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I. INTRODUCTION

Tikkun olam (תיקון עולם) is a Hebrew phrase that has come to be understood as "repairing the world" or "perfecting the world."[1] In the context of lawyering, this concept has resonance for both how we address problems and who we are as lawyers. I start here not only because this goal has been the motivation for all my work since leaving law school and continues to drive my work as a supervising attorney in a law school clinic,[2] but also because it has led me to examine various assumptions about the act of lawyering. Pursuing effective change,[3] particularly in today's complex world, requires that various groups and individuals work together to find and implement solutions.[4] And yet, the fundamental assumption about lawyering is that lawyers represent *particular* clients to whom they owe all the duties and loyalties defined by the Model Rules of Professional Conduct[5] and that a lawyer's representation of that *particular* client[6] alone must be zealous.[7] I contend that the standard contours of this relationship between lawyer and a single client—so central to how most lawyers think about lawyering—are drawn too narrowly to allow for effective problem-solving. Such problem-solving, I contend, is necessary to allow lawyers to address entrenched problems in complex community contexts. They are drawn too narrowly to allow a

1. The connection between this term and social action, now widely recognized, is of recent origin. *See Tikkun Olam: Repairing the World*, My Jewish Learning, http://www.myjewishlearning.com/practices/Ethics/Caring_For_Others/Tikkun_Olam_Repairing_the_World_.shtml (last visited Sept. 15, 2011). This formulation resonates for me as a Jew, but I assume there are companion concepts found in other ethnic, religious, and cultural traditions.

2. This ideal of "making the world a better place" is what led me to go to law school and, I contend, has led many others to pursue legal training. *See, e.g.*, William H. Simon, The Practice of Justice: A Theory of Lawyers' Ethics 1 (1998).

3. I am deliberately avoiding the use of such phrases as "social justice," "social change," or "public interest." These phrases raise a wide range of conceptions of "doing good" that can, and do motivate particular advocates, legal and otherwise. I am using the phrase "effective change" as a grounded concept that assumes some kind of measurable success that is positive for the community. A further important assumption is that such change is directed for the benefit of communities that have been historically disempowered and, therefore, disadvantaged.

4. I made a similar assertion in a recent paper. *See* Robin S. Golden & Sameera Fazili, *Raising the ROOF: Addressing the Mortgage Foreclosure Crisis Through a Collaboration Between City Government and a Law School Clinic*, 2 Alb. Gov't L. Rev. 29, 33 (2009).

5. Model Rules of Prof'l Conduct R.1.3, cmt. 1 (2002) ("A lawyer should . . . take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."). *See also id.* R. 1.7 –1.11 (rules pertaining to conflicts of interest). The Model Rules have been adopted by the majority of states with minor differences. *See, e.g.*, Conn. Rules of Prof'l Conduct (2007).

6. Those clients can be individuals, organizations, and even larger communities.

7. Even my first paper, written more than a decade ago while I was in law school, in which I advocated for a community-focused legal services model, as opposed to the individual rights model, reflected a search for more productive ways to lawyer for effective change. *See* Robin S. Golden, *Toward a Model of Community Representation for Legal Assistance Lawyering: Examining the Role of Legal Assistance Agencies in Drug-Related Evictions from Public Housing*, 17 Yale L. & Pol'y Rev. 527, 544 (1998).

lawyer to explore alternative lawyering roles that more holistically embody ethical responsibilities to her community.[8] Law schools can, and should, provide opportunities for robust exploration of the growing body of literature that reflects on a lawyer's ethical responsibilities to her community,[9] beyond rigid understandings of the best interest of a particular client, no matter what kind of practice she ultimately chooses.[10] I believe that lawyering to[11] a "collaborative" can provide one such opportunity to move beyond representation of a single client, not just for law school students and legal clinics, but also for any lawyer interested in effective change for communities. In this paper, I explore collaborative problem-solving as a promising structure for achieving advances in lawyering for effective change. This concept sharpens the attention of the lawyer and the work to the shared interest in the problem to be solved. Fidelity to the pursuit of a solution to a problem is more accurately reflected in the preservation of the *legitimacy of the collaborative process itself*. This work, thus, requires the facilitation of sustained engagement across multiple human systems[12]—systems that hold both shared and divergent interests simultaneously. As discussed in Part V, Challenges and Responses, to succeed in this work, a lawyer will benefit from

