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Priya Baskaran

Michael Haber

Maurice A. Deane School of Law at Hofstra University

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Transactional Clinics as Change Agents in the Trump Era: Lessons from Two Contexts

Priya Baskaran and Michael Haber

I. Introduction

The results of the 2016 presidential election and the efforts by the Trump administration to make sweeping changes to a wide range of federal policies have left communities across the country feeling overwhelmed and threatened. In its first year, the Trump administration has been working steadily to slash budgets for health care, housing, infrastructure, schools, and other public benefits that help low-income and middle-class Americans, while adopting policies and engaging in rhetoric that has made many immigrants, Muslims, people of color, and LGBTQ people feel increasingly vulnerable and marginalized.

The authors of this commentary run law clinics that provide pro bono corporate and transactional legal services to small businesses, nonprofits, cooperatives, and other entities that cannot afford private counsel. We teach at different law schools, in different geographical regions, and, since the election, we have both sought to work through our clinics to help our communities understand and confront the changes brought by the new administration. We work in very different contexts—Appalachia and suburban New York City—and the commentary begins by exploring how these contexts have led us to undertake this work differently. It then looks at the specific changes we have made in the design of our clinic seminars and in the kinds of cases and community projects we have undertaken and describes some lessons we have learned from these initial experiments as we seek to continue these efforts in the future.

Corporate and transactional lawyers sometimes find it hard to identify pro bono projects that mesh well with their skills and experience because litigation is often a more visible, tangible need for people who cannot afford attorneys. The article concludes with some ideas of ways that CED lawyers and other corporate and transactional attorneys can engage in similar work outside of the clinical context.

Priya Baskaran (priya.baskaran@wvulaw-eilc.net) is Associate Professor of Law at the West Virginia University College of Law. Michael Haber (michael.l.haber@hofstra.edu) is Associate Clinical Professor of Law at the Maurice A. Deane School of Law, Hofstra University.

II. Social Justice Lawyering and Transactional Law in Different Contexts

Although our contexts and the names of our clinics are different, there are a number of similarities between the substantive legal work done by the Community and Economic Development Clinic (CED Clinic) at the Maurice A. Deane School of Law, Hofstra University (Hofstra Law), and the Entrepreneurship and Innovation Clinic (EILC) at West Virginia University College of Law (WVU Law).

The CED Clinic at Hofstra Law represents twenty-five to thirty-five nonprofit organizations each semester, plus a handful of microenterprises, worker-owned cooperatives, social enterprises, advocacy coalitions, and other groups. Broadly speaking, cases at the CED Clinic fall in four categories:

- (1) *Startup corporate and transactional law*—Helping new nonprofits, microenterprises, worker co-ops, social enterprises, and other entities structure their organizations or companies, choose corporate entities, and apply for tax exemption or negotiate and structure corporate finance terms;
- (2) *Affordable housing development*—Helping both traditional community development corporations and community land trusts finance and develop affordable housing;
- (3) *Collaborative “community lawyering” with advocacy organizations, community organizing groups, and coalitions of community groups*—Helping our clients understand the details of current laws and helping to support their organizing campaigns through legal research, policy writing and advocacy, and, less commonly, legislative drafting and litigation; and
- (4) *General corporate law*—Working with our largely nonprofit client base on corporate and regulatory compliance, general contract drafting and negotiation, employment law, intellectual property, and other areas of law.

The EILC at WVU Law provides general transactional legal services to small businesses, nonprofits, community organizations, and individual entrepreneurs in West Virginia. WVU Law is the sole law school in West Virginia, emphasizing the importance of the EILC’s work in both training students and serving our client base. The EILC’s caseload includes the following broad categories:

- (1) *Intellectual property*—Providing a variety of IP related services, ranging from advice on protecting IP to official registration with state and federal agencies. The EILC is part of the USPTO Law Clinic pilot program and provides assistance to clients seeking fed-

eral trademark registration.¹ Through the generous support of the Claude W. Benedum Foundation, the EILC also assists student entrepreneurs throughout the state in seeking intellectual property protection through provisional patents, trademark registration, and copyright registration;²

- (2) *General corporate work*—Advising clients on corporate and regulatory compliance, general contract drafting and negotiation, and employment law, much like the CED Clinic at Hofstra Law; and
- (3) *Transactional assistance to nonprofits and microenterprises*—Serving a number of nascent social enterprises seeking advice on structuring. We advise these clients on the benefits and burdens of tax exemption, securities issues and other financing regulations, and general entity structuring options.

