# Building Builders' Clinics

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In some significant part because of the structure of American law, both the private and public sectors underproduce crucial public and private infrastructure in the United States today. Housing, clean energy technology, sewers, and rail, for example, are all exceedingly politically difficult to plan and, not unrelatedly, expensive to build. Scholars, commentators, and practitioners have documented and lamented the role that the law plays in that difficulty. In low-income neighborhoods, the problem is particularly acute as crucial needs commonly well-served in wealthier areas go unmet. The places where poor people are concentrated often lack parks, banks, and full-service grocery stores.

This essay, intended for an audience of law school faculty, administrators, and donors, argues that more experiential law courses should teach students how to represent private and public developers building things, in service of abundance. Building things serves both important public interest and pedagogical purposes. These purposes ought to be served more frequently in the law school curriculum. This essay will describe why faculty should teach clinics that represent developers and how to do it at scale across a range of law schools.

Clinicians, when designing their dockets and syllabi, are simultaneously (a) structuring a public interest practice and (b) engaging in pedagogical decisions about what and how to teach students who are plotting and planning for their own careers in the law. Representing developers, both public and private, fits well into both missions.

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# I. Why Represent Builders

## A. Representing Builders is Important to the Practice of Public Interest Law

Scarcity does not work well for poor people. When resources are scarce, they tend to be allocated to the rich and powerful. The rich are best equipped to access resources allocated on the basis of price and the ability to navigate, and influence, complicated regulations.[2] The powerful, too, can navigate complex bureaucracies that might be indecipherable to average citizens. Scarcity's disproportionate impact on poor people is well-evidenced today by the state of the housing market. Record low vacancy rates are accompanied by record high rents in much of the country, especially in those areas where the law and mandatory public processes make it very difficult to address scarcity by building new housing.[3] Outbid by middle income renters, poor renters bear the brunt of the resulting game of musical chairs.[4]

Law plays a substantial role in creating that scarcity. Laws govern where, how much, and what type of housing can be built. Law constrains the public sector's ability to serve the public. Some of those rules are intended to ensure that buildings are safe and habitable.[5] Codes ban hazardous materials, demand indoor plumbing, and impose minimum standards in order to mitigate the potential harms of fire.[6] Often times, however, laws are untethered from concerns

[2] *See e.g.,* MARTIN GILENS, AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA (Princeton University Press 2012).
[3] *See e.g.,* Jonathan Spader, *Housing Vacancy Rates Near Historic Lows*, U.S. CENSUS BUREAU (May 12, 2012), https://www.census.gov/library/stories/2022/05/housing-vacancy-rates-near-historic-lows.html; *New Report Shows Rent Is Unaffordable for Half of Renters as Cost Burdens Surge to Record Levels*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY (Jan. 25, 2024), https://www.jchs.harvard.edu/press-releases/new-report-shows-rent-unaffordable-half-renters-cost-burdens-surge-record-levels; Allison Hanley, Rethinking Zoning to Increase Affordable Housing, THE NATIONAL ASSOCIATION OF HOUSING AND REDEVELOPMENT OFFICIALS (Dec. 22, 2023), https://www.nahro.org/journal_article/rethinking-zoning-to-increase-affordable-housing/.
[4] Ron Wirtz, *Rental housing markets, Musical chairs, with fewer chairs*, FEDERAL RESERVE BANK OF MINNEAPOLIS (July 10, 2012), https://www.minneapolisfed.org/article/2012/rental-housing-markets-musical-chairs-with-fewer-chairs.
[5] NADA HUSSEIN, VICTORIA BOURRET, AND SARAH GALLAGHER, NLIHC STATE AND LOCAL TENANT PROTECTION SERIES: A PRIMER ON RENTERS' RIGHTS: CODE ENFORCEMENT AND HABITABILITY STANDARDS TOOLKIT 7 (2024).
[6] *Id.*

about safety, environmental considerations, or health, but are instead explicitly intended to ensure scarcity.[7] In fact, the standard state zoning enabling act and many of its surviving progeny aimed to "conserve[e] the value of buildings."[8] The most straightforward mechanism to preserve property values is to ban further development such that current property owners need not compete with any future homeowners. Even when informed by concerns about health, codes often fail to balance costs. Zoning authorities rarely, if ever, assess whether a costly regulation that reduces housing supply is worth the cost.

Not surprisingly, then, as the laws that govern housing production have become more stringent (often in ways untethered from health, safety or environmental goals), housing costs have skyrocketed.[9] High demand cities, from New York to Los Angeles, and their suburbs embraced exclusionary zoning beginning in the 1960's, rendering much of the existing built environment non-compliant with the new rules and ensuring that any new construction would be significantly more expensive (if even possible) than what had come before.[10] Since that time, the average age of a housing unit, often causally related to a unit's condition, has skyrocketed, as have prices. This is particularly onerous for the one-third of households that rent.[11] These households who suffer the consequences of higher rents but never see the benefits of higher housing prices. Renters, in turn, are disproportionately low-income.[12]

In other spheres, law plays a similarly stifling role. Restrictions based on fear of neighbor opposition, rather than on concern for child welfare, often severely limit the number of new day care centers.[13] In the child care sphere, states typically license providers based on their qualifications and their capacity to serve children's health, safety, and educational needs. Those licensing requirements are hardly uncontroversial. Even where they are tied to laudable legitimate policy goals, they are subject to criticism that they go too far, rendering child care

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[7] Adewale Maye & Kyle Moore, *The growing housing supply shortage has created a housing affordability crisis*, ECONOMIC POLICY INSTITUTE: WORKING ECONOMICS BLOG (July 14, 2022), https://www.epi.org/blog/the-growing-housing-supply-shortage-has-created-a-housing-affordability-crisis/.

[8] Standard State Zoning Enabling Act, Section 3, *available at* https://planning-org-uploaded-media.s3.amazonaws.com/legacy_resources/growingsmart/pdf/SZEnablingAct1926.pdf.

[9] Maye & Moore, *supra* note 8.

[10] John Mangin, *The New Exclusionary Zoning*, 25 STAN. L. & POL'Y REV. 91, 91-93 (2014).

[11] Drew Desilver, *As national eviction ban expires, a look at who rents and who owns in the U.S.,* PEW RESEARCH CENTER (Aug. 2, 2021), https://www.pewresearch.org/short-reads/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/.

[12] Peter Mateyka & Jayne Yoo, *Low-Income Renters Spent Larger Share of Income on Rent in 2021,* U.S. CENSUS BUREAU (March 2, 2023), https://www.census.gov/library/stories/2023/03/low-income-renters-spent-larger-share-of-income-on-rent.html.

[13] *See e.g.,* Jarrod Wardwell, *Fairfield day care proposal sparks traffic fears:'You've kicked the hornet's nest*, CT POST (Aug. 21, 2024), https://www.ctpost.com/news/article/fairfield-daycare-nest-greenfield-hill-hillside-19655988.php; *Child Care Providers Overcome Zoning Dispute*, CHILD CARE LAW CENTER (2013), https://www.childcarelaw.org/2022/03/child-care-providers-overcome-zoning-dispute/; Katie Lauer, *How one provider's fight to expand explains the struggle to provide child care in the Bay Area*, EAST BAY TIMES (Aug. 19, 2024), https://www.eastbaytimes.com/2024/08/19/how-one-providers-fight-to-expand-explains-the-struggle-to-provide-adequate-child-care-in-the-bay-area-2/; Ann Schimke, *State bill seeks to combat child care shortages by cutting local red* tape, CHALKBEAT COLORADO (April 12, 2021), https://www.chalkbeat.org/colorado/2021/4/12/22380813/colorado-bill-less-local-regulation-home-child-care/.

expensive and inaccessible.[14] But providers are subject a panoply of *additional* requirements, totally divorced from child-centered policy goals, notably, again, zoning but also private law restrictions imposed by homeowners' associations and landlords and enforced by courts without regard to concerns about public policy. Home-based providers' annual average take-home income is less than $30,000.[15] Centers, whether for-profit or non-profit, operate on razor thin profit margins. Outside of a few discrete corners of the country, there are no free or low-cost legal services available to child care providers. Providers have little or no ability to navigate or challenge these legal processes. As a result, these laws have prevented or shuttered child care centers across the country. Again, undersupply is, in some part, a legal problem.

