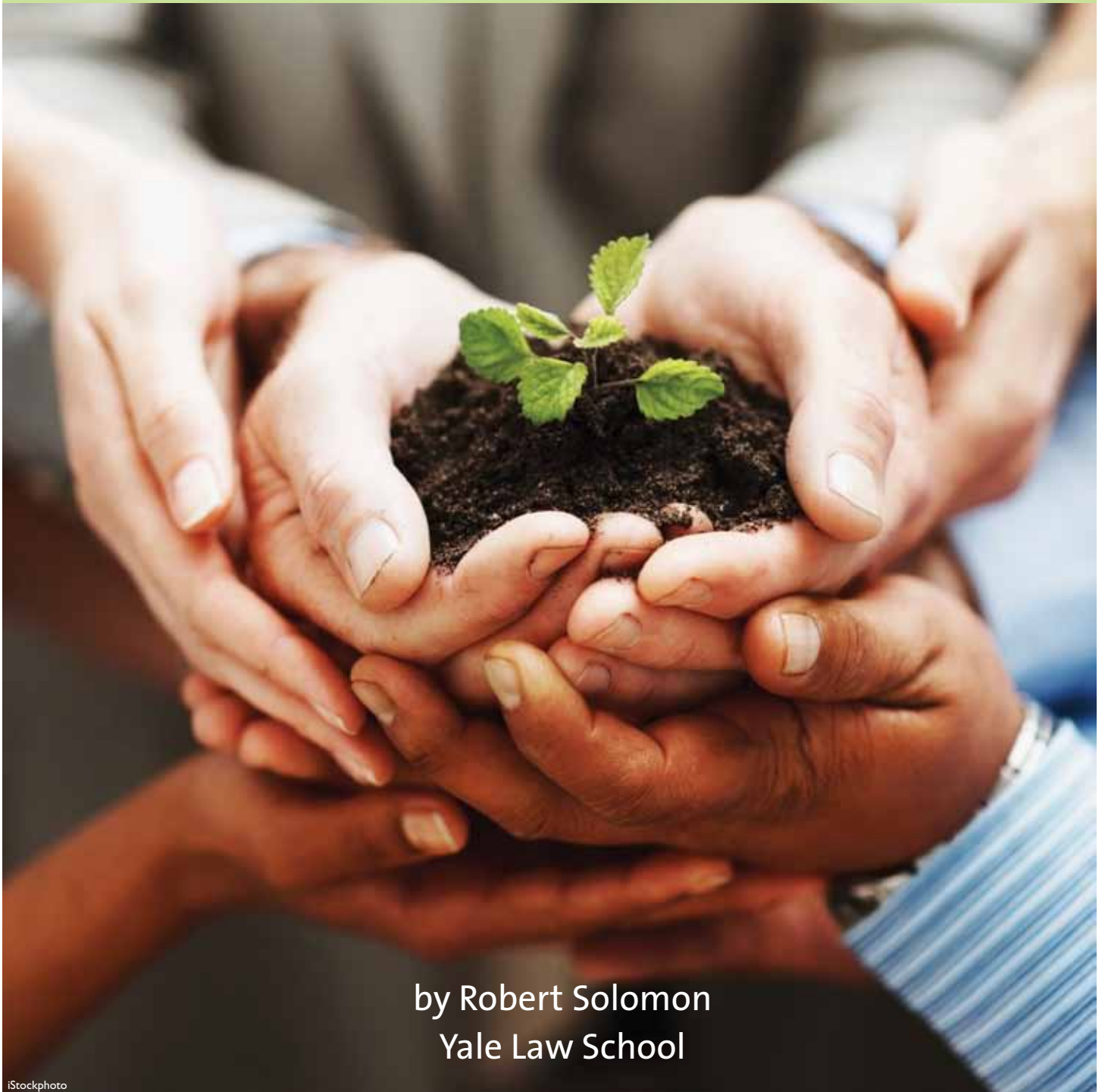


Law Students Nurture Low-Income Communities



by Robert Solomon
Yale Law School

When Yale Law School faculty member Jerome Frank first proposed the idea of clinical legal education in the article *Why Not a Clinical Lawyer-School?* in 1933, Dean Charles Clarke replied that it was hard enough to attract excellent teachers without requiring that they have practical experience, too. Nevertheless, 33 years later, Yale started the Danbury Prison Project, which became the model for an in-house clinical program consisting of a seminar and client representation supervised by law school faculty.

Next came the mental disabilities clinic, with students representing patients, often to gain their release from state mental hospitals. The model was similar to other efforts providing basic legal services to low-income individuals.

Then in 1985, students sponsored a homelessness conference, which led to the development of the Homelessness Clinic in the 1986 spring term. Students went to shelters to meet prospective clients. Before long, they were raising a critical policy question: Why were students in the mental disabilities clinic seeking deinstitutionalization, often to the streets, when students in the homelessness clinic were trying to find shelter for the same people? That inquiry resulted in a joint class and the creation of a core group of students intent on finding ways to house homeless people.

Filling a Gap

Soon Professors Robert Cover and Michael Graetz were discussing a void in the clinical program. As Graetz relates, they were concerned with the typically adversarial nature of law practice in the clinical law curriculum: “We considered it both educationally and socially important to institute a policy component into clinical legal education. We had three major educational goals. First, we wanted to broaden the clinical law experience to include transaction-oriented lawyering skills. Second, we wanted to attract students with business skills ... to the clinical law experience in order to introduce them to public-spirited legal work. Finally, we

wanted to bridge the gap between the academic and clinical curricula.”¹ The idea was that drawing in students with different perspectives would foster a valuable policy discussion.

A nice surprise was that the clinic also drew students from Yale’s other professional schools, including Management, Environmental and Public Health, Forestry and Environmental Science, and Architecture.