Our clinics share three underlying pedagogical goals common to many law clinics, what Professor Carolyn Grose, in her analysis of decades of scholarship about the aims of clinical pedagogy, calls clinicians' "loose consensus" on pedagogical goals: (1) teaching students to generalize from their experiences and skills developed in one context so they can be used in other situations; (2) skills training, exposure to the lawyering process, and the development of professional judgment and values; and (3) exposing students to social justice and critical thinking through legal practice.³

As Professor Grose notes, social justice and critical thinking skills are approached by clinicians in a variety of ways. Some clinicians seek to expose students to the "underbelly" of the legal system—not the sophisticated appellate jurisprudence that is the focus of doctrinal classes, but the rough justice of the rules and procedures that are the day-to-day reality of the vast majority of lawyers' practices when grappling with state agencies, small-dollar contracts, and county courts.⁴ In addition, clinicians may seek to train students to think critically about the legal system as a whole and about their place within it.⁵ Clinicians commonly seek to provide access to justice to the many low- and middle-income people who are

1. The Law School Clinic Certification program enables law students to practice before the USPTO under the strict supervision of licensed Law School Faculty. EILC students have the opportunity to complete trademark applications for clients. They also have the opportunity to respond to office actions and work closely with USPTO examining attorneys, <https://www.uspto.gov/learning-and-resources/ip-policy/public-information-about-practitioners/law-school-clinic-1>.

2. <http://www.benedum.org/>.

3. Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLINICAL. L. REV. 489, 494–96 (2013).

4. *Id.* at 495.

5. *Id.*

unable to afford legal representation.⁶ Finally, some clinicians seek to expose law students to injustice and the role that they may play as lawyers in helping low-income or marginalized people to obtain justice.⁷

Transactional clinics are more likely to embrace some of these approaches to social justice and critical thinking skills than others. Whether the clients of a transactional clinic are mostly start-up businesses, nonprofits, social enterprises, or other types of entities, most transactional clinics focus their work on smaller, less well-resourced, less sophisticated entities that cannot afford private representation. Many transactional clinics aim to serve clients coming from or seeking to help communities in need of services, opportunities, and local economic development, regardless of whether their programs are framed as CED clinics or as business clinics. But while some transactional clinics focus on exposing law students to injustice and the role that they may play as lawyers in helping low-income or marginalized people to obtain justice, many do not make this connection. In our current moment, ignoring how the Trump administration's agenda impacts our clients and the communities we serve is not an apolitical act.

Our efforts to expose law students to injustice and the role that they may play in helping people to obtain justice are rooted in our contexts: the demographics and economies of our local communities, how the Trump administration's agenda impacts our clients and the communities we serve, as well as the backgrounds and demographics of our student populations. For instance, Long Island, the iconic suburb of New York City that is home to Hofstra Law, is both deeply segregated⁸ and increasingly diverse, as the white population has declined and the number of Asian and Latino residents has more than doubled since 1990.⁹ West Virginia, conversely, is fairly homogeneous and White.¹⁰ While both regions have seen economic difficulties, Long Island's median income remains very high despite often-segregated areas that face widespread poverty.¹¹ West Virginia experiences high rates of poverty and unemployment, with almost 18 percent of households living below the poverty line and almost 7 percent unemployment.¹²

6. *Id.* at 496.

7. *Id.*

8. ERASE RACISM, HOUSING AND NEIGHBORHOOD PREFERENCES OF AFRICAN AMERICANS ON LONG ISLAND 6 (2012) ("Long Island is one of the most racially segregated regions in the country.").

9. See Long Island Index, *Population: Growing Diversity, but Growing Older*, at <http://issues.longislandindex.org/#population> (last visited June 23, 2017).

10. 2010 Census Data, at <https://www.census.gov/2010census/popmap/ipmtext.php?fl=54>.

11. ERASE RACISM, *supra* note 8, at 13.

12. <https://talkpoverty.org/state-year-report/west-virginia-2016-report/> last visited 6/19/17.

