND DACA IMPACTS ON HUDSON COUNTY, ESSEX COUNTY, THE CITY OF NEWARK AND THE STATE OF NEW JERSEY 9* (2015), [http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/new\\_jersey\\_final.pdf](http://www.naid.ucla.edu/uploads/4/2/1/9/4219226/new_jersey_final.pdf).

228. See ADVOCATES FOR CHILDREN OF N.J., *supra* note 224, at 9.

229. See *id.* at 11.

Over sixty percent of Newark households are headed by one parent.<sup>230</sup> Approximately one-half of all Newark children receive food stamps through the Supplemental Nutrition Assistance Program.<sup>231</sup> Newark residents struggle to find affordable housing,<sup>232</sup> and chronic absenteeism plagues the city's schools.<sup>233</sup> In 2014–2015, only seventeen percent of public, non-charter school, third grade students met or exceeded expectations on the statewide Partnership for Assessment of Readiness for College and Careers exam (PARCC exam) for English/language arts, and twenty-two percent met or exceeded expectations in math, compared to rates of forty-five percent and forty-four percent for the state.<sup>234</sup> In 2013, twenty-seven percent of Newark adults had no high school diploma, and thirty-eight percent had obtained no education beyond a high school diploma.<sup>235</sup> Nearly eighteen percent of Newark school-age children receive special education services.<sup>236</sup>

Health statistics for Newark residents present an equally troublesome picture. According to 2012 data, forty percent of Newark mothers received no or late prenatal care<sup>237</sup> and ten percent of children were born with low birthweight.<sup>238</sup> In 2014, almost 5,400 children, or seven percent, had no health insurance;<sup>239</sup> the uninsured rate for adults hovers around twenty percent.<sup>240</sup> Rates of cardiovascular disease, heart attack, and diabetes among Newark adults are double the county rate; HIV/AIDS prevalence in Newark is twice the county rate and three times the state rate; and violent crime in Newark is two times the state rate and ten times the national benchmark.<sup>241</sup> Approximately forty-five percent of children ages three to five in Newark are overweight or obese, versus twenty-one percent nationally,

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230. *Id.* at 6.

231. *See id.* at 15.

232. *See id.* at 13 (noting the majority spend more than the recommended thirty percent of annual income on shelter).

233. *See id.* at 29 (finding chronic absence rates of nineteen percent for elementary (K-8) students and thirty-nine percent for high school students).

234. *Id.* at 30, 32.

235. ADVOCATES FOR CHILDREN OF N.J., NEWARK KIDS COUNT: A CITY PROFILE OF CHILD WELL-BEING 43–46 (2015), [http://acnj.org/downloads/2015\\_03\\_10\\_newark\\_kids\\_count.pdf](http://acnj.org/downloads/2015_03_10_newark_kids_count.pdf) (adding that while Newark boasts a median graduation rate of sixty-nine percent, the rate varies from eighty percent to forty-three percent depending upon high school).

236. ADVOCATES FOR CHILDREN OF N.J., *supra* note 224, at 28.

237. *See id.* at 6, 18.

238. *See id.* at 19.

239. *Id.* at 20.

240. KATHY OPRMOLLO, AMBULATORY CARE SERVS., UNIVERSITY HOSPITAL COMMUNITY HEALTH NEEDS ASSESSMENT FY 2014 (2014), [http://www.uhnj.org/patients/docs/UH\\_CHNA-2014.pdf](http://www.uhnj.org/patients/docs/UH_CHNA-2014.pdf).

241. *See id.*

and only thirty percent of children ages three to eighteen meet recommendations for daily activity.<sup>242</sup> The prevalence of asthma in Newark children is significantly higher than for children across the state as well.<sup>243</sup>

Newark residents endure a high degree of fragmentation in healthcare organization and service delivery.<sup>244</sup> The same holds true for residents accessing social services and supports, as they often must visit multiple locations on multiple occasions, where they wait in line for hours to access and correct deficiencies in the distribution of resources to meet their basic human needs for food, shelter, and financial assistance.<sup>245</sup> Scant free legal aid exists; at current legal services funding rates, there is one legal aid attorney for every 11,000 New Jersey residents who are eligible for services.<sup>246</sup> “[M]ore than 460,000 low-income adults in New Jersey have at least one serious civil legal problem each year . . . . [Yet,] fewer than one in six receive [legal] help . . . .”<sup>247</sup> Thus, while the need for assistance for poor and low-income residents of Newark is great, the availability of assistance is woefully inadequate.

## 2. H.E.A.L. Collaborative®

Rutgers Law School’s Newark campus has a long history of advancing social justice and was one of the pioneering sites of clinical legal education.<sup>248</sup> The Education and Health Law Clinic, in which H.E.A.L. Collaborative is housed, was created in 1995 as the Special Education Clinic to address the critical shortage of free legal representation available to parents of children with disabilities in special education matters while educating law students in this substantive area and lawyering skills. The Pediatric Primary Care Clinic is a substantial provider of pediatric primary care in the City of Newark with approximately 17,000 patient visits per year. Located within one mile of the law school, the two clinics serve the

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242. KRISTEN LLOYD ET AL., *RUTGERS CTR. FOR STATE HEALTH POLICY, NEW JERSEY CHILDHOOD OBESITY STUDY* 46 (2011), <http://www.cshp.rutgers.edu/Downloads/8800.pdf>; PUNAM OHRI-VACHASPATI ET AL., *RUTGERS CTR. FOR STATE HEALTH POLICY, THE NEW JERSEY CHILDHOOD OBESITY STUDY: NEWARK SCHOOL BMI DATA* 7 (2010), <http://www.cshp.rutgers.edu/Downloads/8410.pdf>.

243. Compare Anthony Johnson, *Study: 1 in 4 Newark Children has Asthma; EPA Steps in for Air Quality Testing*, ABC 7: EYE WITNESS NEWS (Mar. 23, 2015), <http://abc7ny.com/health/study-1-in-4-newark-children-has-asthma;-epa-steps-in-for-air-quality-testing/569501> (stating 25% of Newark children have asthma), with N.J. DEP’T OF HEALTH, *ASTHMA IN NEW JERSEY: ESSEX COUNTY ASTHMA PROFILE 1* (2014), [http://www.nj.gov/health/fhs/chronic/documents/asthma\\_profiles/essex.pdf](http://www.nj.gov/health/fhs/chronic/documents/asthma_profiles/essex.pdf) (stating 8.7% of New Jersey children have asthma).