8. Since starting work on this paper, I have come across many stories of attorneys who have sought out alternative ways to use their legal training. *See, e.g.*, Christian Nolan, *Praising the Lord and the Law*, Conn. Law Tribune (Apr. 19, 2010), http://www.ctlawtribune.com/getarticle.aspx?ID=36872 ("As a lawyer, you create conflict for people and I'm a peacemaker, so that was difficult for me . . . . but I'm glad I was a lawyer and practiced, I wouldn't trade that for anything. It helps me with everything I do now." (quoting Rev. Sara D. Smith)); Becky Beaupre Gillespie & Hollee Schwartz Temple, *Working Together, Living Together*: *Sometimes the Choice of Practice Can Bring a Better Balance*, A.B.A. J. (June 1, 2010, 2:00 AM), http://www.abajournal.com/magazine/article/working_together_living_together/ (discussing lawyers who chose "collaborative practice" because, for example, "I saw the terrible waste of clients' time and money in litigation and the terrible impact emotionally on clients, particularly in family cases, and I decided that I needed to find some other tools" (quoting David Hoffman)).

9. *See, e.g.*, Lawyers' Ethics and the Pursuit of Social Justice: A Critical Reader (Susan D. Carle ed., 2005) [hereinafter Lawyers' Ethics].

10. Robert W. Cullen, The Leading Lawyer: A Guide to Practicing Law and Leadership 111 (2009) (devoting an entire chapter to collaboration and considering what is required to be both a lawyer and a leader). Interviewees include Leon Panetta, Ben W. Heineman, Jr., and Justice Joyce L. Kennard. *Id.*

11. Throughout this paper I use the preposition "to" in naming the relationship of lawyer and collaborative. As has been raised by commentators on previous drafts, it may be more accurate to use "with." Clearly, the model I describe includes the potential for an active role for the lawyer in the collaborative. However, in this initial conceptualization of the model, I think it is clearer to start by demarcating the basic relationship first.

12. Thinking of organizations and groups as "human systems" is an important concept derived from the field of organizational behavior. Originally, the concept was used to differentiate such systems from those in the physical sciences (i.e., the human body or machines) for the purpose of more productive inquiry. *See* Daniel Katz & Robert L. Kahn, The Social Psychology of Organizations 30–31 (1966). I use the term to emphasize that each organization that is engaged in a collaborative effort represents its own collection of individual actors. This layered interaction of "human systems" provides both the complexity and the benefit of working collaboratively.

understanding theories from the field of organizational behavior,[13] particularly group and intergroup dynamics.

The lawyering structure I advocate for in this paper does not assume a particular issue. Rather, it focuses on some issue of salience to a community that requires joint problem-solving. Issues can and do change as solutions to past problems are implemented successfully or new urgent needs are revealed. Although identifying the community problem is a fundamental first step to this work, the model I propose does not consider the issue to be a proxy for a client. Thinking of "issue as client" exacerbates a series of difficult questions; for example, whether the lawyer is pushing her own agenda and whether the lawyer can hold herself accountable in such a situation.

I argue that a lawyer's obligation can be owed to the shared understanding of the problem itself. For this kind of advocacy, then, the members of the collaborative effort,[14] as a group,[15] are the client.[16] In researching this paper, I have engaged with lawyers and scholars who are grappling with similar issues and developing innovative ways of conceiving of lawyering,[17] and I have been engaged by the work of those who

13. Throughout the paper, I use the phrase "organizational behavior" to represent an interdisciplinary field (e.g., psychology, sociology, anthropology, management) related to the behavior of individuals and groups within organizational settings, both formal and informal. Sometimes this field is also referred to as organizational psychology.

14. In terms of identifying the "client" in this work, I use the terms "collaborative," "collaborative effort," and "collaborative problem-solving process" interchangeably. I use the concept to mean various parties or interests working together to address an issue around which they have a shared concern. This does not mean that these parties are aligned in all of their interests; thus, arise the important ethical issues of confidentiality and conflict that are so thoroughly examined in Susan D. Bennett, *Creating a Client Consortium: Building Social Capital, Bridging Structural Holes*, 13 Clinical L. Rev. 67, 79–95 (2006). I will also use the phrase "multiple representation" (called "intermediary" in the now-rejected Model Rule 2.2) to describe the general category in which collaborative as client would fit. This category includes any situation where "a lawyer . . . represents two or more clients with potentially conflicting interests who seek to consummate a transaction or resolve a dispute between or among themselves." John S. Dzienkowski, *Lawyers as Intermediaries: The Representation of Multiple Clients in the Modern Legal Profession*, 1992 U. Ill. L. Rev. 741, 777 (1992).