In other spaces, the law does not do enough. A permissive approach to corporate mergers can result in shuttered banks and grocery stores in low-income neighborhoods as behemoth retailers prioritize those locations in wealthy neighborhoods.[16] Consolidation within the home-building industry has correlated with decreased housing construction in the years since the Great Recession.[17] Competitive markets require anti-trust law and its enforcement. As astute observers have noted, the growing abundance movement requires deregulatory policy interventions but also significantly more administrative capacity inside of local, state, federal government.

In environmental protection, for example, alternatives to fossil fuels require building things. Some regulations unnecessarily stymy important infrastructure while, at the same time, atrophied public agencies lack capacity to build themselves.[18] Whether solar panel and wind farms, transmission lines, and electric charging stations will be built turns not only on government and private financing, but also on law. Today, many regulations and state administrative structures are ill-designed to meet the moment. Meanwhile, the hazards of climate change, most notably increasingly frequent and severe natural disasters, are felt most acutely by low-income people.[19]

Lawyers will be necessary change agents in the growing abundance movement. Addressing scarcity is properly the subject of a public interest law practice committed to addressing poverty and the needs of low-income people. One cannot address the housing crisis, the child care crisis, access to basic needs like banking and healthy and affordable food, or the climate crisis without solving the problem of undersupply. Undersupply is a legal problem and,

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[14] Timothy Lee, *The Well-Meaning, Very Bad Plan to Make Day Care Workers Get College* Degrees, SLATE (Feb. 9, 2023), https://slate.com/business/2023/02/dc-childcare-daycare-college-degree-requirement-criticism.html.

[15] PROFILES OF THE CALIFORNIA EARLY CARE AND EDUCATION WORKFORCE, 2020: FAMILY CHILD CARE (FCC) PROVIDERS 2 (2022).

[16] *See e.g.*, Adrienne Crezo, *Merging grocery giants threaten Americans' food security*, CENTER FOR SCIENCE IN THE PUBLIC INTEREST (Feb. 23, 2024), https://www.cspinet.org/cspi-news/merging-grocery-giants-threaten-americans-food-security.

[17] Ryan Cooper, *The Housing Industry Never Recovered from the Great Depression*, THE AMERICAN PROSPECT (Dec. 11, 2024), https://prospect.org/infrastructure/housing/2024-12-11-housing-industry-never-recovered-great-recession/.

[18] *See e.g.,* MATTHEW EISENSON, OPPOSITION TO RENEWABLE ENERGY FACILITIES IN THE UNITED STATES: MAY 2023 EDITION (2023); J.B. Ruhl & James Salzman, *The Green's Dilemma: Building Tomorrow's Climate Infrastructure Today*, 73 EMORY L. J. 1 (2023).

[19] *See e.g.,* ENVIRONMENTAL PROTECTION AGENCY, CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS (2021).

therefore, lawyers are key to solving that problem. Lawyers are required to navigate regulatory processes and advocate for changes to laws that, today, make it unnecessarily difficult to build. These are ideal projects for a public interest lawyer.

### B. Representing Builders Serves Pedagogical Purposes

Addressing scarcity is also properly the subject of law student education and training. Representing the entities – for-profit, non-profit, and governmental – that construct housing, grocery stores, child care centers, and financial institutions exposes students to a range of legal practice modalities, both regulatory and transactional practice. When a law professor selects projects that are intended to address an unjust status quo, those projects also expose students to preparing matters for the possibility of litigation. Representing builders[20] requires students to analyze multiple areas of law simultaneously. As a result, they can see, for example, how tax law and the building code might work in concert to outlaw a certain building typology even though neither law seeks to erect such a ban. In this type of work, laws and policies that erect barriers come into high relief, as do those laws that facilitate production. This sort of clinic, then, provides important preparation not only to future builders' lawyers but also to future government lawyers, regulators, and litigators. In addition, representing builders requires an ability to collaborate across disciplines, with both laypeople and sophisticated tradespeople and professionals whose expertise is in fields other than law.

#### 1. Representing Builders Teaches a Wide Variety of Crucial Legal Skills

Law students go off to a variety of careers, in legal services, government (local, state and federal), non-profit organizations, and the private sector. Because representing builders requires a lawyer to practice in multiple arenas simultaneously, a builder's clinic prepares them for this full panoply of potential career paths.

The most obvious pedagogical need that a builders' clinic serves is teaching transactional practice. A minority of law school clinics teach transactional skills. Students routinely report to me that they never having read a contract in the first-year course entitled Contracts. The more practical coursebook, Tina Stark's *Drafting Contracts: How and Why Lawyers Do What They Do*[21] is a favorite reading among my clinical students, including those in my litigation clinic, to whom I teach contract drafting so that they understand how to write a settlement agreement.

Transactional lawyering requires drafting and negotiation skills. Drafting and negotiation, in turn, require an attorney to understand the fundamentals of deal. An attorney must know what aspects of the deal are dictated by market forces and which are required by laws and regulations. In between those dictates and requirements, there is space for negotiation. Navigating that space effectively requires the ability to understand a client's needs as well as its leverage. Attorneys must understand transaction costs as well as risk.[22]

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[20] For the remainder of this essay I will refer to these sorts of law clinics as "builders' clinics," but one might also call this mode of practice, "abundance lawyering," situating it inside the burgeoning Abundance movement.

[21] TINA STARK, DRAFTING CONTRACTS: HOW & WHY LAWYERS DO WHAT THEY DO (2d ed. Wolters Kluwer Law & Business 2013).

[22] Carol Goforth, *Transactional Skills Training Across the Curriculum*, 66 J. LEGAL EDUC. 904, 915 (2017).

That said, a builder's clinic is not exclusively transactional. While some clinics focus on one particular forum – housing court or an unemployment compensation appeals board or federal court or the charitable organizations unit of the Internal Revenue Service – a builder's clinic must operate in multiple fora. Seeking a property tax exemption might require a local approval while a sewer tie-in might require a quasi-governmental authority's sign-off. Meanwhile, challenging a zoning denial might land a clinic in state court,[23] before a state administrative agency,[24] or engaged in civil rights advocacy and litigation in federal court.[25] All the while, the real prize is securing all necessary permits so that the builder and its counsel can engage in contract drafting and negotiation with lenders, investors, architects, and contractors.

Many of these areas of legal practice involve lawyering before administrative agencies staffed by non-lawyers. A key legal skill, little acknowledged in much of the law school curriculum, is lawyering before an audience that does not include judges or even other lawyers. A builder's clinic is grounded in this reality. Sometimes it little matters what an environmental regulation says if the bureaucrat tasked with enforcing that regulation reads it differently. A builder's clinic will sometimes decide that it is not necessary to prepare a memorandum on what a convoluted statute, never interpreted by a court, says. Challenging an agency's interpretation may simply not be plausible in the context of the developer's access to financing and their ability to pay pre-development expenses while they wait for all approvals. If all that matters is what a bureaucrat thinks, a builder's clinic will often simply email that bureaucrat and find out what they think the statute means. The clinic might then assess whether the bureaucrat is susceptible to persuasion. Understanding which battles to fight is, itself, is a crucial legal skill.