244. See N.J. HEALTH CARE FACILITIES FIN. AUTH., *FINAL REPORT FOR: GREATER NEWARK HEALTHCARE SERVICES EVALUATION* 84–86 (2015), <http://www.nj.gov/njhcfpa/what/pdfs/NJHCFFA%20Final%20Report.pdf>.

245. The information is based on the author’s experience assisting nearly 300 families through H.E.A.L. Collaborative since 2013, and hundreds of others the author has helped through the Education and Health Law Clinic since 2001.

246. LEGAL SERVS. OF N.J., *THE NEW JERSEY LEGAL SERVICES SYSTEM AT A GLANCE* (2015), <https://www.lsnj.org/PDFs/Glance.pdf>.

247. *Id.*

248. See PAUL TRACTENBERG, *A CENTENNIAL HISTORY OF RUTGERS LAW SCHOOL IN NEWARK: OPENING A THOUSAND DOORS* 1–2 (2010).

same patient/client population. In 2010, they joined forces in an effort to address the health-harming social and legal needs of Newark children with disabilities and their families. Together, they formed H.E.A.L. Collaborative.<sup>249</sup>

H.E.A.L. Collaborative officially opened doors to the community in March 2013. The program is rooted in the following principles:

1. All members of society have a right to live in healthy environments with ready access to quality programs and services to treat health problems and address the sources of health issues;
2. Many members of society living in poverty or low-income households never will achieve this outcome due to social, legal, and economic conditions adversely affecting health;
3. Social justice principles mandate that society address the nonmedical causes of health problems and inequity through both prevention and treatment; and
4. An integrated, interdisciplinary, community-engaged, multilevel approach is critical to the problem-solving process to achieve lasting, beneficial social change.

Given these principles, H.E.A.L. Collaborative's mission is to reduce poverty's adverse effects on the health and well-being of Newark children and their families.<sup>250</sup> To advance the mission in a manner consistent with the MLP model, H.E.A.L. uses a three-pronged approach. First, H.E.A.L. provides free legal representation, consultation, and social work case management services to children with disabilities and their families who live in households with incomes  $\leq 200\%$  FPL using a preventive, interdisciplinary, community-engaged approach.<sup>251</sup> Second, H.E.A.L. educates front-line health and medical professionals on the identification of social issues with legal remedies that adversely affect child health and family well-being, and methods for resolving these issues without resorting to legal involvement. And third, H.E.A.L. enhances the educational experiences, professional development, knowledge, and skills of those studying and working in the fields of law, medicine, and social work through collaboration in an interdisciplinary setting.<sup>252</sup>

Supplemental office space in the Pediatric Primary Care Clinic permits graduate students in law and social work and H.E.A.L. faculty to interact regularly with pediatric patients, their families, medical and health students, and professionals. Co-location improves access to and quality of care by offering "one-stop" service provision to children and their families

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249. A program description of H.E.A.L. Collaborative is on file with the author.

250. *H.E.A.L. Collaborative, Education and Health Law Clinic*, *supra* note 222.

251. *See id.*

252. *See infra* Section IV.A.1..

in the community. It also enhances opportunities for interdisciplinary collaboration and the development of positive working relationships, and enriches the knowledge, skill sets, and experiences of students and professionals participating in H.E.A.L.

Following the premise that “health status should be of concern to [all,] . . . not merely those within the health sector,”<sup>253</sup> the current H.E.A.L. interdisciplinary team is comprised of faculty and staff from Rutgers Schools of law, medicine, social work, public affairs and administration, public health, and business, and still expanding. H.E.A.L. serves as a semester-long clinical legal education program for law students; a year-long field placement for master’s level social work students; and a mandatory, month-long rotation for second-year pediatric and medicine-pediatric residents. Graduate students from the schools of medicine, business, and other disciplines participate in H.E.A.L. on specific projects as volunteers or for credit.

H.E.A.L.’s subject matter focus was determined from the results of a Rutgers Institutional Review Board (IRB)-approved needs assessment that examined the range of social determinants of health affecting the community, namely the child patients of the primary care clinic and their families.<sup>254</sup> Respondents identified public benefits as the primary concern; education/child development, finances and safety/housing nearly tied as secondary concerns. We cross-checked existing community resources<sup>255</sup> with areas of patient need to identify resource gaps. From this analysis, H.E.A.L. opted to provide assistance in the areas of education, special education, early intervention, and public benefits. Thus, community input from individual families and local area organizations determined the framework for H.E.A.L. Collaborative’s work.

Despite the selection of a subject-matter focus, we did not want to leave families with current or potential future issues in other areas without assistance. Therefore, H.E.A.L. deliberately casts a wide net when working with individual clients and the community so as not to “edit[] out the client’s story that is not relevant to the specialty.”<sup>256</sup> Where a family has additional concerns, H.E.A.L. tries to assist and if H.E.A.L. cannot help directly, we offer supportive assistance (e.g., help families to identify and address social determinants of health concerns before they become legal

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253. Michael Marmot, *Social Determinants of Health Inequalities*, 365 LANCET 1099, 1099 (2005).

254. The twelve-question anonymous survey, written in English and Spanish, screened parents/caregivers for their levels of concern regarding a variety of social determinants, ranging from food, housing and finances, to education and transportation, among others. The survey was worded carefully so as not to limit the questions to legal needs (employing an interdisciplinary lens) or to current issues (incorporating preventive law principles).

255. Community resources include other in-house clinics at Rutgers to which H.E.A.L. could refer matters, local area advocacy groups, and nonprofit organizations.

256. Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 322 (2001).

problems, or assist families to gather evidence for claims in legal law in which we do not practice) and facilitate targeted referrals<sup>257</sup> (i.e., we make initial contact with referrals to ensure the referral is appropriate and available). In so doing, H.E.A.L. adopts a “take what walks in the door” approach.<sup>258</sup>

To achieve its mission, H.E.A.L. engages in a variety of education, service, and research activities. In all activities, H.E.A.L. actively and intentionally incorporates principles of preventive law, interdisciplinary collaboration, and community engagement. Therefore, H.E.A.L. Collaborative is best described as an “integrated” clinic as it “provides the opportunity for law students to identify and to address the underlying social justice problems facing individual clients and communities, to engage in social change advocacy in multiple forums, and to develop skills in multiple areas.”<sup>259</sup> As a result of law students’ participation “in different models of social change lawyering simultaneously,”<sup>260</sup> and employment of multiple strategies and methodologies in their work, they develop the tools needed for multidimensional, collaborative problem solving required for effective health and social justice advocacy.<sup>261</sup>

#### IV. BENEFITS AND CHALLENGES OF INTEGRATING PREVENTIVE LAW, INTERDISCIPLINARY COLLABORATION, AND COMMUNITY ENGAGEMENT IN H.E.A.L. COLLABORATIVE

H.E.A.L. Collaborative’s employment of twenty-first century competencies throughout its work results in invaluable experiences and lessons for students and professionals in law and other disciplines; improved problem prevention and problem solving through collaboration across disciplines, and with clients and communities; and greater collective impact while advancing a social justice mission. However, the model also poses some challenges. The following are just some examples of the ways in which H.E.A.L. integrates twenty-first century competencies into its activities, and the pros and cons of this endeavor.<sup>262</sup>

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257. H.E.A.L. tries to refer families first to other in-house clinics and then to local organizations.