15. Paul R. Tremblay has provided an excellent analysis of when an informal group can successfully be treated as a client by the lawyer in *Counseling Community Groups*, 17 Clinical L. Rev. 389, 404–55 (2010).

16. Together with a colleague, I recently considered this structure as applied by a law school clinic to the development of a comprehensive response to the mortgage foreclosure crisis in New Haven. *See* Golden & Fazili, *supra* note 4, at 43–56.

17. *See, e.g.*, Bennett, *supra* note 14 (providing the most directly relevant discussion of both the need for and benefit of lawyering to a collaborative, which is different than "collaborative lawyering," but derives from the same desire to pursue effective change); Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, *in*, Cause Lawyering and Social Movements 325 (Austin Sarat & Stuart A. Scheingold eds., 2006) (describing and learning from a complex project driven by a collective of organizations but where "no systematic effort to delineate the client" was made); Shauna Marshall, *Mission Impossible? Ethical Community Lawyering*, 7 Clinical L. Rev. 147 (2000) (identifying how community lawyers find themselves addressing pressing community issues without a clearly identified single client, whether or not they consciously entered into joint representation of multiple clients); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 Clinical L. Rev. 427 (2000) (providing a thorough accounting of the theories of practice advocated by "collaborative lawyers," including Lucie White, Anthony Alfieri, and Gerald López, including critiques

have been doing so for generations.[18] The task, so eloquently described by Ascanio Piomelli, is:

> Focused on what lawyers do and how we do it, our aim is not simply to describe practice but to improve it. We seek to transform an inchoate sense of what constitutes good lawyering into a more coherent vision and to refine and share that vision with students, practitioners, and clients. Because lawyers' goals and understanding of our roles determine what we do, how we do it, and what we decline to do, our theories of lawyering directly shape our lawyering practice.[19]

Improvement in practice has been made by Piomelli and others through "collaborative lawyering" where the focus is on the active collaboration *between* the lawyer and the client. Lawyering *to* a collaborative expands on this work by recognizing the power of collaboration among various members of the community. The lawyer's role is to facilitate and support that collaboration. Susan Bennett,[20] and Shauna Marshall before her,[21] recognized the promise inherent in collective representation of multiple parties.[22] The concept of lawyering to a collaborative builds on their work.[23]

I start this paper in Part II by identifying what I see as a lack of adequate problem-solving structures for challenging and addressing entrenched social problems impacting disadvantaged communities. I suggest that clinical practice, together with organizational theory, inform a new model and way to approach community lawyering—lawyering to a collaborative problem-solving process. In this model, the

by Joel Handler, William Simon, and Gary Blasi, and ending with a reflective accounting of his own example of collaborative lawyering).

18. Lawyers' Ethics, *supra* note 9 (containing pieces on historical and current alternative conceptions of the "good" lawyer). Louis Brandeis is often mentioned as representing an early model of alternative legal ethics, having "coined the term 'lawyer for the situation' to describe a lawyering model under which an attorney seeks to find a just or fair solution to a dispute rather than to advocate solely for his own clients' interests." *Id.* at 48. Most recently, two conferences, one at New York Law School, and the other at Arrowhead, provided rich opportunities to explore innovative approaches to lawyering theory and practice that included complex clinical clients. *See* Stephen Ellman, *Clinical Theory Workshop 25th Anniversary Conference*, New York Law School (Oct. 1–2, 2010), http://www.nyls.edu/faculty/faculty_sponsored_projects/25th_anniversary_clinical_conference/; *Complex Clients: Lawyering Beyond the Individual Client*, UCLA School of Law (Nov. 4–7, 2010), http://www.law.ucla.edu/home/index.asp?page=3298.

19. Piomelli, *supra* note 17, at 431 (footnotes omitted).

20. *See* Bennett, *supra* note 14.

21. *See* Marshall, *supra* note 17.

22. *See* Bennett, *supra* note 14, at 110–13; Dzienkowski *supra* note 14, at 747–48; Henry Ordower, *Toward a Multiple Part Representation Model: Moderating Power Disparity*, 64 Ohio St. L.J. 1263, 1273–80 (2003).