Our students come to our clinics from different backgrounds, with quite different ideas about national politics and the Trump administration's agenda, and with different career plans. Hofstra Law's student body is relatively diverse,¹³ while at WVU Law, minority students typically make up between 8 percent to 11 percent of the class.¹⁴ A majority of students who have taken Hofstra Law's CED Clinic in recent years are looking forward to incredibly lucrative careers at large law firms in New York City, while at WVU Law, a significant number of graduates will remain in the state and many work for very small firms of two to ten attorneys.¹⁵

III. Changes to Our Clinics in the Trump Era

A. Seminar Design

1. EILC, WVU Law

Like all transactional clinics, EILC is tasked with turning students into actual practitioners, albeit under the student practice rule. Even students who have taken the basic business law courses like Business Organizations are still unfamiliar with the intersections between tax, financing strategies, IP ownership, liability, and the host of other factors that impact transactional practice. Each semester, the EILC includes primers on the blackletter law involving IP, partnership tax, unrelated business income for public charities, and other key topics.

Given the challenges of covering the basics of transactional practice, the EILC seminar did not initially include anything related to the national election. Post-election, it became clear that Appalachia was the center of a national dialogue both in the popular media and through policy discussions. Aside from the occasional, uncreative jokes, few people thought much about West Virginia or Appalachia until the 2016 election thrust it into the national limelight. Starting in the fall of 2016 as Donald Trump's campaign began to gain momentum, there were many articles commenting on West Virginia as "the heart" of Trump country.¹⁶ These articles pre-

13. By one 2012 study, Hofstra was the twenty-first most diverse U.S. law school with under 70 percent of students identifying as White. Michelle Weyenberg, *Most Diverse Law Schools*, 22 NAT'L JURIST 24 (Nov. 2012).

14. <http://www.law.wvu.edu/about-us/class-profile> last visited 6/19/17.

15. ABA Employment Data 2016, at <http://www.law.wvu.edu/files/d/9d4cf1c5-77b4-463d-a2c7-e06fa6878cf8/2016-employment-questionnaire-summary.pdf>.

16. <http://www.newyorker.com/magazine/2016/10/10/in-the-heart-of-trump-country>. But see <http://elizabethcatt.com/2016/10/16/appalachia-as-trump-country/> ("We need to examine why journalists from elite and prestige publications are invested in presenting Appalachians—and particularly West Virginians—as representative of all Trump supporters, to the extent that they write, as John Seward does in *Vanity Fair*, 'I am in West Virginia to understand Donald Trump.' Why aren't pockets of Trump supporters in Oklahoma, Idaho,

sented a number of theories for Trump's popularity, ranging from continued economic disenfranchisement as the state's major industry declined to darker motivations arising from geographic and cultural isolation.¹⁷ Regardless of the reasons behind his popularity, 68 percent of votes cast in West Virginia were in support of Donald Trump—the largest per capita support of any state.¹⁸

As a program that advocates for West Virginia communities, there are some genuine concerns as to whether the Trump administration serves the best interests of the EILC's clients. From the beginning, his proposed policies and budget cuts have burdened the economically distressed communities and individuals in West Virginia. For example, his proposed funding cuts continue to target the Appalachian Regional Commission (ARC)—a vital driver of jobs, training, and infrastructure development.¹⁹ The ARC is a partnership between federal, state, and local governments to create a regional economic development agency. The ARC serves thirteen states, though only West Virginia is entirely encompassed within the ARC's boundaries. The ARC was formed to create a regional economic development strategy to combat the crippling poverty in Appalachia. ARC projects have funded vital infrastructure, including providing potable water and wastewater services to communities.²⁰ The ARC also funds important workforce development initiatives, including retraining workers discarded by the shrinking coal industry.²¹ In June, the ARC awarded \$899,791 to PRIDE Community Services "to develop a pool of construction trade professionals for the region."²² The project will provide training pro-

Florida, New York, and New Jersey the subject of similar profiles? To be sure, I'm certain that there isn't a red state in America that hasn't been described as 'Trump Country' by at least one journalist, but the compulsion to hold up Appalachia as representative is unique. . . . Historically, cultural elites—writers, academics, politicians, journalists, and so on—have used flawed representations of Appalachia to do two things: (1) to enhance the cultural difference between progressive white individuals and those thought to be 'yesterday's people;' and (2) to absolve cultural elites from the responsibility of thinking critically about race and racism. Often, writers combine these two positions. Poor mountain whites, thus appropriately situated at the bottom of the white racial hierarchy, allow writers to make tidier arguments—both positive and negative—about class.”)