Especially where a builder's clinic has selected clients and projects that seek to tackle an unjust status quo, a builder's clinic can even prepare students for litigation. A social justice builder's clinic will be willing to fight good fights. Zoning approvals for affordable housing are particularly hard to come by in wealthy neighborhoods where local NIMBYs[26] have the time and self-interest to fight new development.[27] Most affordable housing developers have neither the time nor the money to fight the protracted battles wealthy NIMBYs and their City Hall enablers are willing to wage. Those battles often require challenging or defending zoning decisions in court. As a result, affordable housing development tends to concentrate in under resourced neighborhoods, to the detriment of people who live in those developments.[28]

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[23] Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 FORDHAM L. REV. 1083 (2021).
[24] *See e.g.,* Mass. Gen. Laws ch. 40B.
[25] *See e.g.,* Mhany Mgmt. v. Cnty. of Nassau, 819 F.3d 581 (2nd Cir. 2016).
[26] "Not in My Backyard": while this acronym is typically used as a noun to describe people and groups that seek to prevent development of certain uses in their neighborhoods, as a verb, it describes the process of seeking to prevent development. NIMBYs typically make use of political clout to NIMBY things. They will advocate against zoning, land use, and environmental approvals for developments that they seek to exclude from their neighborhoods. *See e.g.,* Michael Gerrard, *The Victims of NIMBY*, 21 FORDHAM URB. L.J. 495 (1993-1994).
[27] *See e.g.,* KATHERINE EINSTEIN, DAVID GLICK, & MAXWELL PALMER, NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA'S HOUSING CRISIS (Cambridge University Press 2019).
[28] SARAH BOOKBINDER ET AL., BUILDING OPPORTUNITY: CIVIL RIGHTS BEST PRACTICES IN THE LOW INCOME HOUSING TAX CREDIT PROGRAM 1 (2008).

Access to a free lawyer qualified and willing to take up arms to bring affordable housing to wealthy neighborhoods can shift a developer's calculus. Litigation is expensive and time-consuming. Law clinics can address the former but not the latter, unless the simple presence of developer's legal counsel prompts an opposing party to settle or drop litigation. Engaging in regulatory and transactional practice in the shadow of potential litigation is itself a key legal skill. If a lawyer knows that a regulatory approval, or denial, is likely to be challenged in court, it might change the way one approaches the regulator and each and every party entitled to appeal or defend the administrative determination.

### 2. Representing Builders Requires Law Students to Engage with Complexity

Development law is not the only legal field that requires lawyers to engage with complexity but it does sit at an intersection of many different areas of law, requiring lawyers and law students to tangle with multiple regulatory realms simultaneously, many of which are not designed around each other.

In litigation, typically, issues are narrower. Certainly, appellate clinics, in particular, have the luxury of focusing on a limited number of defined legal issues. Like participants in a mock trial or introductory college course, they proceed from a defined arena of readings and sources of law and are at liberty to ignore, for the most part, issues not previously raised. Litigation proceeds from a somewhat more expansive game board but, nevertheless, a complaint sets out a fairly limited set of legal questions and concerns to be addressed.

Transactional clinics that limit their representation to forming small businesses and non-profits, similarly, engage with a confined area of law. Nevertheless, these representations will introduce students to some aspects of the interplay between corporate law and tax law, for example. Choices seemingly about corporate structure and governance will limit and impact a client's choices about tax treatment, for example, and vice versa.

A builder's clinic must practice in many more areas of law simultaneously. This area of law does not permit either "compartmentalization or linear thinking."[29] There is no one area of law that governs building. Building requires navigating real estate and property law, financing contracts, land use and zoning processes, environmental review and permits, insurance law, construction law, and corporate governance. A typical deal will begin with the contracts and title review required to secure site acquisition and ultimately entail forming new business organizations, negotiating dozens of contracts with lenders and contractors, and advocating before multiple state and local agencies required to issue the permits necessary to begin construction. Simply establishing a sensible timeline, one that expedites the process to the extent possible but also uses the client's resources -- time, money, political clout -- efficiently, is a complex task that requires both extensive client consultation and an understanding of how different legal and regulatory processes are likely to proceed, preferably in concert rather than in cacophony.

Legal choices in one realm will affect choices available to a client in another. For example, there may be benefits to establishing a development entity as a tax-exempt charitable

[29] Susan Bennett, *On Long-Haul Lawyering*, 25 FORDHAM L. REV. 771, 782-783 (1998).



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non-profit but doing so will then require additional complexity when using a financing stream based on corporate tax credits. Because the non-profit has no tax liability to offset, it will require a partner who can use tax credits. That in turn might compromise a development project's eligibility for property tax relief depending on how local property tax ordinance and state statutes are drafted. A client's ability to navigate these choices will require knowledgeable and thorough legal counsel. And one can easily see how lack of access to such counsel might prompt a community organization to turn away from development and instead to focus on other activities that, while worthwhile, leave the problem of undersupply unaddressed.

### 3. Representing Builders Teaches Law Students to Collaborate

In addition, representing clients that build things – whether housing, grocery stores, or clean energy infrastructure – teaches students to collaborate, not just with other lawyers and clients but also, importantly, with other professionals, from contractors to accountants. Law students frequently cite collaboration as a key professional skill that they hope to develop by taking a clinic. While they may be focused on learning that skill by collaborating with other students, it is even more important that they learn to collaborate with non-lawyers, whether clients or other professionals.

Building requires various professionals working in concert. A builder relies heavily on their lawyer but also on their engineers, environmental professionals, architects, and contractors. A lawyer seeking to secure for state and local regulatory approvals will work alongside these professionals to assemble an application. While the lawyer must understand the applicable legal criteria and standard of review, these other professionals will provide the components necessary to compile and complete the submission.

Of course, in addition to working with other professionals, it is crucial that students learn to collaborate with clients. Translating the law for non-lawyers is a key legal skill. Legal ethics 101 requires that lawyers not make business decisions for their clients. A client's ability to make an informed business decision, in turn, requires the lawyer to accurately and effectively describe the relevant legal landscape. What laws constrain the client's choices? How do those constraints operate in context? What is the process applicable to various regulations and permits? If a lawyer cannot effectively communicate with a client, the client cannot make an informed business decision and a lawyer has failed to meet their ethical obligations.

Understanding the ways in which law constrains clients' plans and goals is central to being an effective, creative lawyer. Similarly, law students must understand the way in which paper legal solutions might not work for a client facing other constraints, say timing or financial. While a regulatory denial might be subject to appeal, for example, a client might decide not to enforce its legal rights in court because doing so will expose a project to excessive pre-development costs and risk. Instead, a client might be willing to walk away from a project even when a lawyer might believe that legal relief is available and when doing so will only further exacerbate a pernicious undersupply. Or the client might be willing to make concessions, say fewer affordable housing units or wind turbines, in exchange for a quicker regulatory approval, even if a lawyer is certain that the client could prevail on appeal.

### 4. Representing Builders Introduces Students to Community Lawyering and Group Representation

Relatedly, representing builders requires students to develop some literacy in community lawyering. Any one person acting alone can NIMBY a proposed development, but only an organized group can build it. Even when a NIMBY purports to be acting on behalf of a community group, sometimes that community group was erected solely for the purpose of engaging in NIMBYism, thus laundering a small group's opposition through an astroturf organization. Building things, on the other hand, requires an entity with capacity and sufficient support from funders and others to see a project through to competition. Successfully completing a project also requires an extensive and thorough mapping of legal and regulatory structures and *power*.

As is the case with community lawyering more generally, representing builders helps law students to develop a healthy humility when it comes to their own professional skill set and the role of the law more broadly. For builders, lawyers are just one tool and they are never the primary solution to the problems builders face. Law is sufficiently secondary or tertiary that developers' lawyers must collaborate with other problem-solvers.

As a result, clients are not simply powerless vehicles that allow the lawyer to get into court. Clients sit in the driver's seat. Lawyers are necessary to identify and then decrease or eliminate barriers, but they cannot drive the bus. Instead, a client must prioritize its goals, which might include balancing across various projects, only one of which might be on a clinic's docket. Lawyers and clinics must communicate with their clients regularly. The clients know the current status of discussions with lenders and investors. They are engaged in diligence to determine whether development is feasible given soil conditions and lumber pricing. In a litigation matter, the client typically waits on updates from the lawyer. In a development deal, the relationship is more of a back-and-forth between the lawyer and client, each updating the other on its progress towards the client's ultimate goals.