23. Using the lens of the collaborative as client also makes sense in understanding the actual work I am engaged in with the Community and Economic Development (CED) clinic at Yale Law School. In our projects, addressing everything from mortgage foreclosure to food policy, we are using a form of the collaborative problem-solving model. We are working self-consciously to structure the community collaborative model so as to clarify and formalize the lawyering relationship. Defining the relationship up front enables the lawyer and the collaborative to assess success and to anticipate potential conflicts.

collaborative is the client, and appropriate attention is paid to defining the relationship between lawyer and client.[24]

Next, in Part III, I describe the contours of this new model by locating it within existing conceptions of lawyering, specifically community lawyering. In sharpening these contours, I draw on lessons learned from my clinic's first foray into lawyering to a collaborative, a comprehensive response to the mortgage foreclosure crisis in New Haven, Connecticut.

In Part IV, I consider the self-conscious application of this model. Here, I draw directly on my work in the Community and Economic Development[25] (CED) clinic at Yale Law School. CED's most recent collaboration project, the Neighborhood Planning Project, is led by a steering committee made up of representatives of various organizations with a shared interest in the successful economic development of a particular neighborhood in New Haven, Connecticut. My students and I entered this project with the benefit of reflection on past work. In Part V, I identify and address the unique challenges and responses of using this model. Building on the work of other clinical scholars, such as Susan Bennett,[26] and, drawing on theories from organizational behavior, I explore the ethical and practical implications of having a "client" made up of a chorus of voices. While all the participants share an interest in addressing a particular issue, each retains her primary connection to the organization and interests she represents. Conflicts of interest are to be expected and must be anticipated and dealt with on an ongoing basis.[27] Conscious efforts, facilitated

24. The creation of a Memorandum of Understanding (MOU), as discussed *infra* Parts III.C. and IV.A.3, is a critical part of defining this relationship. Both Bennett, *supra* note 14, at 73–77, and Marshall, *supra* note 17, at 221–22, recommend the creation of a document that formalizes, for the multiple participants, the relationship with the lawyer. Bennett's concept is closest in kind to what the students and I are using in our first effort at formalizing a collaborative as client. At this point, my concept of a collaborative that focuses on an identified current issue, as opposed to Bennett's concept of creating a consortium that will address multiple issues over time, is better served by a single memorandum of understanding signed by all participants. One concern in creating a collective that is not issue-based is that there is a risk of the collective becoming an institution with its own separate identity. As such, it would no longer represent a collection of voices working together. I recognize the value of providing an ongoing forum for sharing information across parties as identified by Bennett, *supra* note 14, at 86–88, but I believe that this can occur within a structure of multiple issue-focused collaboratives.

25. My conception of community and economic development is broad. Scott Cummings has provided a somewhat narrow definition of traditional CED work that does not involve policy development or legislative advocacy. *See* Cummings, *supra* note 17, at 309–10. This definition represents "a focus on *localism*, a commitment to bottom-up *neighborhood revitalization* over state-sponsored redistributive reform, and a version of mobilization that emphasizes *collaboration* over confrontation." *Id*. at 313. I should note that he establishes this narrow definition in order to challenge it with a description of a "new" direction for CED work. My work with students uses local experience on real projects to inform local, state, and federal policy and does not feel limited in the ways defined by Cummings. However, I subscribe to an emphasis on collaboration over confrontation in CED work, but not just for the reasons suggested by Cummings and others. *See infra* Part III.A.

26. *See* Bennett, *supra* note 14, at 67.

27. Related, but not explored here, is the question of what it means to lawyer in the government setting where it can appear that there are multiple "clients." *See* Jeffrey Rosenthal, *Who Is the Client of the Government Lawyer?*, *in* Ethical Standards in the Public Sector: A Guide for Government

by the lawyer, are needed to maintain the effectiveness of the collaborative and to guard against undue influence on the process by the lawyer. I also explore the roles that lawyers can and should play in facilitating, sustaining, and even creating structures that allow for collaborative problem-solving.[28] If one accepts that problem-solving requires collective effort, then it follows that such collaborative effort requires some kind of organizing and operating structure.[29] In fact, the more well-designed the structure is—including anticipating the need for reflection and self-correction—the greater the potential for success. Lawyers can play an important role in helping lead the collaborating participants through the challenges of working together to address critical issues.[30] In so doing, the lawyers themselves can achieve a sense of integrity between their ideals and their work.[31] In Part VI, I conclude that if a lawyer feels that she has a responsibility to pursue social justice, then engaging in collaborative problem-solving efforts can help achieve effective change.