258. Since opening doors in March 2013, H.E.A.L. Collaborative has helped nearly 300 children and families to address over 800 legal and social needs including special education, public benefits, guardianship, and health insurance appeals, among others. (Data on file with H.E.A.L.’s research team.)

259. Marcy L. Karin & Robin R. Runge, *Toward Integrated Law Clinics that Train Social Change Advocates*, 17 CLINICAL L. REV. 563, 568, 570 (2011) (explaining that integrated clinics incorporate a variety of strategies and approaches in advancing social change, such as individual representation, community organization, education and advocacy, and policy initiatives, based on the needs identified by their clients and the community); see Brodie, *supra* note 168, at 337, 354–84 (discussing the benefits of adopting a “middle ground” clinical approach that “hovers between the two archetypal visions (service and impact) of social justice lawyering”).

260. Karin & Runge, *supra* note 259, at 567.

261. See *id.*

262. For purposes of this Article, the author limits discussion to law students’ experiences only.



*A. Examples of Integration of Approaches in Education, Service, and Research, and Resultant Benefits to Law Students*

1. Education of Law Students

The education of law students in H.E.A.L. Collaborative occurs in multiple ways, including direct instruction in the classroom; group exercises; large and small group instruction; simulations; case rounds; team supervision meetings; and guided and supervised direct client and community work. This section focuses on non-live client learning experiences; learning from live client work is discussed in the section on service below. Throughout these education activities, H.E.A.L. develops law students' twenty-first century competencies.

Some activities seem silly on their face (e.g., drawing pictures and solving puzzles in teams);<sup>263</sup> yet they build rapport among participants from the same and different disciplines, and require good communication and collaboration among participants to succeed. These exercises expose students to different problem-solving approaches, and require students to reflect on the effects of disciplinary language, norms, and values on communication, collaboration, and the problem-solving process. Other exercises are more serious. A simulation based on a former client places participants in the role of a single parent with two children living in poverty. Students develop a monthly budget; they compare and contrast their financial allocations and the rationales for their decisions and discuss the influence of personal and professional norms, values, and biases on these decisions.<sup>264</sup> The exercise encourages students to be empathetic and view the situation from the parent's context,<sup>265</sup> demonstrating the importance of client input and narrative into all aspects of the problem-solving process. It also requires students to explore the family's current concerns as well as potential future issues, thereby taking on the preventive lawyer's role of "anticipator" and "planner." Another exercise provides a "bare bones" summary of a child with a chronic medical condition and asks participants to brainstorm the myriad potential causes of the illness and trace each cause back to its possible roots. Through this process, students learn that problems can be defined and categorized in multiple ways; that problem

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263. For example, in one exercise on communication and collaboration, students are grouped into sets of three with a representative from each of the three disciplines. One person receives a child's drawing that the person must then describe to another under timed conditions so that the second person can reproduce it with crayons on paper. The third person serves as notetaker. Dialogue between the describer and artist is restricted in a different manner each time the exercise is repeated: First, only the describer may speak; then, the artist may ask only closed-ended questions that elicit a yes or no response; and finally, the participants may engage in a dialogue.

264. Participants answer questions such as: Did you forego formula in favor of breast milk for medical or personal reasons? How did you determine whether to pay for cable television? Did you consider the risk of losing your job or child-welfare involvement when you refused to leave work to get your child whom the school had suspended for behavior reasons? Was money for and/or access to transportation a factor in your decision?

265. Using fundamental social work concepts such as systems theory and the ecological approach, law students begin to view individuals and their community, i.e., environment, as multifaceted and recognize that individuals can only be understood fully in the context of their relationships.

definition and categorization directly affect the choice of intervention; that identifying and addressing a problem's root cause(s) offers the best opportunity to prevent recurrence; and that client and community input, insight, and involvement in the process are critical.

To gain a better understanding of the context in which H.E.A.L.'s target population resides, students go out into the community and observe and reflect on the experience: for example, by riding a public bus from one end of Newark to the other, or spending two hours in a waiting room at a local public benefits office, courthouse, or emergency room/health care clinic. These experiences expose students to the importance of contextualizing individual and community concerns, and incorporating community-engaged lawyering in this process. Law students also receive skills training and attend didactic sessions to better understand substantive laws and relevant systems. They study topics such as the intersection of poverty and health; cultural competence; relevant federal, state, and local education, public benefits, and social service programs; laws, policies, and systems that affect health directly and indirectly; the significance of problem definition; and the skills and benefits of twenty-first century competencies in addition to traditional lawyering skills.

The education of law students continues as they participate in weekly interdisciplinary case rounds and monthly social determinants of health rounds with all pediatric and medicine-pediatric residents (not just those assigned to H.E.A.L.). Case rounds provide an opportunity for law students to gain input from their same and different discipline peers while exploring patterns in the problems their clients face and the conditions in which they live. As a result, they learn to draw connections between individual client concerns and larger societal/structural concerns. Utilizing twenty-first century competencies, law students and their peers brainstorm ways to surmount obstacles to problem solving, and, where possible, to prevent problems from arising in the first place. They improve their knowledge of the laws, systems, and programs with which their clients interact, and their understanding of the significant role that context and narrative play in the problem-solving process.<sup>266</sup> They discover how law is both a social determinant of health and one of many tools to remedy the effect of social determinants. They learn the limits of their own profession and the benefits of collaboration with those having other knowledge and

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266. For example, consider a child who behaves inappropriately at school for reasons stemming from the child's disability and is repeatedly suspended. The suspensions affect the parent's employment because the parent cannot leave the child at home unattended. The employer fires the parent, causing a loss of income and inability to pay the rent, culminating in an eviction notice and impending situation of homelessness. Law students must understand not only each system (e.g., special education, employment, behavioral, housing) and relevant laws and policies to properly work with this family but also the way in which the systems interact to find the best solution. They must trace the problem back to its root cause, e.g., the district's failure to properly address the child's behavior problems, to prevent the cycle from repeating, and develop a sustainable solution.

skill sets. They find common ground with their same and different discipline peers as well as their clients and the community, and discover the benefits of building on commonalities while respecting differences.