This type of lawyer-client relationship can raise interesting ethical questions. What is a strategy decision and what is properly a business decision? Where a community-based coalition is advancing a development, how should a clinic define the client?[30] Where a member of the group is the primary client contact but a board or other body is responsible for governance, how should a lawyer interact with the client? How should a lawyer act when the primary client contact seems to be at odds with the governing board?[31]

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[30] See e.g., Michael Diamond and Aaron O'Toole, *Leaders, Followers, and Free Riders: The Community Lawyer's Dilemma When Representing Non-Democratic Client Organizations*, 31 FORDHAM URB. L.J. 481 (2004).

[31] *See* Model Rules of Prof'l Conduct R. 1.13(b) ("If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization").

#### 5. Representing Builders Introduce Students to the Law's Failures

What is the lawyer's role when it is the law itself that gives rise to injustice? This Essay will not endeavor to tackle that very complex question. Clinics, however, are ideal laboratories for considering it, for "engag[ing] in routine critique of [one's] lawyering practice."[32] And builders' clinics, for all the reasons described above, force the question. As the field of Law and Abundance develops, clinics will be an ideal forum in which to teach it, as law clinics require students and faculty to imagine how best to change the ways in which law and lawyering contribute to scarcity.

There are very good reasons to embracing builder's clinics. The next section will acknowledge some of the barriers to doing so.

## II. Barriers to Representing Builders in Clinics

There are, of course, barriers to teaching clinics like these. The law school calendar does not align neatly with the sometimes-unpredictable timelines on which deals evolve and close. Deals proceed on an unpredictable timeline. There are no rules of civil procedure to govern the process. Rules of evidence do not apply to many of the administrative procedures that govern permitting. The legal processes associated with building are difficult to align with the academic year.

Building things often requires practicing at the intersection of different areas of law. Real estate law, a necessary component of all of these deals, is undervalued in elite law schools. While all law schools offer clinical coursework, the elite law schools tend to supply the faculty. It is also a "local practice," governed in some significant part by local law and customs, while academic hiring markets are often national. Properly representing a housing developer might require real estate, land use, corporate, and tax expertise. That can mean that a clinic might need more than one faculty member, a hard sell when law schools are already resistant to funding the faculty necessary to accomplish the student/faculty ratios required to operate in-house clinics. And the right candidate to teach the clinic might not check off other typical faculty selection checklist items, such as federal clerkships or legal scholarship.

Faculty might worry that students will find it difficult to manage deals with lengthy checklists outlining hundreds of documents to be delivered at closing. "Nondirective teaching" is generally accepted to be "the way of clinical education."[33] In a nondirective experiential course, students take the reins and supervising attorneys and faculty "interven[e] as little as possible…limiting the amount of explicit guidance."[34] This approach works best when client matters are confined to a small number of research and questions and deliverables, such that a novice can claim ownership of the matter. It also works well where the range of legal issues is

[32] Etienne Toussaint, *The Miseducation of Public Citizens,* 29 GEO. J. ON POVERTY L. & POL'Y 3 287 (2022).
[33] *See e.g.* Serge Martinez, *Why Are We Doing This? Cognitive Science and Nondirective Supervision in Clinical Teaching,* 26 KAN. J.L. & PUB. POL'Y 24 (2016); Michele Gilman, *Ten Empowering Strategies for Nondirective Clinical Supervision,* 31 CLIN. L. REV. 211 (2024).
[34] *Id.*

predictable and can be introduced in the seminar portion of clinic, or even a pre-semester "boot camp," early in the semester.

Larger, more sprawling matters are less amenable to a nondirective approach. A representation that begins as a simple land acquisition will evolve to require construction contracts and land use approvals, sometimes on tight timelines. Effectively managing the representation will require a faculty member to take the lead and engage in directive teaching, at least in the short term, deliver a crash course to students on a discrete area of law, procure co-counsel, or some combination of all three. Directive teaching is making a comeback, even in clinical circles, in part because education and pedagogy research suggest that it can be more effective than nondirective approaches.[35] Nevertheless, it remains the minority position and builders' clinics will likely be required to deviate from it.[36]

There are other secondary and tertiary concerns. Some law clinics do not have lawyers' trust accounts and cannot handle client funds. Others are not permitted by their universities to provide opinion letters to counterparties, a basic element of closing a transaction.[37] Law clinics, generally taught by left-of-center upper-middle-class elites, are susceptible to the same skepticism of "developers" that informs homeowner NIMBYism more generally. In fact, our clients' neighborhoods were often the very places trampled by mid-20th century redevelopment efforts, the tragedies and travesties that in turn prompted, perhaps in overreaction, the anti-development policies that feed scarcity today.[38] Some law faculty and public interest lawyers wrongly assume that these deals include subsidies that permit reimbursement for legal fees so that pro bono services are not required.[39] The primary barriers, however, are calendar and complexity and both will be addressed in the next section, in which this Essay will describe how one might go about building the builders' clinic.

## III. Building the Builders' Clinic

The goals described in Section I are worth serving and the barriers described in Section II are surmountable. More law school clinics should build things and this Section III will explain how. I will first describe some foundational principles and building blocks. I will then describe the work of the relevant clinics at my own institution.

[35] *See* Martinez, *supra* note 37.
[36] Thank you to Adam Cowing for this excellent point.
[37] Thank you to Andrew Foster for these important observations. His clinic at Duke University solves both problems by working with co-counsel, which itself has benefits for students and their collaboration skills.
[38] Lemar, *supra* note 25 at 1094-1097.
[39] This is true only if a deal successfully makes its way to closing and then only if the fees are quite limited, typically feels related to the financing closing and a few simple real estate law basics. In the case of many matters, however, the representation is protracted and the road to closing is sufficiently difficult that the closing might never occur. In these cases, when one is working with community-based clients or clients seeking to address undersupply by building things that are hard to build, the permitted line item for attorney's fees will not cover costs. And the closing might never occur. As a result, at the beginning of a deal, when a closing is hardly a certainty, it will be hard if not impossible for low-capital community-based developers to attract counsel.

### A. Building Blocks

The building blocks described here are designed to ensure that a builder's clinic serves its pedagogical and social justice purposes while also addressing some the barriers described in Section II.

#### 1. Social Justice Goals

Many of the first transactional law school clinics were community development clinics, representing community-based builders. Only later, in part because of the support of funders like the Kaufman Foundation and a burgeoning interest in "entrepreneurship" did most transactional clinics represent for-profit businesses. As one clinician put it in 2010, "'entrepreneurship' is a sexy word."[40] These clinics initially focusing on small businesses but some expanded their scope to providing free labor to biotech start-ups and multinational corporations.[41] Sometimes they validated the provision of free legal services to these entities as a service to the university, by limiting service provision to graduate students starting their own ventures.[42] In other cases, they promised to prioritize women- or POC-led businesses, whether or not the women and people of color in question were quite well-resourced.[43] Finally, some dismissed entirely the idea of public interest or social justice, arguing that pedagogical goals could not be served alongside public interest goals. By 2011, just one-third of transactional clinics were community development clinics. Today, of those that are community development clinics, a small number represent builders.

For some years, there was a debate in the clinical legal scholarship and at a seemingly endless string of panels and discussions at clinical teaching conferences about the relationship between social justice or public interest lawyering goals and teaching transactional lawyering skills.[44] Underlying the conversation was an assumption that the two goals were in tension. Some clinical teachers assumed that social justice transactional clinics, focused on representing non-profits and small businesses, could not expose students to the complexities and intricacies of

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[40] Praveen Kosuri, *Clinical Legal Education at A Generational Crossroads: X Marks the Spot*, 17 CLIN. L. REV. 205, 219 (2010); *See also* Paul R. Tremblay, *Transactional Legal Services, Triage, and Access to Justice,* 48 WASH. U. J.L. & POLICY 11 (2015) ("Law school clinics dedicated to entrepreneurship and small business development have proliferated in the past fifteen years").

[41] *See e.g.* Monika Wnuk, *Pritzker law students build legal skills by serving small business owners,* NORTHWESTERN UNIVERSITY (2025), https://www.northwestern.edu/innovation/innovation-at-northwestern/dplc.html.

[42] *See e.g. Entrepreneurship Clinic*, MICHIGAN LAW (2025), https://michigan.law.umich.edu/academics/experiential-learning/clinics/entrepreneurship-clinic-0.