17. See generally https://www.nytimes.com/2017/03/04/opinion/sunday/i-remember-when-appalachia-wasnt-trump-country.html?_r=0, <http://www.vanityfair.com/news/2016/02/donald-trump-supporters-west-virginia>.

18. <https://www.nytimes.com/elections/results/west-virginia>.

19. https://www.washingtonpost.com/national/trumps-budget-targets-rural-development-programs-that-provide-a-quiet-lifeline/2017/03/21/0899fe5e-0df1-11e7-9b0d-d27c98455440_story.html?utm_term=.7287cb5d68e5.

20. <https://www.arc.gov/about/index.asp>.

21. https://www.arc.gov/news/article.asp?ARTICLE_ID=558.

22. See <https://www.arc.gov/images/grantsandfunding/POWER2017/ARCEconDiversificationAwardsSummaries6-14-2017.pdf>.

grams in construction trades as well as placement services for jobs. Additionally, the program provides support for individuals interested in starting construction-based small businesses in the region.²³ The ARC has previously funded agricultural projects as well, including a farm incubator and training program. A joint initiative between the Coalfield Development Corporation, a 501(c)(3) organization and local redevelopment corporations across four counties, the Refresh Appalachia projects work to create sustainable small farms, creating jobs while increasing access to affordable produce for Appalachian communities. The loss of the ARC would be devastating to West Virginia, leading to a reduction in annual earnings by \$15.7 million.²⁴ Although these changes have not been executed yet, their very consideration indicates that the health and stability of Appalachia may not be a priority for the president.

The EILC must help students understand the very real consequences of Donald Trump's proposed policies on our state. Many students have expressed support for this presidential administration, both by frank admission and contextual conversations. A social justice perspective helps students lay aside personal politics and critically examine government through the lens of community advocacy. As many of students will stay in West Virginia, the impact of developing these critical thinking skills can be significant. They are positioned to play an important role in deciphering the intersection of law and politics in their communities.

Using a social justice framework in seminar also enables frank and open discussions about poverty, race, and isolationism. The EILC is engaged in supporting economic development efforts of disenfranchised communities. All vulnerable communities share the burden of poverty; yet each community also experiences unique obstacles, like immigration status, substance-abuse issues, lack of infrastructure, or decaying infrastructure. As the media continued to depict Appalachia as homogenous and intolerant, it became important to draw deliberate connections between poor communities across the country. These connections served as an important opportunity to discuss both EILC students' growing frustration with their perceived stereotyping by the national media as well as shed light on their biases when contemplating the problems of unfamiliar communities.

2. CED Clinic, Hofstra Law

Students in Hofstra Law's CED Clinic sometimes have a hard time connecting deeply with the founders of our client entities, especially when those clients were formed by, and represent the interests and desires of,

23. *Id.*

24. Center for American Progress, <https://www.americanprogress.org/issues/economy/news/2017/03/29/429397/trump-budget-harming-west-virginians-appalachia/>.

low-income people or people who are unsophisticated about the types of details that are required by government agencies in the process of forming and structuring corporate entities. Clinic students tend to develop far closer professional relationships with the younger, college-educated founders of client entities than they do with the founders of clients who come from less similar backgrounds.

As a question of training students to become corporate lawyers, the CED Clinic has rarely focused on this as a significant issue. One core competency that the CED Clinic aims to instill in all students is the ability to distinguish the corporate “persons” of our clients from the natural persons who appear before us as the agents or founders of those entities. So when students decline to conflate those agents or founders with our clients, it had previously been counted as a pedagogical success, not a failing—better to stick clearly on the side of legal ethics and client loyalty than to press students in a direction that might cause them to lose track of those professional priorities. But in our new era, when those agents or founders are low-income people of color, immigrants, or LGBTQ people seeking to undertake a project to help improve or protect their communities, the pedagogical tool of ignoring the personal interests of the founders or agents of an entity to concentrate exclusively on the interests of our organizational client may take that approach to too far an extreme. Part of providing our legal services to the community means engaging with community members in a meaningful way, beyond narrow talk of corporate filings and financing options. That means making a certain kind of human commitment to these individuals, even if that commitment is not one to which we are bound by the rules of legal ethics.