H.E.A.L.'s educational activities transport law students from their prior training in which they view legal issues narrowly to using a wide angle problem-identification and problem-solving lens that emphasizes that not all problems are legal; that even if a problem is legal it may be defined according to other disciplines; that the lawyer toolkit does not provide the only, or the best, way to resolve many problems; and that the perspective of others, including the client, is critical to the problem prevention and solving processes.<sup>267</sup> Through their discovery that multiple ways of analyzing and addressing problems exist, law students come to understand the many different roles residing within their profession that can effect social change with and for individuals and the community,<sup>268</sup> and the importance of twenty-first century competencies to effective lawyering.

## 2. Service with and for Individual Clients and the Community

All of H.E.A.L.'s service activities aim to identify, address, and prevent real world health problems. Service activities include consultation, direct representation, and social work case management and advocacy for and with individual clients and the community, as well as collaboration with the community on education, research, organizing, advocacy, and policy initiatives. Law students "learn by doing" through their experiences in H.E.A.L. service provision. Experiential learning aligns with principles of andragogy, which provides that adult learners "attach more meaning to learnings they gain from experience" and acquire more knowledge when they have a need to learn to deal with a real-life problem or task.<sup>269</sup> Since adult learners "see education as a process of developing increased competence . . . learning experiences should be organized around competency-development categories."<sup>270</sup> By applying the lessons learned in H.E.A.L.'s educational activities to their service experiences with live clients, law students maximize their development of twenty-first century competencies.

H.E.A.L. assigns an interdisciplinary team to individual clients and community initiatives so that students may examine the issues from multiple disciplinary knowledge bases, skill sets and approaches, and learn

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267. Law students learn that problems seldom conform to clear-cut disciplinary boundaries and that "a good lawyer must be able to counsel clients and serve their interests beyond the confines of his technical expertise—to integrate legal considerations with . . . other nonlegal aspects of the matter." Brest, *supra* note 99, at 8.

268. *See id.*

269. MALCOLM S. KNOWLES, *THE MODERN PRACTICE OF ADULT EDUCATION: FROM PEDAGOGY TO ANDRAGOGY* 44 (1980); *see also* Bloch, *supra* note 180, at 331 (explaining that andragogical methodology favors experiential and participatory learning).

270. KNOWLES, *supra* note 269.

from each other and clients in this process. Teams aim to ensure that clients and communities are the “protagonists in framing and resolving their concerns.”<sup>271</sup> Client interviews involve an exploration of pressing social determinants that are affecting health adversely, as well as potential future ones, with an eye towards preventing and addressing conditions *before* they have the chance to transform into social or legal problems, as the latter often are far harder to remedy.

Working side-by-side with their clients and interdisciplinary peers provides law students the opportunity not only to practice the skills and tools they have acquired in their own field but also to observe and try out the tools and approaches used by their teammates.<sup>272</sup> Examples of some of these skills and tools include: systems theory;<sup>273</sup> “starting where the client is”;<sup>274</sup> fostering client self-determination;<sup>275</sup> strengths-based practice;<sup>276</sup> and “goodness-of-fit”<sup>277</sup> between client needs and problem definition, and the strategies and interventions selected. Students’ knowledge base and skill set expand while collaboration improves. “Working together causes each participant to see and appreciate how others approach a problem and envision resolving it . . . . [Therefore,] interactions can become more lateral than hierarchical.”<sup>278</sup>

The twenty-first century competencies students develop in the individual client context translate to community work. The community work enables law students to see beyond individual client problems to structural and societal causes, and develops in students an increased awareness of the social, economic, and political context and their effects on justice and

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271. Tokarz et al., *supra* note 155, at 365.

272. For example, social work students’ incorporation of systems theory challenges law students’ tunnel vision and linear thinking; and client’s definitions of problems can change the narrative and subsequent interventions in dramatic ways, testing law students’ tendency to define problems and solutions as purely legal.

273. See Jennifer Rosen Valverde, *A New IDEA for Improving the Education of Children with Disabilities in Foster Care: Applying Social Work Principles to the Problem Definition Process*, 26 CHILD. LEGAL RTS. J. 14, 28 (2006) (noting that each system is made up of component parts that interact, influence, and are influenced by each other, and that, “[b]y examining systems of various orders that are not comprehensible through investigation of their respective parts in isolation, one may develop an improved understanding of problems and thereby develop more viable solutions”).

274. See *id.* at 27 (explaining that “starting where the client is” requires attention to be paid to the meaning that an individual attributes to a problem and the problem-solving process, including “an examination of, among other things, the [person]’s openness to change, self-determination, assessment of the problem(s), and available strengths and resources, all from [that person]’s perspective”).

275. See *id.* (defining self-determination as “self-direction” and individual autonomy in decision making (quoting MARY E. WOODS & FLORENCE HOLLIS, *CASEWORK: A PSYCHOSOCIAL THERAPY* 26 (4th ed. 1990)).

276. See *id.* at 29 (explaining that “strengths-based practice requires . . . a shift in focus from pathology to possibility” and that it presumes all persons have strengths and one must mobilize one’s strengths to attain one’s goals).

277. See *id.* at 30 (defining “goodness-of-fit” as “refer[ring] to the compatibility between a client’s needs, problem assessment, and the interventions proposed to meet those needs” and as requiring accuracy in problem assessment and definition to ensure that interventions are properly tailored and implemented).