[43] *See e.g. Entrepreneurship and Innovation Clinic Becomes a "Secret Weapon" for Clients,* YALE LAW SCHOOL (Jan. 4, 2021), https://law.yale.edu/yls-today/news/entrepreneurship-and-innovation-clinic-becomes-secret-weapon-clients ("The [Yale] Clinic seeks to provide guidance and resources to support first-time, academic, and women and minority founders and entrepreneurs").

[44] *See e.g.* Kathryn Fanlund, *Law Schools' Role in Increasing Access to Justice,* AMERICAN ASSOCIATION OF AMERICAN LAW SCHOOLS (2015), https://www.aals.org/about/publications/newsletters/aals-news-august-2015/increasing-access-to-justice/ ([Prof. Peter Edelman, addressing the 2015 AALS Conference on Clinical Legal Education, on increasing access to justice]: "Specifically, we need more clinics that connect lawyers to low-income communities and provide representation not only on an individual basis, but also by way of activities that help to build community, in terms of empowerment and concrete transactional projects.").

real-world transactional practice. Therefore, they argued, a focus on pedagogy required clinicians to dismiss a commitment to public interest lawyering in favor of maximizing student learning.[45]

This Essay argues otherwise. It is possible to teach students real-world, complicated transactional lawyering and simultaneously use law school resources to advance the public interest. Certainly, the formation of a typical non-profit organization is not particularly complex. Even when a client itself is doing interesting work, arguably, charitable organizations law is less complex than is corporate law because it does not raise the same array of questions regarding finance, nested structures, and tax implications.

Even if that is true, however, public interest development law is an entirely different story. Non-profit developers rarely work alone. This field requires engaging with complicated deals involving multiple entities, multiple streams of financing, and tax implications. Contemporary community development policy maximizes the use of private capital so as to stretch public dollars. For example, the largest affordable housing subsidy today is a federal tax credit that requires that equity investors in affordable housing transactions be for-profit entities with significant federal corporate tax burdens.[46] The resulting transactions are complex and introduce students to a wide array of corporate and real estate finance concepts. It is entirely possible to square one's pedagogical goals with a desire to work in the public interest.

To do so, client selection is of utmost importance. One must select clients with the internal desire, mission, and – importantly – capacity to build things. Conveniently for these purposes, many community development funding programs and deal structures enable partnerships between grassroots community-based organizations and sophisticated repeat players. These programs are designed to maximize both developer expertise and community representation. Local grassroots organizations bring important components to these deals, typically they enjoy priority for certain funding streams, they can access free or low-cost land from local governments that value their clout and connections, and they can provide crucial assistance in navigating local approvals processes.

Clinics that do this work typically specialize in representing community-based organizations negotiating partnerships and collaborations with better-staffed and financed partners, whether for-profit or non-profit.[47] Representing the community-based partner allows a clinic to tackle many or all of the legal barriers to development while limiting the provision of free services to a party that could not otherwise afford legal services. In fact, when pro bono legal services are not available, community-based partners typically go without an attorney, relying instead on their development partner's counsel, potentially to the detriment of the community-based partner and the ultimate beneficiaries of the development. Without counsel,

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[45] Praveen Kosuri, *"Impact" in 3d-Maximizing Impact Through Transactional Clinics*, 18 CLIN. L. REV. 1, 9 (2011) (describing the shift from CED clinics to entrepreneurship clinics as an effort to "meet law student demands for transactional skills training that reflected the reality of being a corporate lawyer").
[46] I.R.C. § 42 (2025).
[47] Jeff Leslie, *Representing the Community Partner in Joint Ventures Utilizing Low Income Housing Tax Credits*, 32 J. AFFORDABLE HOUSING & CMTY. DEV. L. 381 (2024).

the community-based partner might surrender too much control over project design and too much of the financial benefit of a deal to its more sophisticated partner.

When taking on a community-based partner as a client, one need not select clients with a long history of development. It is imperative, however, that a clinic find clients with the will and capacity to develop things so that the representation does not come to an abrupt end when the client loses interest in a project. As described above, access to free legal services does not address all or even most of the barriers to developing and addressing undersupply. The client may not have substantial financial resources or even paid staff, but its governing body must be committed to a development project as a goal.

In addition, it is crucial that in selecting clients, a builders' clinic does not inadvertently choose clients that might make bad law. Once an organization is a clinic client, the clinic has a duty of zealous representation. Prior to taking on a client, then, a clinic must consider the policy implications of a matter. It must also consider who, on the ground, the clinic's and the clinic's client's allies would be. The clinic might decide that there are types of projects it will not support. For example, in the case of my own community development clinic, we have developed some in-house policies that we follow when taking on new matters. We do not engage in NIMBYism. If a community-based organization seeks to kill a proposed development, however earnestly it may believe that the development is detrimental, we do not do that work. First, doing so might require us to create bad precedents or law. Second, NIMBYing developments does not serve our pedagogical purposes, it simply does not involve the kinds of law we hope to teach. In addition, we do not build affordable housing designed to tiptoe around suburban NIMBYism. Often times, tony Connecticut suburbs will tolerate affordable housing only when it is built exclusively for senior citizens[48] or incorporates resident selection processes that prioritize people already living or working in the suburbs.[49] These factors are often an attempted end-run around the Fair Housing Act's prohibitions on discrimination based on race and familial status. While they might make it easier for a developer to build, for both pedagogical and social justice purposes, we limit our provision of free legal services to clients doing the hard work of building important infrastructure, in this case family housing, even in the face of local opposition.

#### 2. Addressing Barriers

The barriers to erecting builder's clinics, calendar and complexity, are surmountable though they do require, of course, the will to do so on the part of both faculty and administrators.

Complexity can be addressed in a few ways. Faculty, of course, must have substantial practice experience representing developers. Even then, clinic fellows, co-teachers, and adjunct faculty can supplement the primary faculty's area of expertise. To serve this purpose, fellows must also have substantial practice experience. When a builder's clinic must tangle with esoteric tax code provisions or thorny environmental regulations not in the primary faculty's area of expertise, the clinic might seek out relevant adjunct faculty or pro bono co-counsel. The fact that

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[48] *See* Rubin Biggs and Patrick Holland, *Familial-Status Discrimination: A New Frontier in Fair Housing Act Litigation,* 132 YALE L. J. 792, 795 (2023).
[49] Lisa Prevost, *A Fair-Housing Inquiry in Darien,* NEW YORK TIMES (Oct. 8, 2010), https://www.nytimes.com/2010/10/10/realestate/10wczo.html.

a law school clinic is providing pro bono services might inspire local law firms or other professional to provide services pro bono.

Clinical faculty may find assistance close to home, inside the law school itself. Doctrinal faculty, particularly if they have had practice experience, often have interest in dipping a toe into clinical teaching.[50] They might provide occasional advice and counsel. Deeper more meaningful engagements are also possible. Alina Ball, a transactional clinical professor, and Manoj Viswanathan, a doctrinal tax professor, have written about their experience teaching a one-semester experiential practicum that provides tax legal services to businesses served by Professor Ball's transactional clinic.[51] The practicum operates one semester each year and provides business tax advice. The practicum's client base is limited to Professor Ball's existing clients. The practicum permits Professor Ball to draw on Professor Viswanathan's tax expertise. As they point out, one could imagine similar arrangements between clinicians and faculty in other areas, such as environmental, bankruptcy, or business organizations law.

Calendar, oddly, can be a tougher nut. As clinician Susan Bennett puts it, "clinic time doesn't accord with community time."[52] Whether that nut can be cracked might turn on faculty's willingness to provide legal services outside of the confines of the academic calendar. This is not particular to builder's clinics, but the problem is particularly acute. While a housing court matter or unemployment compensation appeal can often times be resolved inside of a semester, this is simply never going to be the case of development projects. If a clinic can successfully recruit pro bono co-counsel, this can help to address gaps in service provision between semesters and during faculty sabbaticals. Hiring summer interns, granting credit for fieldwork done between the fall and spring semesters, or offering a summer session can help as well.