In the Trump Era, the CED Clinic has tried to teach students to prioritize our ethical obligation to our client entities, but also to try to connect meaningfully with the people affiliated with those clients. Of course, this can be a significant challenge for many law students, but it does prepare students to be more effective community advocates and, hopefully, more responsive and thoughtful lawyers for any kind of corporate entity they go on to represent in their careers. To try to strike this balance, students in the CED Clinic attend community meetings and client meetings where there is no specific need for a lawyer²⁵ in order to spend time focused on the stories of the people involved in our client entities. Students are asked to look for ways that lawyers might be able to help with the issues raised in community meetings, even if that legal work might not be something the CED Clinic could take on itself. This approach has in fact led the Clinic to become involved in some of the community projects and collaborations described in Section B.2.

25. Naturally, client approval was obtained prior to attendance at such a client meeting.

B. Clients and Other Community Projects

1. EILC, WVU Law

The EILC engaged in a number of larger impact projects in addition to direct services to clients. These projects are used as a vehicle for exploring (1) the intersection between law and policy and (2) opportunities for transactional attorneys to leverage their skills to create solutions. These projects have always responded to the needs of clients or communities. For example, the EILC was approached by a community organization concerned about a prevalent housing scam. In the summer of 2016, Southern West Virginia was crippled by a devastating flood that destroyed entire towns. One of the issues uncovered during the aftermath of the flood was the prevalence of “Rent-to-Own” scams. These scams target individuals who cannot secure traditional financing for home buying because of credit issues or insufficient savings for a down payment. A landlord will approach them with an option to buy a piece of property through rent and a small monthly installment. The tenants mistakenly believe they are entering into a seller-financed home purchase, but instead are entering into a lease with an “option to purchase” at some future date. Landlords also shift traditional burdens like repairs or taxes onto families in Rent-to-Own contracts, explaining (incorrectly) that they are owners/buyers and therefore responsible for these expenses. During the flood, some families lost homes they had personally invested money and time into repairing. These families could not receive homeowner assistance from FEMA because they did not own the home. They were only entitled to the significantly smaller “renter’s recovery” from FEMA. Families also could not receive assistance from charity groups rehabbing homes because they did not have the deed. Some individuals were even compelled by landlords to use their FEMA renter’s recovery money to fix a home they did not own. Often this small recovery amount was insufficient to repair the significant damage to the home. The EILC created consumer protection educational materials that were distributed throughout the county. The materials were designed to inform victims of their rights as well as help them avoid future scams.

The EILC continued this impact project model in creating resources for vulnerable communities in the new political climate. The EILC created educational materials and a sample contract surrounding temporary guardianship agreements. Many vulnerable, undocumented parents are concerned about losing custody of minor children if they are detained by ICE. These families are seeking education on their rights and assistance in protecting their children. They may want their children to stay with a neighbor or another caregiver rather than enter the foster-care system. They need information on collecting important medical, school, and other records to ensure their children can receive educational and medical services. The EILC helped prepare educational materials to help parents understand their rights and what proactive steps they should take in pre-

paring for possible separation. The EILC students also drafted a sample temporary guardianship agreement that could be used as evidence in court.²⁶

The prospect of separation is a problem faced by other vulnerable parents as well, including parents entering a residential substance abuse treatment program. This project was an opportunity to create a tool for all vulnerable families in danger of losing custody of their children and an important means to discuss common ground between these groups. As substance abuse is a pervasive problem in West Virginia and one that can engender sympathy from students, it proved to be fertile ground for discussing the ways in which undocumented individuals are dehumanized much like individuals struggling with addiction.

2. CED Clinic, Hofstra Law

Hofstra Law's CED Clinic has looked to push the boundaries of what we take on in our transactional clinic to be more responsive to new community needs arising out of changes brought by the Trump Era. This year, the CED Clinic has engaged in community education, policy advocacy, and collaborative efforts with other clinics—all work that would have been somewhat unusual in prior semesters.