278. Piomelli, *supra* note 162, at 448.

access to justice for populations.<sup>279</sup> In some community projects, H.E.A.L. offers its interdisciplinary workforce to the community to support their efforts to respond to issues raised by multiple community members or community-based organizations. For example, H.E.A.L. developed an informational pamphlet to respond to parent concerns regarding the health effects of lead exposure and the legal rights of parents following the local public school system's disclosure of lead in the water supply.<sup>280</sup> In another project, H.E.A.L. addressed concerns regarding the fragmented nature of service delivery, and the failure to have a single locale that listed social service, advocacy, and other resources and programs available for Newark residents, by researching and creating an internet database with more than 350 local-area social service, health, advocacy, and other programs.<sup>281</sup>

Other community projects have been more proactive. For instance, H.E.A.L. drafted a memo summarizing the potential effects of then-new changes to Medicaid's "free care" policy on public schools' ability to receive Medicaid reimbursement for health services provided to eligible students in New Jersey.<sup>282</sup> A local organization requested the memo so that it could determine if and how to address the issue.<sup>283</sup> H.E.A.L. also codeveloped a series of one-page informational pamphlets on social service programs and eligibility requirements and other materials to assist health care professionals with their screening of families for social determinants of health.<sup>284</sup> In all projects, reactive and proactive, community engagement plays a key role for the community identified and defined the problem, called on H.E.A.L. to provide expertise and assistance in the particular area, and then collaborated on the strategy employed to address the issue. Accordingly, law students develop an understanding that the law is not "a unidirectional 'professional service'" but rather "a collaborative communicative practice."<sup>285</sup>

Law students prepare for and reflect upon their service experiences during individual and interdisciplinary team supervision sessions as well as in case rounds. The opportunity to explore and reflect upon learning

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279. See *supra* Section IV.A.1.

280. H.E.A.L. collaborated with the public school student union to distribute pamphlets to the community.

281. See RUTGERS HELPS NJ RESOURCE GUIDE., [www.rutgershelpsnj.org](http://www.rutgershelpsnj.org) (last visited Feb. 10, 2018) (listing various resources "to assist advocates, professionals and community members in navigating the complex array of federal, state, and local resources and agencies available to the public").

282. See Memorandum by H.E.A.L. Collaborative (on file with author).

283. Another project emerged during H.E.A.L.'s representation of a parent against a charter school for improper discipline of a child for actions stemming from the child's disability. Students explored whether other parents were experiencing the same concern and amassed over thirty examples of similar allegations from local area organizations. H.E.A.L. then met with the head of the State Assembly's Education Committee to discuss these concerns, and received an invitation to assist in drafting new charter school legislation for proposal.

284. H.E.A.L. continues to develop similar user-friendly informational pamphlets and form letters for patients.

285. See White, *supra* note 167, at 158.

experiences enhances student learning and reorients their meaning and belief schemes such that the learning becomes ingrained.<sup>286</sup> Students' participation in H.E.A.L.'s service activities permits them to take on some of the myriad roles an attorney may play,<sup>287</sup> and educates them regarding the importance of nontraditional problem-solving alternatives and the need for prevention, collaboration, and client and community involvement to achieve sustainable social change. Further, these activities enhance law students' social justice orientation; the more that law students experience with and understand their clients and the community within the social, political, and economic context, the better they comprehend that problems often perceived to be individual are really societal and structural, and that the law is not fair for all.

### 3. Research Activities

H.E.A.L. Collaborative strives to harness the intellectual resources of faculty and students from multiple disciplines, as well as community knowledge in its "community action" and more traditional empirical research initiatives. H.E.A.L.'s community action research projects aim to contribute to the remediation of community-identified conditions or problems and thereby create social change. Through its empirical research initiatives, H.E.A.L. seeks to identify and better understand individual client and community needs in context; the clients' experiences receiving services from H.E.A.L.; and the value of interdisciplinary education and collaboration to student and resident learning.<sup>288</sup> The information and data collected through IRB-approved studies enables H.E.A.L. to share useable knowledge with the community, and to evaluate and improve upon its own methods and processes for addressing client and community needs, and educating students and residents.<sup>289</sup>

H.E.A.L.'s research team includes representatives from law, medicine, social work, public health, public affairs, and business.<sup>290</sup> The program's action research examines community conditions and problems from the perspective of multiple disciplines, reinforcing the invaluable les-

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286. Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 51-52 (1995) (discussing andragogy and the three stages of transformative learning as including the "disorienting experience," "exploration and reflection," and "reorientation").

287. See Angelo N. Ancheta, *Community Lawyering*, 81 CAL. L. REV. 1363, 1368-69 (1993) (reviewing LOPEZ, *supra* note 161) ("The customary roles of attorney and client are not etched into stone."); see also Quigley, *supra* note 286.

288. See H.E.A.L. Collaborative: Service Provider Evaluation IRB #14-005M [hereinafter Study Protocol I] (unpublished study protocol) (on file with author); H.E.A.L. Collaborative IRB #13-728M [hereinafter Study Protocol II] (unpublished study protocol) (on file with author).

289. See Study Protocol I, *supra* note 288; Study Protocol II, *supra* note 288.

290. See Study Protocol I, *supra* note 288; Study Protocol II, *supra* note 288.

son for law students that not all problems are legal nor are they best defined or addressed in a legal capacity.<sup>291</sup> To illustrate, return to the lead community project example described briefly, *supra*, in Part II. Following distribution of the informational pamphlet, H.E.A.L. partnered internally across disciplines at Rutgers and with outside area health and environmental-related organizations to investigate the myriad disciplines and associated laws, policies, resources, and concerns that are implicated in an effort to start a conversation on how to define and address the problem. In this ongoing process, students learn to define problems and solutions broadly and to think proactively and creatively as a “designer” with myriad discipline-based possibilities for reform.<sup>292</sup>

In accordance with principles of community engagement, H.E.A.L. routinely seeks individual and community input into and perception regarding the potential causes and contributors of specific health problems, and the viability of possible interventions in its research activities.<sup>293</sup> The information gained provides a starting point for discussions with local groups about how best to define and address an identified concern, and to prevent conditions from transforming into legal problems.<sup>294</sup> For example, H.E.A.L. is conducting a needs assessment regarding community access to quality food and exercise opportunities. As the data is analyzed, law students explore and experience “the challenges of translating the problem-solving techniques employed in direct representation of individual clients [ ] to the larger context of problem-solving [with the] client community.”<sup>295</sup> They witness “the ways in which community problems may be interconnected to those faced by individuals, and by how individual cases or problems may be caused and/or driven by underlying forces that could be addressed at the root level.”<sup>296</sup> H.E.A.L.’s research activities thereby bolster law students’ understanding of the essential role of community engagement in the problem identification, definition, and intervention processes.

H.E.A.L.’s action research also enhances law students’ exposure to and development of skills in preventive law. For instance, when researching Medicaid’s “free care” policy, students examined the potential impact of this policy on children’s receipt of special education services in schools to determine if the policy would have an adverse effect.<sup>297</sup> In this manner, they learned to think “preventively” as well as “solutionally.”<sup>298</sup> Further,

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291. See Berkheiser, *supra* note 104, at 1156 (noting that prematurely categorizing a problem as fitting into a single discipline risks perpetuating the situation where “[i]f a lawyer has only legal solutions, everything begins to resemble a legal problem”).