All that said, there will be times when the requirements of a deal simply require faculty to take the lead on a closing or land use application that, inconveniently enough, requires substantial legal work in August or December. There are benefits to faculty taking the lead on portions of the legal work during times of the year when students are not available. It is not loudly acknowledged among clinicians, but those of us who practiced for many years prior to becoming teachers quietly know that clinical teaching makes a lawyer rusty.[53] The volume of lawyering work we see as teachers simply pales in comparison to the amount of work that we handled while in practice. Because we lawyer alongside students, we take on fewer cases than we would have handled when collaborating with other experienced lawyers. We spend many hours writing law review articles and recommendation letters rather than contracts. We counsel students when we might otherwise have been counseling clients. As a result, we see fewer deals and documents, we are less likely to stay on top of new developments in the marketplace and in the law, and we lose some of the muscle memory involved in reviewing an operating agreement

[50] Doctrinal faculty were instrumental in the development and evolution of what is now the Community and Economic Development clinic at Yale Law School; *See e.g.* ROBERT SOLOMON, LAW STUDENTS NURTURE LOW-INCOME COMMUNITIES (2010).
[51] Alina Ball and Manoj Viswanathan, *From Business Tax Theory to Practice*, 24 CLINICAL L. REV. 27 (2017).
[52] *S*ee Bennet, *supra* note at 29.
[53] It is not loudly acknowledged, nor is it uncontroversial. Those of you who took the time to read and comment on drafts of this paper were sharply divided on this point. Michael Haber suggested that this paragraph might merit its own stand-alone piece (this is not to suggest that he agreed with it). Writing that piece would, of course, require me to represent fewer clients.

or a commercial lease many times each month. And we are not in front of the cases that we do supervise. Instead, we spend many hours reviewing many student drafts. We prepare students to be the face of the client representation when the time comes to meet with a client, present evidence at a hearing, or cross-examine a witness. That preparation is much more time-consuming than it would be simply to handle those tasks on our own. Periodically, occasionally, taking the lead on a matter is an important refresher for a longtime clinician. Writing your own draft is simply a different skill than reviewing someone else's.

### B. Examples of Builder's Clinics

A few law school clinics already do this work, sometimes exclusively and more often alongside other types of community development work. This Essay will describe those clinics and, importantly, how they differ from other transactional clinics that represent small businesses and non-profit organizations or provide externships at large corporations.

#### 1. Affordable Housing Development

While most transactional clinics today represent small or start-up enterprises, "the earliest transactional clinics were focused on housing and community economic development law."[54] These clinics represented clients building infrastructure in low-income communities. They were builders' clinics.

Of the three earliest transactional clinics, two – at Antioch School of Law and Georgetown Law School – were housing development clinics.[55] Using transactional legal clinics to build affordable housing aligned neatly with the desire to deploy free law student and faculty labor to serve the public interest. The transactions served the needs of low-income people, the same populations likely to be served by litigation clinics. And affordable housing developers are often community-based or non-profit organizations, again a comfortable fit for a public interest practice.

In fact, students interested in solutions to the systemic problems faced by their homeless clients pushed faculty at Yale Law School to start the Housing and Community Development Clinic (HCD) in the late 1980s.[56] Clinical students and faculty at Yale Law School have long represented low-income people facing eviction. As described by HCD's founding faculty, "[i]ndividual and impact litigation proved to be an effective method of keeping many New Haven residents in their homes and guaranteeing them their full slate of entitlements. Still, there was a sense at LSO that litigation attacked only the symptoms of a deeper, systemic problem."[57]

HCD formed in response to that concern tackled a broad range of legal and other work in service of housing development. Early clients included "Habitat for Humanity, Inc., Mutual

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[54] Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools*, 43 WASH. U. J.L. & POLICY 85, 87 (2013).
[55] *Id.* at 94-95.
[56] James S. Rubin & Robert A. Solomon, *Learning and Serving the Community: Yale Law's Housing Development Clinic,* 2 J. AFFORD. HOUS. & COMMUNITY DEV. L. 15 (1992).
[57] *Id.*



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Housing of South Central Connecticut, local church groups, an AIDS residence, and a developer of surplus military housing," as well as start-up non-profit affordable housing developers in New Haven and its suburbs.[58] Students "navigated… local zoning and variance procedures, past local legislative and executive bodies, and through state and banking bureaucracies."[59] With clinic support, one non-profit suburban developer raised "over three million dollars from the State [of Connecticut] to build housing in [a well-off suburb] that will be rented at less than three hundred dollars a month."[60]

Over time, the clinic adjusted to changing market conditions. First, the clinic evolved from a focus, driven by the homelessness crisis of the 1990s, on transitional and supportive housing to more permanent forms of affordable housing.[61] When the real estate market softened in the early 1990's, the clinic embraced other forms of community building work, including negotiating a memorandum of understanding for a consortium of banks funding the work of a recently-formed loan fund.[62]

Housing development has nevertheless been a consistent focus and mission for the clinic over the decades. Early clinic students wrote "a 200-page primer for the formation of Shelter-type clinics at other law schools."[63] In it, they discussed the lawyer's role in their community, basic corporate and charitable organizations law, site selection and acquisition concepts, financing and closing, and best practices in management. Even then, some decades before anyone thought to coin the term YIMBY, they described the importance of client selection. They described working with one group formed in reaction to, rather than in furtherance of, development and noted "[t]he obvious danger in helping such a coalition is that it could be used as a powerful vehicle to stop favorable development projects, such as low-income housing and drug rehabilitation centers."[64] They recognized that in the course of community development work, there can be a "tension between being accountable to a client, while at the same time being responsible to the client's beneficiaries."[65]

Those concerns remain today. The clinic has been in constant operation since its founding though it is now called the Community and Economic Development Clinic. I have taught it since 2013. Today the clinic represents affordable housing developers in both New Haven and its suburbs. On behalf of those clients, the clinic engages in a wide array of transactional and regulatory work. Students negotiate site acquisition, draft contracts with architects and contractors, apply for land use approvals (and sometimes defend those approvals in court), negotiate financing and equity documents, and handle complicated closings involving both public and private funders.

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[58] *Id*.
[59] *Id*.
[60] Rebecca Arbogast et. al., *Revitalizing Public Interest Lawyering in the 1990's: The Story of One Effort to Address the Problem of Homelessness*, 34 HOW. L.J. 91, 107 (1991).
[61] See Rubin & Solomon, *supra* note 62.
[62] *Id.*
[63] *See* ADAM BERGER ET AL., HOMES FOR THE HOMELESS: A HANDBOOK FOR ACTION (Carolina Academic Press 1990).
[64] *Id.* at 28.
[65] *Id*. at 28.

The Clinic's work exposes students to many of the legal barriers to housing development. In connection with more than one project, students have witnessed the concessions clients will make in an effort to secure land use approvals from suburban land use authorities. For example, in a desperate effort to build affordable housing, clients, particularly those seeking to build in well-resourced, well-off, well-NIMBY'd neighborhoods and towns, routinely decrease the number of units they will build. We see this in practice but the universality of this kind of concession is documented in the literature.[66] Clients will agree to limit new housing units to occupancy by those subgroups of poor people considered least offensive to well-heeled zoning board members. As such, students are exposed to fair housing considerations from the perspective of developers seeking to ensure that necessary units are built but not on the backs of concessions that violate fair housing law, internal organizational policies, or the moral qualms of individuals working on these deals.[67]

Students are exposed to extralegal efforts by local governments to block housing, even housing that, on paper, ought to be permitted as of right. For example, powerful housing opponents will seek to deploy sewer policies or historic preservation laws to put an end to proposed housing developments. In response, students have been forced to deploy fair housing or other affirmative tools to push development.[68] They have also been prompted, by the clinic work, to delve into the details of policy and then to develop normative takes on law reform not only through policy work but also in their own scholarship.[69]

Most of our students do not become real estate lawyers. Their work in the clinic, nevertheless, informs their future work as housing lawyers, environmental advocates, governmental lawyers, and corporate associates. Closing deals, understanding the interplay between various seemingly unrelated regulations, respecting clients, and collaborating with people with various kinds of expertise are all key skills for many different kinds of lawyers. Developer representation introduces students to all of these skills while serving an important public interest. A key benefit of this work is that those aspects of law that are barriers to development come into high relief, as do those aspects of law that facilitate projects getting built. As a result, students who go on to careers in impact litigation, policymaking, or regulatory enforcement can draw on their own experience navigating the law on the ground as they seek to effectuate more systemic reforms.