II. THE CASE FOR COLLECTIVE EFFORT

Closing the achievement gap, banking the unbanked, creating and sustaining stable neighborhoods—these and other complex problems have proved resistant to

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Lawyers, Clients, and Public Officials 13 (Patricia E. Salkin ed., 1999) ("[T]he government lawyer does not *necessarily* represent a single client and, as a result, the client of the government lawyer is not so easily identified."). A government lawyer may be confronted with a situation where it is her belief that advocating for a position that is supported by the agency for which she works may *not* be in the public interest. Does the government lawyer have a duty to the public to protect the public interest? Rosenthal cites Geoffrey P. Miller, who rejects the notion that the governmental lawyer has a responsibility to represent the public interest because it is so difficult to define a single understanding of "the public interest." *See id.* at 15. Miller suggests that, "the Constitution establishes procedures for approximating [the ideal of the public interest] through election, appointment, confirmation, and legislation. Nothing systematic empowers lawyers to substitute their individual conception of the good for the priorities and objectives established through these governmental processes." Geoffrey P. Miller, *Government Lawyers' Ethics in a System of Checks and Balances*, 54 U. Chi. L. Rev. 1293, 1295 (1987). ABA rules appear to suggest that the lawyer owes these duties to the agency that she works for. But does that mean the entity or the individual who runs it? *See* Rosenthal, *supra* at 21. The lawyer must go up the chain if she thinks that something is inconsistent, all the way up to the head of the agency.

28. *See* John Bouman, *Growing the Toolbox: Diverse Strategies for Public Interest Lawyers in Campaigns to Expand Access to Health Care for Low-Income People*, 15 Geo. J. on Poverty L. & Pol'y 833, 835–39 (2008) (making a strong case for why lawyers should learn to collaborate with community organizations to enable effective change for the community and describing the need for lawyers in such efforts).

29. *See* Bennett, *supra* note 14, at 95–105 (discussing the value of consortia for creating links, networks, and forms of social capital that, in turn, combine and amplify their strengths of the individual members).

30. *See id.* at 105–09 (discussing that traditional lawyers already help clients create collectives and bridge relationships, a natural extension of the community lawyer's role is to "manage structural holes" for a collaborative, that is, enable the closing of information gaps between participants, which is possible because the lawyer is both inside the group but also an outsider).

31. *See* Daniel Markovits, A Modern Legal Ethics: Adversary Advocacy in a Democratic Age 123 (2008). While Markovits holds out small hope that modern lawyers can maintain their integrity against ethical assault, I believe the kind of lawyering envisioned here can come close, in large part because it is not adversarial, but also because, if done with self-reflection, has a flexibility unavailable in other lawyering roles.

more traditional adversarial and court-centric lawyering approaches such as court ordered remedies and litigating the rights of individuals.[32] These issues cannot be successfully addressed by zealous advocacy of individual clients alone, even if those individual clients are major actors, such as school districts, community development banks, or community development corporations. The solutions are also too complex to be resolved by court-ordered remedies. And yet, these systemic issues create entrenched barriers for the entire community, including individual people and organizations. Addressing these problems successfully requires a paradigm shift, moving beyond the individual client to a new model of lawyering in support of collaborative effort.

The case for using collective effort to achieve effective change is multifaceted. First, aggregate zealous representation of individuals or specific groups has failed to make deep and sustained change to systemic issues.[33] Even progressive lawyers, involved in more traditional lawyering for poor communities through work with individual clients, recognize the limitations of those methods.[34] These limitations substantiate a focus of resources on encouraging and supporting collective effort.[35]

32. *See* Golden & Fazili, *supra* note 4, at 37–43, 76–78.

33. *See, e.g.*, Golden, *supra* note 7 (discussing how zealous representation of certain tenants being evicted from public housing by legal services attorneys run counter to the efforts of organized groups of tenants to decrease crime and improve the quality of life in public housing); *see also* Raymond H. Brescia, Robin Golden & Robert A. Solomon, *Who's in Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 Fordham Urb. L.J. 831, 846–47 (1998) (noting that individual representation "may . . . impede the development of safer communities . . . [and] focusing on representing discrete individuals may impede the development of coalitions to deal with common problems . . . [and] may impede the growth of community organizations by defining problems as deprivations of individual legal rights, as opposed to community problems susceptible to community solutions."); Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 Clinical L. Rev. 195, 204–05 (1997) (noting that CED clinics developed in part because of the recognition that "[l]itigation did not change the underlying poverty conditions in which low-income people live . . . Clinicians and other legal services providers have found that representing groups with respect to long term neighborhood development issues such as housing, consumer, community banking, and small business development has a greater impact on sustained community change than just representing indigent individuals.").