292. See Barton, *supra* note 75, at 29–30.

293. See *supra* notes 185–93 and accompanying text.

294. See *supra* Section II.A.

295. Kruse, *supra* note 183, at 405.

296. Seielstad, *supra* note 105, at 493.

297. See Memorandum by H.E.A.L. Collaborative (on file with author).

298. See Barton, *supra* note 75.

the lessons students learned by using preventive law with individual clients were carried over to community clients, enabling students to anticipate, plan, and advise the community on addressing conditions early, rather than “wait[ing] until a problem has visibly erupted before identifying it as a ‘problem.’”<sup>299</sup>

In addition to community-action research, H.E.A.L. is involved in IRB-approved empirical studies examining client-service process and outcomes, and interdisciplinary education and collaboration.<sup>300</sup> Specifically, H.E.A.L. seeks and evaluates clients’ and students/residents’ perspectives on the services and education, respectively, provided and the results obtained.<sup>301</sup> This information is used to make programmatic improvements with the aim of maximizing service and education outcomes. The data contributes to professional knowledge on legal services client-service provision, interdisciplinary collaboration for students and professionals from a variety of disciplines, and more.

Few lawyers engage in nontraditional forms of legal research, and law students seldom, if ever, receive exposure to or instruction in this area. However, participation in collaborative research with the aim of addressing a community problem or effecting social change is a critical skill for law students so that they may contribute effectively to the resolution of complex social problems. Experience with empirical research teaches law students to set goals and outcomes towards which to strive, to measure the effectiveness of the interventions they provide, and to evaluate their processes of working with and serving their clients. Through their exposure to and participation in H.E.A.L. Collaborative’s research activities, law students gain needed competency in and witness the benefits of twenty-first century competencies in yet another facet of legal work.

#### *B. Challenges of Merging Preventive Law, Interdisciplinary Collaboration, and Community Engagement in a Clinical Law Program*

The integration of preventive law, interdisciplinary collaboration, and community engagement in a clinical law program significantly enhances law students’ knowledge, skills, and competencies needed for effective twenty-first century law practice.<sup>302</sup> Yet the model presents challenges as well, which warrant some attention. I have grouped them into five areas: Great—or Too Great—Expectations; Unlearning to Learn; Do as I Say, Not as You See; Finding Balance; and Program Structure and Logistics. While some may view these challenges as “cons,” they are also

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299. *See id.*

300. *See* Study Protocol I, *supra* note 288; Study Protocol II, *supra* note 288.

301. *See* Study Protocol I, *supra* note 288; Study Protocol II, *supra* note 288.

302. *See supra* Part II.



benefits in that they open the door to difficult, eye-opening, reflective, and insightful discussions that make for wonderful teaching moments.<sup>303</sup>

### 1. Great—or Too Great—Expectations

Law students participating in H.E.A.L. Collaborative are expected to gain substantive knowledge of relevant law and proficiency in myriad lawyering skills such as interviewing, counseling, oral, and written advocacy skills, as well as a foundation in twenty-first century competencies. This is a tall order for any lawyer, let alone a law student participating in a clinic for the first time.

The multiple knowledge bases and skill sets required to practice in an integrated clinic such as H.E.A.L. “add[] complicating layers to these clinical courses.”<sup>304</sup> Professor Karen Tokarz likens the process of learning lawyering in a community to “learning how to kayak on a moving river”<sup>305</sup> due to the multiple roles lawyers must play, the complexity of the legal and nonlegal issues that occur at micro and macro levels, and “the fact that situational factors are in constant flux.”<sup>306</sup> Professor Janet Weinstein posits that the success of interdisciplinary training requires a law student to “have a good understanding of his or her own discipline, both in theory and in practice,” including the profession’s strengths and weaknesses, and that this often does not occur until one has years of practice.<sup>307</sup> This leads to questions about students’ abilities “to absorb the requisite lessons in a limited time frame”<sup>308</sup> and whether programs like H.E.A.L. demand too much of students. At the same time, if the legal academy does not expose law students to the complexities that exist in solving social and legal problems on a micro and macro scale, and equip them with the knowledge, skills, and experiences to tackle such problems, many may graduate with the view that poverty and the “unmet . . . needs of the poor [are] too overwhelming a problem to solve” and thus “not worth their effort.”<sup>309</sup>

### 2. Unlearning to Learn

Most law students have a clear image of the “ideal” lawyer and traits needed for success that include being “directive, hierarchical, individualistic” and “superior” to lay people and other professionals.<sup>310</sup> According

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303. See Abbe Smith, *Carrying on in Criminal Court: When Criminal Defense Is Not So Sexy and Other Grievances*, 1 CLINICAL L. REV. 723, 723–27 (1995) (responding to a former student’s critique of his experience in a criminal defense clinic and finding valuable lessons in the critique); see also Robert D. Dinerstein, *Clinical Education in a Different Voice: A Reply to Robert Rader*, 1 CLINICAL L. REV. 711, 711–12 (1995) (identifying teachable moments and lessons from a student’s critique of the clinical experience).

304. See Tokarz et al., *supra* note 155, at 393.

305. *Id.* at 392–93.

306. *Id.* at 386.

307. Weinstein, *supra* note 117, at 357.

308. Tokarz et al., *supra* note 155, at 386.

309. Kruse, *supra* note 183, at 424.

310. Enos & Kanter, *supra* note 115, at 85–86, 102.

to Professor Alan Lerner, by the end of their first year in law school, law students, through the professional school socialization process, identify as “gladiators,” and there is little one can do to alter this socialization.<sup>311</sup> These preconceptions of students cultivate resistance to spending time and effort to develop “client-centered, client-empowering, multidisciplinary lawyering methods, and foreclose the opportunity for them to experience the benefits of such a model.”<sup>312</sup> Thus, to “learn by doing” in and from an integrated clinic model such as H.E.A.L., law students must “unlearn” prior law school lessons<sup>313</sup> and the professional socialization that has occurred must be “undone.”