Our major community education effort developed in response to requests from local small business owners and nonprofits that employed immigrants legally authorized to work through the Obama-era Deferred Action for Childhood Arrivals (DACA) program, which the Trump administration has announced plans to terminate.²⁷ After developing some advice for a specific client, the CED Clinic wrote and disseminated a short white paper for local small businesses and nonprofits with immigrant workers who are confronting questions about DACA-authorized employees.

We also partnered with a client organization to conduct the legal research for its policy advocacy paper on regional segregation and the need for local governmental agencies to take meaningful steps to fight segregation in the face of planned federal cuts to affordable housing and fair housing programs.²⁸ Although such a research project was outside of our ordinary legal work, many of our affordable housing develo-

26. In West Virginia, only a court can appoint a temporary guardian for minor children. However, agreements can be used as evidence for the parent's intent, allowing families to create a plan in the event of separation.

27. Michael D. Shear & Julie Hirschfeld Davis, *Trump Moves to End DACA and Calls on Congress to Act*, N. Y. TIMES (Sept. 5, 2017), <https://www.nytimes.com/2017/09/05/us/politics/trump-daca-dreamers-immigration.html>.

28. See *Invisible Walls: How Trump's Nassau County Foot Soldiers Build Them, and How Black and Latino Communities Can Tear Them Down*, INVISIBLE WALLS LONG ISLAND, <https://www.invisiblewallsls.org/news-1/2016/12/6/nassau-county-divided> (last visited June 23, 2017).

per clients and many local community groups were gravely concerned that the Trump administration's plans to slash HUD funding would destroy their housing opportunities and make Long Island a less welcoming place for people of color, immigrants, seniors, and low-income people.

Finally, the clinic has engaged in collaboration with other Hofstra Law clinics across our ordinary divisions. In the spring of 2017, the New York State Senate was considering the Liberty Act,²⁹ which would adopt a state policy prohibiting local law enforcement from detaining or questioning individuals for suspected violations of immigration law or from asking about immigration status unless that status is an element of a suspected crime, or from holding immigrants beyond the period of time they are being held for state-related purposes. Hofstra Law Clinic faculty consulted with community organizations that are clients of the CED Clinic to determine what advocacy strategies might be most useful, and Hofstra Law Clinic faculty jointly wrote an op-ed describing the benefits of the bill.³⁰ More recently, the CED Clinic has begun to explore the potential for collaborative projects around immigrant worker-owned cooperatives with our Deportation Defense Clinic.

The Hofstra Law CED Clinic has also made changes in how it selects its start-up nonprofit clients. The clinic previously prioritized client diversity as a core goal, seeking out clients that were varied in their sophistication, size, histories, and that reflected the geographical, racial, and ethnic diversity of the region. In the Trump Era, we have placed a greater emphasis on serving communities most under threat by the Trump administration's policies, in particular Latino and immigrant communities.

IV. Lessons Learned for Our Clinics

A. How to Reduce Tensions in the Classroom

A vital component of the clinical classroom is creating a supportive and open environment to discuss sensitive and controversial topics. There are a variety of pedagogical tools used by clinicians including implicit bias trainings, discussion guidelines, and role-playing. Students in transactional or business law clinics often do not expect controversial social and political topics to arise as they might in criminal justice or family law clinics. This makes outlining expectations and classroom discussion guidelines at the outset that much more important.

Both of our clinics aim to provide a structure for tackling complex or controversial subjects. The students in Hofstra Law's CED Clinic tend to be politically moderate or somewhat liberal and focused on practice in large, corporate law firms. For this group, potentially controversial topics

29. S. B. 4075, 2017-2018 Reg. Sess. (N.Y. 2017).

30. As of the time of this writing, the bill remains in committee. New York State Senate, Senate Bill S4075A (2017-18 Leg. Sess.), <https://www.nysenate.gov/legislation/bills/2017/s4075/amendment/a> (last visited Oct. 4, 2017).

like cross-cultural lawyering and implicit bias are sometimes met by students who are less shaken by these ideas than they are uninterested in these topics, feeling that they are of less importance to their careers than the “real” legal work of negotiating contracts or drafting corporate documents. But discussing how implicit bias can impact women, people of color, and others in the supposed meritocracy of law schools and law firms³¹ can make the discussion more impactful for at least some students, and we try to move from that conversation to one where we discuss how similar forces may be at play in our clients’ lives.