34. *See* Corey S. Shdaimah, Negotiating Justice: Progressive Lawyering, Low-Income Clients, and the Quest for Social Change 22 (2009). Shdaimah interviewed numerous progressive-minded lawyers and found that many were frustrated with the ineffectiveness of the available legal tools to do more than chip away at social justice issues and describes how this dissatisfaction has led lawyers into interdisciplinary practice and small business lawyering. *Id.* It should be noted that, despite their frustrations, many lawyers felt fulfilled by their work on behalf of individual clients. *Id.* at 132–34; *see also* Barbara L. Bezdek, *To Forge New Hammers of Justice: Deep-Six the Doing-Teaching Dichotomy and Embrace the Dialectic of "Doing Theory,"* 4 U. of Md. L. J. of Race, Religion, Gender & Class 301, 308 (2004) (citing the reason that front line poverty lawyers left to join clinical faculties as "the frustration with the limitations of conventional advocacy to effect meaningful change in the legal arrangements that repeatedly ensnare poor people").

35. *See* Martha F. Davis, *Our Better Half: A Public Interest Lawyer Reflects on Pro Bono Lawyering and Social Change Litigation*, 9 Am. U.J. Gender Soc. Pol'y & L. 119, 122 (2001); Marshall, *supra* note 17, at 158–60; Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 Hastings L.J. 947, 950 (1992) (suggesting a justifiable allocation of resources from short-term individual client needs to longer-term community needs).

Paul Tremblay describes the difference between the work of poverty lawyers who focus on providing individual representation and lawyers who strive to address a community's larger, long-term needs. He describes the former as the primacy of the "ethic of care" versus the latter, which represents an effort to empower the community, resulting in more significant, but deferred, rewards.[36] While there will always be a significant need for individual poor people to have their rights defended by lawyers,[37] supporting collective efforts is a promising option to achieve large-scale change.

Second, I contend, as have others,[38] that solving complex problems requires compromise and mutual understanding that cannot be achieved through an emphasis on the advancement of individual interests. Even impact litigation, which has the appeal of addressing the needs of large numbers of individuals simultaneously, often fails to ensure lasting change. For example, the importance of historic successes like *Brown v. Board of Education*[39] in advancing social justice generally cannot be denied. However, the continued existence of the achievement gap between white and minority public school students more than fifty years after *Brown* suggests that complex problems like school reform require sustained focused efforts across interest groups—parents, educators, unions, government, and business—and not just court ordered remedies.

The ongoing debate over multidisciplinary practice (MDP),[40] and the popularity of this kind of practice with clients,[41] further suggests that what we think of as traditional lawyering is changing in response to the complexities involved in addressing problems today. In its simplest form, MDP involves the ability of lawyers and other professionals (such as accountants) to work together, in one firm, and

36. *See* Tremblay, *supra* note 35, at 949–50.

37. *See, e.g.*, William Glaberson, *Courts Seek More Lawyers to Help the Poor*, N.Y. Times, Jan. 7, 2010, at A26 (discussing the creation of an "attorney emeritus" program to encourage recently retired lawyers to represent low-income clients without the need to buy malpractice insurance as a way of addressing the growing ranks of the unrepresented in New York state).

38. *See, e.g.*, Mark R. Warren, Dry Bones Rattling: Community Building to Revitalize American Democracy 125–55 (2001) (describing a collaborative model used to make progress in addressing racism where other efforts have failed); Kimberlee K. Kovach, *Transforming Laywer Ethics for Effective Representation in a Non-Adversarial Approach to Problem Solving: Mediation*, 28 Fordham Urb. L.J. 935, 974–75 (2001) (describing the difference between the mindset needed for problem-solving and that of an adversarial lawyer).

39. 347 U.S. 483 (1954).

40. *See generally* Multidisciplinary Practice: Staying Competitive and Adapting to Change (Gary A. Munneke & Ann L. MacNaughton, eds., 2001) [hereinafter "Multidisciplinary Practice"]; J. Michael Norwood & Alan Paterson, *Problem-Solving in a Multidisciplinary Environment? Must Ethics Get in the Way of Holistic Services?*, 9 Clinical L. Rev. 337 (2002).