The “unlearning and undoing” process is both difficult and time consuming, and time is a scarce commodity in the clinical program. However, students must go through this process to become open to and develop knowledge and skills in twenty-first century competencies. Faculty must “delegitimize all the preconceived notions of the lawyer as savior and litigation as the answer to [all] problems”<sup>314</sup> so that students can open themselves to principles of preventive law, interdisciplinary collaboration, and community engagement. Students must learn to identify and accept their discipline’s limitations, and recognize that some of the most complex problems may not have a solution in law, so that they become willing to work with and learn from others, including clients and the community. Moreover, students must grow to understand that there is much more to law than being reactionary and using litigation to resolve pre-existing problems so that they accept and develop interest in the myriad other roles of lawyer, including “planner,” “counselor,” “educator,” and “organizer,” in accordance with principles of preventive law.<sup>315</sup>

A potential risk of participation in an integrated clinic is that some students will not engage in the resocialization process and resist where the knowledge and skills expected of them do not fit into their idea of lawyering.<sup>316</sup> As a result, they may discount the contributions of their clients and those from other disciplines to the problem-prevention and problem-solving processes.<sup>317</sup> Others may engage but discover that they dislike teamwork and collaboration. Thus, prior law school lessons regarding the narrow legal knowledge base and skill set, conceptions about the lawyer’s

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311. Alan M. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solver*, 32 AKRON L. REV. 107, 109, 124–25, 146 (1999).

312. Enos & Kanter, *supra* note 115, at 86.

313. See Tokarz et al., *supra* note 155, at 395–96 (discussing the need for lawyers to unlearn lessons that they are superior to lay people and other professionals).

314. Elssesser, *supra* note 165, at 387.

315. See *supra* Section II.A.

316. See Barry et al., *supra* note 177, at 450 (explaining the resistance of some law students to participating in community legal education projects as due to student perception that such projects are outside the roles of lawyers).

317. See Tokarz et al., *supra* note 155, at 383 (“Clinical law faculty and clinic students may discount the importance of the non-law focus or approach due to ignorance or bias, and non-law professionals may experience discomfort if their contributions are not understood or their work is perceived as being devalued.”).

professional identity, and biases and stereotypes towards clients and professionals from other disciplines may be reinforced, rather than reoriented, through participation in an integrated clinic.

### 3. Do as I Say and Do, Not as You See

Law students' observations of and experiences with legal practitioners and legal systems reinforce their concepts of the role, identity, and tools of lawyers. This occurs both outside the law school in clerkships, internships, and paid positions in legal organizations and law firms, as well as inside the law school in classrooms, clinics, and pro bono programs. The narrow conception of lawyer as sole problem solver who is limited to legal interventions is perpetuated,<sup>318</sup> along with the superior placement of attorneys in the problem-solving hierarchy. With so few professors and practitioners deliberately incorporating twenty-first century competencies in their respective teaching and practice, law students have few models to emulate.

Moreover, law students frequently observe attorneys in practice refusing to collaborate with clients, other professionals, or adversaries. They witness lawyers relying solely on legal definitions of and solutions to problems. They watch lawyers rewind to address past problems, but not fast-forward to anticipate and strategize to prevent future ones. Law students model what they see and tend to conform to the culture of the environment in which they work.<sup>319</sup> These experiences disserve law students by contradicting and detracting from the lessons learned in H.E.A.L.

H.E.A.L.'s instruction in and incorporation of twenty-first century competencies often conflicts with what students observe inside the legal academy, including clinical programs, as well, for many faculty and peers in other clinics follow a more traditional lawyering approach. When students observe that they are not "doing" in the same fashion as their peers, and are learning different approaches and skills, they begin to question whether H.E.A.L.'s way is appropriate. This questioning transforms into doubt and compounds student resistance to incorporating new and different ways of lawyering into their practice.

### 4. Finding Balance

A successful integrated clinic requires the striking of a proper balance among numerous forces that pull in different directions. These forces include meeting the current pressing and future potential needs of individual clients and the community; developing relationships with and setting and

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318. See Enos & Kanter, *supra* note 115, at 87.

319. See Neil Hamilton & Lisa Monpetit Brabbit, *Fostering Professionalism Through Mentoring*, J. LEGAL EDUC. 102, 108 (2007) ("Much skill development for law students and new lawyers occurs through observation of and discussion with good role models."); see also Buck Lewis, President's Perspective, *Struggling to Be More Like Malinda and Frank*, TENN. B.J., Sept. 2008, at 3 ("If you don't think young lawyers and staff members and law students are constantly watching how we behave ourselves, you'd better wake up and smell the coffee.").

managing the expectations of interdisciplinary and community organizational partners; and prioritizing pedagogical objectives and practical experiences for students. Simultaneously, the program context and narrative may affect operations (e.g., through funding issues), programmatic direction, and research initiatives, thereby causing disruption to the delicate balance required for integrated clinics to operate. The programmatic challenge is finding the right balance between the program's duties to students, to clients, and to partners, and managing the expectations of all involved.<sup>320</sup> Despite best efforts, at various points in time, one duty may have to take precedence over another. This requires a certain degree of juggling and constant oversight of the program.

The primary balancing challenge concerning law students is finding the "time, resources and [proper] contexts to help students develop [problem-solving] skills and . . . integrate them thoroughly into . . . legal practice."<sup>321</sup> H.E.A.L. Collaborative strives to ensure that all law students participating in the program receive the same or similar pedagogical experiences. However, this aim may conflict with our desire to meet client needs by accepting "what walks in the door." As a result, students, at times, do not receive the same level of exposure to and experience with areas of substantive law and skills/approaches as their peers who participate in clinics that focus on only one area of substantive law (e.g., guardianship), one type of lawyering skill (e.g., appellate practice clinic), and/or adhere to a more traditional lawyering approach. This may come at a cost to the development of a particular skill area, be it a skill of traditional lawyering or of one of the twenty-first century competencies advanced by H.E.A.L.

##### 5. Program Structure and Logistics

The structure of and partners involved in an integrated clinic strongly influence the clinic's success in advancing its mission. Identifying the "right" institutional and community partners with respect to professional discipline, community knowledge, experience, and the ability to work well with others is critical to achievement of the program mission. Partners must have excellent communication skills, a willingness to listen as well as share, and a desire to collaborate in action, not merely in name.

Logistics are another factor that significantly influence integrated clinic work. Academic calendars can create barriers to collaborative work with clients, communities, and across disciplines. Differences in semester start and end dates, course schedules, work hours, field placement and rotation timeframes, and outside obligations all can influence program goals. The breadth of student learning expected and law school policies on clinic credits and credit hours can significantly affect the ability to meet pedagogical and client goals. One semester, although sufficient to develop positive working relationships with individual clients, often is insufficient

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320. See Seielstad, *supra* note 105, at 494–95.