WVU Law’s EILC provides structure for tackling complex topics by taking the following measures. First, the clinic emphasizes that attorneys must demonstrate the necessary “discipline required to address thorny situations with equanimity and critical insight.”³² This means actively engaging with topics that are politically and personally sensitive in the classroom. Second, the EILC uses an established framework—a modified version of the “five-lesson framework” outlined by Patti Alleva and Laura Rovner in *Seeking Integrity: Learning Integratively from Classroom Controversy*—to ensure respectful and honest discussion of controversial topics.³³ Alleva and Rovner ask five questions to help students to deconstruct a topic, allowing them to fully engage while being cognizant of the personal and political tensions. The framework questions are assigned as part of guided discussion worksheet students must complete prior to class. The use of discussion questions requires students to invest the necessary time to examine and unpack difficult topics.

For each sensitive issue, students must answer:

- (1) What are the substantive law issues raised by this moment?
- (2) Is there a role the law is or should be playing in resolving the social/policy issues at stake?
- (3) What are the biases, assumptions, history, values, and other factors that may be affecting the positions people take on these issues?
- (4) Speaking personally, how do you feel about this topic?
- (5) What role should personal values play in our advocacy or position? Are these reasonable expectations? How would you achieve common ground or respectful disagreement?

31. See generally Nextions, *Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills* (Yellow Paper Series 2014-0404), available at http://www.nextions.com/wp-content/files_mf/14468226472014040114WritteninBlackandWhiteYPS.pdf (last visited June 23, 2017).

32. Patti Alleva & Laura Rovner, *Seeking Integrity: Learning Integratively from Classroom Controversy*, 42 Sw. L. REV. 355, 360 (2013).

33. *Id.* at 389.

Finally, the EILC uses structured classroom discussion to unpack these sensitive political and social topics. Class begins with an exploration of the five factor framework assigned in the discussion questions, enabling students to share their legal and policy issue spotting. The use of multimedia can help transition the discussion into the more personal and sensitive topics. For example, when teaching a class on the “Muslim Ban,” I used an old episode of *This American Life* that outlined the refugee visa process.³⁴ The episode provided key context for the longstanding issues with refugee visas as well as important insight into the legal issues, including vetting. The use of multimedia also allows students to react to the media and story, making them more comfortable to discuss the issue as opposed to defend their personal position. Once students are actively engaged in the discussion, personal responses and beliefs can be integrated into the discussion more easily. This creates the necessary foundation to explore the tensions between our beliefs, the law, the beliefs of others, and methods for reaching a resolution. Class ends with an emphasis understanding the varying perspectives and that resolution to these problems is unclear.

B. Collaboration Across Legal Fields

It is not uncommon for transactional lawyers in general, or lawyers who work in affordable housing and community development law in particular, to develop extremely narrow areas of expertise: lawyers may come to develop tremendous sophistication and specialization in tax-credit housing finance, green building law, or land use law, and rarely have cause or opportunity to look outside of that specialty. Because that level of specialization and expertise is not always needed in the clinical context, it is comparatively easy for transactional clinicians to tackle novel issues or to collaborate with other lawyers when new issues or crises arise for at-risk communities, communities of color, or low-income communities. For all transactional lawyers, but especially for those of us, like many clinicians, with more generalist practices, it is important to take this opportunity to understand how we can collaborate across practice areas to better understand and serve these communities.

C. Importance of Context

Our experiences at Hofstra Law and WVU Law demonstrate that engaged conversations with our students and colleagues and meaningful legal work that upholds the best values of the legal profession can help us become change agents in the Trump Era. One key to success is crafting a deliberate strategy that allows us to use our areas of expertise to meet the needs of our local contexts. An important theme in both of our clinics is exposing law students to injustice and the role that they may play as

34. See: http://lawprofessors.typepad.com/clinic_prof/2017/02/teaching-the-muslim-ban-through-multimedia-in-a-transactional-clinic.html.

lawyers in helping low-income or marginalized people to obtain justice. This requires our students to meaningfully engage with controversial topics and issues that affect our clients, their owners, members or employees, and their communities. This exposure is part of training the next generation of transactional lawyers to view critical thinking and an orientation toward justice as a part of their professional obligations.