41. *See* Multidisciplinary Practice, *supra* note 40, at 3 ("While the focus of much of the current MDP debate has been on the conflict between law firms and accounting firms, the concept of multidisciplinary practice is not limited to accounting firms: banks, real estate companies, psychologists, engineers and a host of other professionals may have reason to join forces with legal services providers. While much of the attention given to this controversy has concerned multinational business transactions and competition for that business, other substantive areas of practice, such as family law, trusts and estates and elder law, lend themselves to a multidisciplinary approach as well."); *see also* Norwood & Paterson, *supra* note 40, at 340.

provide a range of services to clients. This kind of "one-stop shopping" is preferable to clients because it saves time and effort. More importantly, when the complex needs of a client require the attention of multiple professionals, a joint problem-solving team approach is likely to identify obstacles and address those obstacles more efficiently. Ethical strictures, however, have limited the form in which lawyers can engage in MDP requiring clear attorney control over any multidisciplinary work.[42] Despite these limitations, its popularity with clients supports the idea that today's problems are multilayered and require a comprehensive approach to finding and implementing solutions. Scholars have noted that even new delivery models to serve low-and moderate-income communities include MDPs.[43] The expansion and success of multidisciplinary[44] and interdisciplinary[45] clinics in law schools are another indication that practice is changing in demand to the complexity of issues. In fact, many CED clinicians are already struggling with realities of work that push the envelope of client definition.[46]

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42. Multidisciplinary Practice *supra* note 40, at 5–6 (Model Rule 5.4 has been interpreted to mean that "[a]lmost any multidisciplinary practice arrangement that is not completely controlled by its lawyer members will subject the lawyers to discipline." (internal footnote omitted)); Norwood & Patterson, *supra* note 40, at 343 (listing the areas of particular concern regarding MDPs including loyalty to client, independence of legal judgment, keeping client confidences, avoiding conflicts of interest, advancing the quality of justice, promoting access to justice, and barring the practice of law by non-lawyers); *see also* Multidisciplinary Practice *supra* note 40, at 5 (suggesting that this requirement is a not-so-subtle form of protectionism on the part of the bar).

43. *See* Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 Clinical L. Rev. 227 (2000) (showing that participants in these interdisciplinary efforts have not participated in the American Bar Association (ABA) debate on MDPs); Norwood & Paterson, *supra* note 40, at 354–55 (providing an interesting discussion of how the MDP model can be used to address the needs of at risk children and their families in a holistic way).

44. *See, e.g.*, Suzanne B. Goldberg, Multidimensional Advocacy: A Clinical Teaching and Strategic Lawyering Framework (Oct. 1–2, 2010) (draft manuscript presented at the New York Law School conference) (on file with author) (discussing need to work on multiple levels to address issues including advocacy work that moves beyond individual client representation); Alizabeth Newman, *Bridging the Justice Gap: Building Community Through Individual Need*, 17 Clinical L. Rev. 615, 616 ("[T]his article introduces a hybrid model of lawyering . . . [using] strategic engagement of individual legal assistance within a community group setting as a catalyst toward community-building and social change. . . . Rather than resigning ourselves to the persuasive dichotomy between representation of the individual client or legal support for community organizing").

45. My conception of lawyering to a collaborative is interdisciplinary. The effort to find solutions to pressing community issues often requires the engagement of other professionals such as: business leaders, environmentalists, city planners, and public health professionals. But, for several reasons, it avoids the MDP debate: 1) To the extent that the law school clinic is the "firm" that is providing multi-disciplinary services, the services are controlled by lawyers; 2) We do not collect fees for our work; and 3) A large part of the interdisciplinary nature of the work is in the structure of the "client" and not the services provided by outside professionals.

46. The Seventh International Clinical Conference sponsored by UCLA and the University of London was focused on, "Complex Clinical Clients: Lawyering Beyond the Individual Client" and provided rich opportunity for clinicians to share experiences. *See supra* note 18.

Finally, there are more and more instances of mainstream recognition of the need for and value of collaborative efforts.[47] For example, one half of the 2009 Nobel Memorial Prize in Economic Science was awarded to Elinor Ostrom of Indiana University[48] under the title of, *Economic Governance: The Organization of Cooperation*. Yale University used the recent purchase of a large research center in West Haven-Orange, Connecticut, to establish five multidisciplinary research institutes that, through collaboration, hope to achieve breakthroughs more quickly than can be achieved through the traditionally separated medical, research, and engineering campuses.[49] The City of New Haven was recently heralded by the Obama administration for negotiating a new teachers' contract that allows student achievement data to be used as part of teacher evaluations, which is believed to be a key to closing the achievement gap.[50] This contract was overwhelmingly approved by the rank-and-file teachers. The teachers union, school administration, and the mayor, all attributed the success of this negotiation to a collaborative approach.[51]