321. Enos & Kanter, *supra* note 115.

time for students to establish relationships of trust needed for community work.<sup>322</sup> Students' "transitory situation[s]" resulting from their participation in a one-semester clinic may "create[] a particular problem when the nature of the [community] work inherently requires long-term commitment, trust building over time, and an appreciation for community and partnership history."<sup>323</sup>

Time limitations may affect interdisciplinary teams' ability to pass through the stages of forming, norming, storming, and performing needed for successful team solidarity and collaboration as well.<sup>324</sup> Consequently, some students end the semester during the storming phase and this can color their perceptions of the benefits of collaboration and the collaborative process for the future. In addition, preventive law practice and the incorporation of client and community insight and involvement in all aspects of the problem-solving process take time up-front despite the fact that they can save time, energy, and heartache on the back-end.

In light of the aforementioned challenges stemming from incorporating multiple lawyering approaches in an integrated clinic such as H.E.A.L. Collaborative, one must ask whether the benefits outweigh the risks such that the program properly advances law student learning. Based on my experience, the answer is a resounding yes. Through the education, service, and research activities of H.E.A.L. Collaborative, law students have the opportunity to study, witness, experience, and reflect upon the use of preventive law, interdisciplinary collaboration, and community engagement in legal practice. As a result, they develop a level of proficiency in each of these three approaches that enhances their preparation and skill set needed for effective twenty-first century lawyering.

#### V. RECOMMENDATIONS FOR EXPANDING THE TWENTY-FIRST CENTURY LAWYERS' TOOLKIT

As discussed at the start of this article, law school clinics long have served at the forefront of educating students in essential competencies not sufficiently addressed, or addressed at all, in other areas of the law school curriculum. Accordingly, one must wonder if they have become the "kitchen sink" or "catch-all" provision of legal education. Can and should clinics continue to undertake the law school's duty to inculcate social justice values in students, while simultaneously teaching lawyering skills, human relational skills, professionalism, and creative problem solving in addition to new competencies such as those proposed here? The integrated clinic model demonstrates that clinics can meet this challenge, but is this

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322. See Fox, *supra* note 185, at 518 (noting the "long-term relationships" on which community lawyering is based).

323. Tokarz et al., *supra* note 155, at 395.

324. See Weinstein et al., *supra* note 129, at 51 (discussing Tuckman's model of group process and adding an additional stage, "reforming," between "storming" and "performing" based on their experiences with law students).

enough to ensure that the lessons students learn from the experience are internalized such that they last well into the future?

The legal academy's provision of instruction in and opportunities for law students to practice twenty-first century competencies in nonclinical doctrinal and skills classes prior to participating in an integrated clinic no doubt would foster students' understanding of and comfort using these competencies while in clinic, such that they are better internalized and become more second nature.<sup>325</sup> Through curricular mapping, law schools can determine at what level and in which courses students should be exposed to particular knowledge and skills, and then build upon that exposure in subsequent courses, based on knowledge that "students do not generally learn a skill in only one class, but as a progression through multiple courses."<sup>326</sup> In this manner, students move through multiple stages of knowledge acquisition and skill development: from introduction, to competency, to mastery.<sup>327</sup> Thus, I propose that students receive instruction in and opportunities to practice twenty-first century competencies *throughout the curriculum* to maximize their learning.

The recent amendments to the *ABA Accreditation Standards* offer an opportunity for the legal academy to rethink the pressure it places on clinics and the clinical legal education community to handle the catch-all education of law students. In response to critiques of legal education and the amended standards, some law schools have started or have already engaged in the process of redesigning their curricula substantially to make their students more "practice ready" upon graduation.<sup>328</sup> For those law schools that have been slower to embark on this endeavor, the time to develop a logical, orderly, and progressive curriculum that introduces, develops, and layers the education of these competency areas is now. "Not only should the curriculum as a whole be designed to progressively educate students, but the experiential education opportunities themselves should be structured to intentionally build upon students' developing competencies."<sup>329</sup> By so doing, the final year of law school can become "a carefully conceived culmination of the knowledge and skills gleaned throughout the law school experience."<sup>330</sup> Through the *ABA Accreditation Standards'* newly required assessment process, law schools can measure the effectiveness of their curricular redesign, in terms of outcomes and

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325. See Daicoff, *supra* note 22, at 865–66 (arguing that delaying instruction in lawyering skills until a third-year clinical experience "may be [too] late, after troublesome habits have developed"). But see Weinstein, *supra* note 117, at 357 (arguing that students must be "grounded in their own profession" in order for interdisciplinary training to succeed and that "even by the third year of law school students are not well-grounded").

326. Niedwiecki, *supra* note 22, at 260; see Batt, *supra* note 11, at 122 (supporting the infusion of experiential education throughout the "traditional" curriculum).

327. See Niedwiecki, *supra* note 22, at 260–61.

328. See Barry, *supra* note 11, at 256–66 (describing innovative curricula at certain law schools).

329. Margaret Moore Jackson, *From Seminar to Simulation: Wading out to the Third Wave*, 19 J. GENDER RACE & JUST. 127, 132 (2016).

330. Barry, *supra* note 11, at 276.

process, and use this data to further modify and fine-tune the amended curriculum to ensure its learning goals are achieved.<sup>331</sup>

Failure to take advantage of this opportunity not only will deprive new graduates of the essential skills needed for twenty-first century legal practice but also will disserve individuals, communities, and society at large.<sup>332</sup> The worsening plight of the low-income and poor in this country, caused by society's repeated failure to remediate the adverse effects of social and structural determinants on health and well-being, and to develop viable mechanisms to address the root causes of these problems, warrant change now. Doing otherwise merely will perpetuate the definition of insanity oft-attributed to Albert Einstein: "[D]oing the same thing over and over [again] and expecting different results."<sup>333</sup> Evidence of the need to develop law students' competencies in preventive law, interdisciplinary collaboration, and community engagement is clear, even more so in these challenging times, and models for progress are in place. H.E.A.L. Collaborative is just one example of an integrated law school clinic that bridges multiple approaches and methodologies for the benefit of law students, individual clients, the community, and the future of legal practice. The benefits and challenges of this model may be extrapolated and applied easily to myriad other areas of law. All that is needed are the desire and commitment to effect change.

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331. OUTCOME MEASURES REPORT, *supra* note 26, at 56 (discussing the use of law school data as a basis for further modifying the accreditation standards).

332. See Jackson, *supra* note 329, at 165–66.

333. Frank Wilczek, *Einstein's Parable of Quantum Insanity*, QUANTA MAG. (Sept. 10, 2015), <https://www.quantamagazine.org/einsteins-parable-of-quantum-insanity-20150910>.