V. Conclusion: How Community Development and Other Transactional Lawyers Can Undertake Similar Work Outside of a Clinical Context

In his article *Transactional Legal Services, Triage, and Access to Justice*, Professor Paul Tremblay argues that while transactional legal services are often seen as less important than litigation when viewed through the frame of triage, the importance of transactional lawyers in the struggle for social justice becomes far clearer when we employ a “long-term, capacity-building, and capital-nurturing metric” as our framework for analyzing the impact that we can play in providing access to justice.³⁵ There are ample opportunities for transactional attorneys to provide critical legal assistance in support of people of color, immigrants, Muslims, LGBTQ communities, and low-income communities that seem to be increasingly under attack in the wake of the presidential election, and it is important for transactional lawyers to recognize that our skills may be used to serve immediate and obvious client needs, but can be just as important when used in support of the longer-term and capacity-building needs of at-risk communities.

Transactional lawyers are needed to provide direct legal services, advise clients on specific topics, and provide broader educational workshops that can provide information to a community desperate to understand new or proposed laws or policies. Some examples include the following:

- Transactional lawyers are needed to help undocumented business owners create succession plans to save their enterprises if they are detained. An immigrant’s business could be his or her life’s work, the main source of income for his or her family, and an important economic driver in his or her town—employing community members, providing key services, and sponsoring Little League teams.
- Transactional lawyers are needed to help employers understand the legal landscape to protect undocumented workers and ensure that their businesses continue to function in the event of sudden changes to their employees’ work status, ICE raids, or other government interference. Transactional lawyers are needed to take on simple contract work, like creating temporary guardianship agreements or powers of attorney to help families regain personal possessions of detained rela-

35. Paul R. Tremblay, *Transactional Legal Services, Triage, and Access to Justice*, 48 WASH. U. J.L. & POL’Y 11, 12 (2015)

tives. If a person is detained while driving the family car, a power of attorney can help that person's partner or spouse recover that vehicle, an essential possession for transportation to work or school.

- Transactional lawyers are needed to provide capacity-building legal support for nonprofits. Nonprofits venturing into working with undocumented communities can be subject to additional scrutiny, emphasizing the need for proper structure and compliance with state laws and IRS regulations. Attempting to participate in the sanctuary movement can have substantial implications for organizations, their governing boards, and even their individual members.³⁶
- Transactional lawyers are needed by the broad network of organizations working with vulnerable communities who are often in need of additional assistance. Many charities and religious organizations are eager to have lawyers staff advice clinics, prepare documents, or hold workshops to educate the community on their rights. Transactional attorneys should explore opportunities to collaborate with these groups.
- Transactional lawyers are needed to adapt the legal toolkits that have been created by law firms, clinics, and legal services groups for one jurisdiction to be useable in other states or localities. For example, our clinics have adapted some of the materials created by the Small Business Legal Clinic at Lewis and Clark Law School, which has created robust educational materials on Business Succession Planning for undocumented business owners in Oregon,³⁷ and the power of attorney form developed by the Arizona-based nonprofit No More Deaths that can be used to reclaim the possessions of detained immigrants and migrants.³⁸

In these and many other ways, corporate and transactional lawyers have the skills to support communities of color, immigrants, Muslims, LGBTQ people, low-income communities, and other marginalized groups at a time of tremendous risk and justified concern. The need for these transactional legal services seem likely to only continue to grow and transactional lawyers should look for opportunities to stand up for those at the greatest risk in the Trump Era.

36. See ICE Letter allowing for reprieve from raids in "sensitive locations," <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>. Note there are specific provisions against harboring undocumented individuals as stated in 8 U.S. Code § 1324.

37. <http://oregonimmigrationresource.org/wp-content/uploads/2015/04/Know-Your-Rights-for-EMPLOYERS.pdf>.

38. <http://forms.nomoredeaths.org/helping-migrants-and-immigrants-recover-detained-money-and-belongings/>, last visited 6/20/17.