Yale's is, of course, not the only builder's clinic. At the University of Chicago School of Law, the Housing Initiative Transactional Clinic "works with clients to build new housing for low-income people."[70] The clinic works exclusively on residential real estate transactions, from single family home renovations to multimillion dollar affordable multifamily rental buildings.

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[66] Einstein et al., *supra* note 28.
[67] *See* Biggs & Holland, *supra* note 54.
[68] *See* Daniel Chapple, *Relief for Those Who Need It Least: How Conn. Gen. Stat. Sec. 8-30g's Moratorium Provision Rewards Towns in Addressing Housing Segregation in Connecticut and Offers Lessons for the Nation,* 29 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 299, 315-316 (2020-2021).
[69] *See* Eric Stern, *A Federal Builder's Remedy for Exclusionary Zoning*, 129 YALE L.J. 1516 (2020); Nathan Cummings, *Septic Shock: Wastewater Infrastructure, Urban Growth, and Local Exclusion,* 41 YALE L. & POL'Y REV. 170 (2022); Biggs & Holland, *supra* note 54.
[70] *Housing Initiative Transactional Clinic*, THE UNIVERSITY OF CHICAGO LAW SCHOOL (2025), https://www.law.uchicago.edu/clinics/mandel/housing.

Students work on corporate structure and governance as well as contracts relating to financing and construction.[71] Students in the Entrepreneurship and Community Development Clinic the University of Texas at Austin have represented community-based developers building single-family homes. Duke's Community Enterprise Law Clinic represents clients in community development transactions.

There is a vein of community development work that supports, for example, tenants purchasing the existing buildings in which they live. For many years, a clinic at Georgetown Law School represented tenants purchasing their buildings pursuant to Washington, D.C.'s Tenant Opportunity to Purchase Act, which gives tenants a right of first refusal on the buildings in which they live. That clinic served an admirable purpose but acquiring existing housing does not expose students to the same array of issues faced by clients seeking to build new housing. Other community development clinics sometimes engage in development, but only occasionally and only alongside a panoply of other sorts of work, including opposing certain kinds of development and engaging in policy work.[72] In fact, there may be more community development clinics today that oppose development than that advance it.[73]

It is important to note, that much of the student learning here happens through representing clients in the development process. While clinics not squarely focused on development can introduce students to some of the types of work relevant to building – seeking financing, creating corporate structures, etc. – they will not expose students to the full panoply of legal and regulatory barriers that must be surmounted in order to build.

### 2. Serving Community Needs

For over thirty years, CED has represented clients building things other than housing.[74] Thirty years ago, HCD worked with residents in New Haven's Dwight neighborhood to form the Greater Dwight Development Corporation, a community development corporation.[75] GDDC sought to address two important neighborhood needs. The neighborhood was a food desert, lacking easy access to a full-service grocery store. It also lacked high-quality early childhood education. HCD represented GDDC through its formation, development and financing of a shopping plaza, lease negotiations with a full-serve grocery retailer and other tenants, and land use and environmental issues. It also represented GDDC in connection with the formation and operations of an early childhood Montessori school. Both the shopping plaza and early childhood center are thriving today. In fact, a current clinic project is assisting with the center's expansion

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[71] The University of Texas School of Law and Duke University also house clinics that routinely represent developers. The University of California at Irvine also has this capability.

[72] *See e.g.* Anthony V. Alfieri, F*aith in Community: Representing "Colored Town",* 95 CAL. L. REV. 1829, 1835 (2007).

[73] *See e.g.* Sheila Foster and Brian Glick*, Integrative Lawyering: Navigating the Political Economy of Urban Development*, 95 CALIF. L. REV. 1999 (2007).

[74] *2021 Law School Access to Justice Conference: Fighting Systemic Racism: Law School and Community Partnerships* (2021), https://nycourts.gov/LegacyPDFS/accesstojusticecommission/A2J_1C_Transcript.pdf.

[75] A community development corporation is a neighborhood-based non-profit organization whose mission is to bring infrastructure and amenities to under resourced communities. Driven by both need and available funding, many CDC's efforts revolve around housing but they also work to build retail, including grocery stores, child care facilities, and financial institutions, for example.

to a nearby second site, where two units of workforce housing intended to serve teachers will also be located.

CED's clients also seek to build recreational infrastructure. The clinic represented a non-profit entity organized to operate a newly-constructed boathouse on the New Haven waterfront. The legal work included negotiating site acquisition and disposition documents that addressed the interplay between public and private financing.

Finally, our clients are not always non-profit organizations. Sometimes they are small businesses that provide a critical ladder to opportunity for their founders and important services to their communities. Home-based child care providers are a prime example. Over the years, we have represented many such providers seeking to keep their doors open despite the best efforts of zoning officials, landlords, condominium boards, and homeowners' associations. For years we consulted home-based child-care providers bumping up against local zoning requirements that made it difficult to start or expand their businesses. We sometimes provided brief advice and we sometimes provided full representation in connection with the land use and zoning process. We have also worked with providers whose primary obstacle to starting or expanding their business is a difficult landlord or condominium/homeowners association. Students have prepared zoning applications and appeared before zoning officials, negotiated lease amendments with landlords, and represented clients before and against homeowners' association boards. In all of these cases, students are exposed to the immense legal difficulties – grounded in both public and private law – often faced by small businesses.

It is very tempting to seek to address the systemic issues underlying their travails. We do not, however, undertake public policy work without a client who has prioritized legislative advocacy. Policy changes do not generally occur simply because advocates are correct, but, more often, because advocates have amassed power. While the clinic can help to establish that a policy change is correct, only our clients can amass power. When clients are interested in that work, we are very interested in helping them. In the case of our home-based child care provider clients, eventually, the problem became sufficiently prevalent that one of our non-profit clients sought out systemic reform. On their behalf and alongside some of the individual day care providers we had represented, we worked on a fix in state law that would limit the ability of zoning officials, landlords, and condominium/cooperative/home owners association boards to shut down or prevent the opening of home-based child care that was otherwise properly licensed by the State of Connecticut. That work came to a head during the 2021-2022 school year, during which we represented three different home-based child care providers in their individual matters while also working on state legislative advocacy. While the bill signed into law the following year, in 2023, did not accomplish everything our clients sought to change, it was an important improvement. Students were invaluable in drafting bill text, meeting with legislators and answering their questions, writing policy reports and one-pagers, and delivering public testimony. Importantly, our years of direct client representation -- experience navigating local zoning processes and the state's building code processes -- made us much stronger, smarter advocates for systemic reform.

### 3. Interdisciplinarity

For many years, CED was an intentionally interdisciplinary clinic. "The founders of HCD envisioned an organization that could supply developers with services in a variety of areas, not just legal work. HCD's roster has always included students from Yale's School of Organization and Management, the School of Art and Architecture, and the School of Public Health. Indeed, only half the participants in [the Fall of 1992] clinic are law students."[76] Today, CED continues to accept applications from other graduate schools at Yale but it is no longer the case that half of all students are non-law students. At most, one student in a given semester will be studying a discipline other than law.[77] That said, the law students in the clinic continue to learn, in the clinic, how to collaborate with professionals in other fields. When our students file, for example, a site plan application, they are required to work closely with civil engineers. That work will expose students not only to some of the substantive ways in which environmental laws, say about stormwater retention, require the participation of engineers and scientists, but also the mechanics of working with other professionals who are often times away from their desks and working in the field.