These discussions resulted in the Workshop on Shelter for the Homeless, first offered in fall 1986, an endeavor that became the Housing and Community Development Clinic and, more recently, the Community and Economic Development Clinic. In spring 2005, the school offered a separate clinic on community development financial institutions (CDFIs) to accommodate student demand to participate in work being conducted in the banking arena.

The transactional clinics did indeed foster a different policy discussion. The transactional clinic was attractive to law students who were not interested in representing individuals in poverty cases and, but for the transactional offering, might not participate in a clinic at all. A nice surprise was that the clinic also drew students from the university’s other professional schools, including the School of Management, Environmental and Public Health, Forestry and Environmental Science, and Architecture. Over the years, medical, nursing, divinity, and graduate students also

have participated. The Community and Economic Development Clinic appears to be the most interdisciplinary law school clinic in the country.

The interdisciplinary makeup of the class has enhanced the dialogue in rich ways, adding planning, business, and health perspectives to development issues, along with markedly different approaches to ethical issues. The transactional and policy work has been a magnet for law students with a market perspective, some with backgrounds at large consulting companies or at domestic or international nongovernmental organizations.

Over 23 years, the clinic has moved from housing work into a more expansive vision, responding to the needs of community organizations, accepting opportunities, and providing a model for other law schools interested in public service in lower-income communities. Yale has represented local organizations in their efforts to develop a supermarket in an underserved area, several day-care centers, a Laundromat, and several housing developments, including low-income and elderly housing and an AIDS residence.

But in an effort that probably exceeds Jerome Frank’s wildest expectations, the law school represented the City of New Haven in obtaining a \$25 million settlement from a bank that was demutualizing and then helped the City create a tax-exempt foundation to organize a community development bank.²

A Community Development Financial Institution

The law school’s banking effort began when New Haven Mayor John DeStefano requested a meeting to discuss the proposed demutualization and merger of a local bank. The case presented novel issues of asset ownership and depositor rights. This led to questions concerning the federal government’s requirement that depositors vote to approve demutualization and the bank’s application for a waiver of that requirement.



Student work included conferring with the Federal Deposit Insurance Corporation and the Connecticut Banking Commissioner, drafting a first-impression objection to the FDIC on the waiver, making presentations to the client, drafting testimony for a public hearing, preparing financial analysis of the merger and its effect on New Haven, analyzing the effect of lawsuits and potential lawsuits against the bank, and forming and evaluating settlement possibilities.

The students prepared a presentation for the banking commissioner, memos analyzing proposed executive compensation for the restructured bank, and a formal objection to the FDIC, opposing the merger. This presettlement work was compressed into a single academic term, with weekly meetings of the entire bank group and more frequent meetings of subgroups. Ultimately, the parties settled for \$25 million, to be paid to an independent tax-exempt entity designated by the City of New Haven.

The settlement raised difficult tax and foundation problems and provided rich experiences for students. The City wanted to form a foundation to receive the bank funds, with the expectation that the foundation would invest a substantial portion in a for-profit community development bank. Yale Law School Professors John Simon and Michael Graetz were consulted on program-related investment and tax-exempt supporting organization questions, and tax specialists at the law firm of an alumnus provided banking and tax expertise. Ultimately, the decision was made to apply for tax-exempt status as a Section 509(a)(3) organization supporting the community development activities of the City of New Haven. The tax-exemption was granted on November 3, 2005.

The work, however, was just starting. Students next gathered into three groups—CEO and board search, structure, and business plan—and did an intensive study of existing community development banks and other models, including credit unions and venture capital funds. They traveled to North Carolina to study Self-Help, an



innovative credit union, to Chicago to study Shore Bank, to Milwaukee for Legacy Bank, and to Washington, DC, for City First. Guests who made presentations to the class included a former Comptroller of the Currency, the CEO of City First, and two representatives of Shore Bank. Students researched federal and state charters, bank organization, bank-chartering processes, collateral nonprofit activities, bank holding companies, potential products, financial structures, and other critical issues.

In the 2005 spring term, the foundation formed a bank organizing group for a nonprofit community development financial institution, with students involved in every aspect of the charter application.³ The Connecticut Department of Banking granted a temporary charter in 2009, one of the first steps in the regulatory process before an institution can open for business as a bank.

Creating a bank is complex and well beyond the practice of transactional programs at most law schools, often for pedagogic reasons. Pedagogical tension is a reality, and some schools resolve it by limiting transactional work to replicable events such as incorporation and tax exemption. Others limit the work to small business advice or more routine real estate transactions.

Nevertheless, it is possible and beneficial to represent clients in complex and even unconventional projects that challenge students. And while many initiatives push the envelope, representation of community development corporations and small

businesses continues to allow students a wealth of transactional experience.

For schools that are interested in doing something similar, it is worth noting that adjunct faculty play a key role. Outside resources can provide critical assistance in highly specialized areas whether the experts come from other schools at a university or are local attorneys or alumni with expertise in affordable housing development, small business representation, real estate transactions, banking, legislation, and public policy. Ultimately, collaboration can provide an extraordinary educational experience for students and a valuable legal service to lower-income communities.

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Endnotes

- ¹ Michael Graetz and Robert Solomon in *Homes for the Homeless: A Handbook for Action*, ed. Adam Berger (Durham, North Carolina: Carolina Academic Press, 1990).
- ² Peggy Delinois Hamilton, "Starting a Community Development Bank: A New Haven Story," *Communities & Banking* (spring 2006), <http://www.bos.frb.org/commdev/c&b/2006/spring/communitybank.pdf>.
- ³ See <http://www.cdfi.org/index.php?page=info-1a> for more details on community development financial institutions.