In an effort to focus on the interdisciplinarity of this work, in the Fall of 2022, I launched a course, called Housing CT, with colleagues at Yale's School of Architecture and School of Management that assigns interdisciplinary student teams to affordable housing developers, typically non-profit, engaged in the early stages of visioning a new project.[78] At the end of the semester, students prepare a site plan design, together with financial projects and an assessment of the relevant legal hurdles to implementing that design. In lieu of a final exam, they present their findings to the project partners and to the State of Connecticut's Department of Housing, which has committed to providing funding to viable projects developed by the students and their partners. One of the Fall 2022 projects began construction in September of 2024.[79]

For law students, the primary difference between CED and Housing CT is that, in Housing CT, we are outnumbered. One cannot speak legalese in Housing CT. The course consists largely of architecture students. The law students act as a consultant to the architects designing the site plan, who are themselves acting as consultants to the project partners. Another difference is that, even more so than in CED, in Housing CT, we have been approached with a problem, but not necessarily a legal problem. Instead, the law students are engaged in constant

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[76] *See* Rubin & Solomon, *supra* note 56.
[77] CED no longer does affirmative outreach to other graduate schools, in part, because Yale's other graduate programs have slowly, over time, developed their own in-house community-based experiential learning offerings.
[78] *See e.g. 4393: Urbanism and Landscape: Housing Connecticut: Developing Healthy/Sustainable Neighborhoods*, YALE ARCHITECTURE (2022), https://www.architecture.yale.edu/courses/14314-housing-connecticut-developing-healthy-sustainable-neighborhoods; Press Release, Association of Collegiate Schools of Architecture, Winners Announced for 2024 Architectural Education Awards (Feb. 7, 2024), https://www.acsa-arch.org/press-release-winners-announced-for-2024-architectural-education-awards/; *Housing Connecticut: Designing Health and Sustainable Neighborhoods,* YALE URBAN (2022), https://urban.yale.edu/projects/housing-connecticut-designing-health-and-sustainable-neighborhoods.
[79] Abigail Brone*, New Haven affordable housing development is first in a partnership between state and Yale,* CONNECTICUT PUBLIC RADIO (Dec. 3, 2024), https://www.ctpublic.org/news/2024-12-03/new-haven-affordable-housing-development-first-in-partnership-between-state-yale.

issue-spotting, which they must do without crying wolf. After all, the idea is to propose a viable project, not to tangle up the projects in legal minutiae.

Law students in Housing CT have worked on a wide range of legal matters. They have considered how condominium structures can be used to deploy different sources of public funding for different purposes inside of a single high-rise mixed-income mixed-use building. They have done extensive title research in order to understand the constraints on redevelopment of an already-developed site. They have tussled with Connecticut's somewhat convoluted (and certainly inconsistent) approach to property tax relief for affordable housing development. And they have identified and surmounted the legal barriers to building "missing middle" affordable home ownership opportunities.[80]

Project selection, as is the case in CED, is key. Accordingly, Housing CT selects projects across geographies. In the first year, we worked on three projects all based in New Haven. In the years since we have sought to introduce students to the different barriers to development that exist in different types of municipalities and neighborhoods and we have added projects in suburban and rural Connecticut. Unlike CED, given its explicit builders' clinic focus, Housing CT has not been asked to NIMBY development and has not had to turn away potential clients on that basis.

#### 4. Alternatives

When a builders' clinic is not immediately viable, clinics that do not represent developers can seek to advance similar pedagogical goals. Representing community organizations seeking to improve physical conditions of existing infrastructure, for example, will expose students to some of the areas of law described above. For example, tenants focused on conditions enforcement – and their lawyers – must tease through housing and building codes, insurance requirements, and local regulatory agencies' practices. Successfully assisting tenants in these matters will require students to tangle with some (though not nearly all) of the same web of law, financing, and capacity required to build a building in the first place.

Representing racial justice organizations and others challenging exclusionary zoning and other local policies that frustrate affordable housing and other infrastructure can also serve some of these pedagogical goals. Winning these cases requires plaintiffs to prove that the challenged policy causes a development not to occur. That inquiry will expose students to the legal rubrics and power maps underlying development politics and scarcity. That said, clinics that focus on related public policy or even impact litigation avoid introducing students to the intricacies and daily travails of doing the work.

## IV. Conclusion

[80] "Missing middle" refers to the universe of factors that constrain the construction of small-scale multi-family and other housing typologies that, historically, helped to meet demand for entry-level housing for low- and moderate-income people. *See e.g.* DANIEL PAROLEK, MISSING MIDDLE HOUSING (Island Press, 2020).

The modern conception of public interest lawyering was born in the 1960's and '70's. Non-profit law firms representing and advancing the rights of the marginalized drew funding from large foundations and inspiration from decades of the work by the NAACP and the ACLU. Over this period, hundreds of local legal services organizations and dozens of national firms dedicated to protecting racial minorities, consumers, and the environment, opened their doors. They served clients who met their intake criteria, based a client's demographic features and the nature of their legal needs.

At the time, the Ford Foundation, the most prominent force funding these endeavors,[81] understood the need "to create a theoretical justification for its commitment to these firms."[82] They argued that the legal work undertaken by this new crop of firms provided voice to those otherwise omitted from both court proceedings and administrative processes. While the field evolved over time, two of its goals – ameliorating inequality and advancing the regulatory state as a forum for addressing inequality –persisted.[83]

Their ability to meet those goals is hampered, however, by the fact that their work was and remains largely "ad hoc, defensive, unplanned, reactive to current affairs."[84] They respond to oppressive action but do not advance a positive vision of resource development and provision. In an example from the world of housing law, legal services lawyers routinely prioritize clients with public assistance over those left to maneuver in the private market. The reason? Federal law entitles the former to procedural protections unavailable to the latter. Lawyers representing public housing residents and voucher-holders have more legal tools at their disposal than do those representing the 80% of renters who rent in the private sector. Winning a housing lottery sets you up for the legal services lottery.

Community development practice is an exception, it is a public interest law practice dedicated to resource development. Its most prominent theoretician, however, William H. Simon, and many of its practitioners tout not *resources* but *the governance of those resources* as the defining feature of community development law.[85] They are less interested in building housing and grocery stores and more interested in ensuring a governance stake in that housing and those grocery stores for community-based organizations.[86] Their focus is hyperlocal and, as a result, they misses regional inequities and propose few solutions that grow resources rather than differently allocate them.[87] As I have argued, even among self-described community development lawyers, a significant amount of legal work does not advance a positive vision of

[81] Robert L. Rabin, *Lawyers for Social Change: Perspectives on Public Interest Law,* 28 STAN. L. REV. 207, 228 (1976).
[82] Louise G. Trubek, *Public Interest Law: Facing the Problems of Maturity*, 33 UALR L. REV. 417, 421 (2011).
[83] *Id.* at 424.
[84] Rabin, *supra* note 81, at 214.
[85] WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY (Duke University Press 2001), at __.
[86] David Barron, Review, The Community Economic Development Movement: A Metropolitan Perspective, 56 STAN. L. REV. 701, __ (2003).
[87] *Id*.

development, but instead reacts to development perceived to be harmful to low-income communities.[88]

It is perhaps the hyperfocus on process, across public interest practices, that has resulted in an oversight in mainstream public interest law practice. While public interest lawyers dedicate themselves to meeting unmet legal needs, they do not advance a vision for meeting unmet human needs. There is very little interest in addressing scarcity. Resource constraints are, instead, taken for granted.

Some have located abundance lawyering in the property rights wing of the public interest law arena. Abundance lawyering can be, sometimes, a libertarian project. The Institute for Justice houses a zoning reform project and the Cato Institute has long challenged overregulation of home-based child care provision. But the field includes a great deal of regulatory work – from reinvigorating antitrust law to better serve consumers to building up the administrative capacity of the state to provide some of those resources, from housing to environmental infrastructure, underprovided by the market today. Abundance lawyering is not a practice ideologically bent along familiar lines.

That complexity is all the more reason why law schools and clinics are crucial fora for developing this field. Clinics are a venue for teasing out the nuances of a field and the unintended consequences of our lawyering choices. Law professors have work to do here, to explain not just the theory of abundance lawyering but understand the role that practitioners will play in lawyering for abundance.

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[88] Lemar, *supra* note 23.