Lawyers should proactively consider the value of collective effort as they work to support underserved and disadvantaged communities. And law school clinics should keep this in mind when considering how to engage students in advocacy for effective change. Community and economic development clinical practice, in particular, provides opportunities to explore collaborative projects because community development work, by its nature, involves multiple parties with both shared and divergent interests. Traditional CED work (i.e., helping a community development corporation successfully pursue a project to benefit the larger community) already engages students and clinicians deeply in the community. It is nearly impossible for a CED project not to involve numerous parties in addition to the identified client. For example, a CED client trying to build an affordable housing project will need to

47. *See* Bennett, *supra* note 14, at 105 ("The superiority of the efforts of actors performing in networks to those of actors performing alone has become so accepted that funders expect and even require applicants for grants to apply jointly with other partners, and to demonstrate their past achievements as workers in different kinds of collaborations." (footnote omitted)).

48. Information provided on the Nobel Memorial Prize website about the award to Ms. Ostrom's work says, "If we want to halt the degradation of our natural environment and prevent a repetition of the many collapses of natural-resource stocks experienced in the past, we should learn from the successes and failures of common-property regimes. Ostrom's work teaches us novel lessons about the deep mechanisms that sustain cooperation in human societies." *The Prize in Economic Sciences 2009: Economic Governance: The Organization of Cooperation*, Nobel Prize, http://nobelprize.org/nobel_prizes/economics/laureates/2009/info.pdf (last visited Sept. 15, 2011). It is also worth noting that the Nobel Peace Prize awarded to President Obama was for "his extraordinary efforts to strengthen international diplomacy and cooperation between peoples." *The Nobel Peace Prize 2009*, Nobel Prize, http://www.nobelprize.org/nobel_prizes/economics/laureates/ (last visited Sept. 15, 2011).

49. Ed Stannard, *Yale Research Center Also Has a Huge Storage Closet*, New Haven Register (Nov. 8, 2009), http://www.nhregister.com/articles/2009/11/08/news/new_haven/a1yale.txt.

50. *See New Haven Board of Aldermen Unanimously Approve Teachers Contract*, City of New Haven, Office of the Mayor (Nov. 5, 2009), http://www.cityofnewhaven.com/Mayor/ReadMore.asp?ID={B8CBF90E-0C15-4192-A33B-9AE853AEE067}.

51. *See* Kathy Frega, *Diane Ravitch Talks Ed Reform in New Haven*, BlogCEA (Dec. 1, 2010), http://blogcea.org/2010/12/01/diane-ravitch-talks-ed-reform-in-new-haven/.

engage with various governmental agencies and may need to partner with various sources of funding, such as both a local loan fund and a state housing finance authority. A lawyer working on behalf of this client will be working "with" representatives of these other organizations to address obstacles to bringing the project to fruition. As CED projects and efforts become more ambitious in response to community needs, these overlapping relationships will only increase. Practitioners and scholars have begun to handle these situations in a variety of ways, from declaring that there is no identified client[52] (and no apparent effort to identify one), to post hoc recognition of conflicts.[53] These responses, together with my own experience with my first "collaborative as client" project, have suggested the critical aspects to consider[54] in handling this work successfully.

One essential element that must be mentioned at the outset, as it is not currently well known in the vocabulary of clinicians, is the importance of group and intergroup theory from the field of organizational behavior to the success of these efforts. From the formation of the collaboration, to the definition of the relationship between the lawyer and the collaborative, and to sustaining the focus on problem-solving; concepts of group formation, intergroup dynamics, and theories of representational groups will provide essential tools to lawyers and to the collaborative group as a whole.

III. COLLABORATION AS CLIENT—LOCATED IN THEORY

My concept of lawyering to a collaborative builds on a rich foundation of theory and practice that is community-driven. Much of this work moves lawyering beyond the traditional individual client paradigm, a move that I embrace as necessary to address the complex problems facing disadvantaged communities. Such a move also raises the essential issue of how to define the lawyering relationship in this new environment. In this section, I start by grounding my concept in the existing literature as a first step towards defining the contours of the model. I then explore the importance of both identifying the client for this collaborative work and the need to adequately define the relationship among the members of the collaborative and

52. *See* Cummings, *supra* note 17, at 325 ("There was a loosely coordinated team of lawyers with different tasks . . . with a fluid specification of roles and no systematic effort to delineate the client."). The author has also engaged in recent conversations with various clinicians engaged in legislative advocacy. These clinicians describe work that often finds the lawyer engaged with a group of representatives working together on a particular piece of legislation. For this work, the clinicians have not considered themselves to have any identified "client" and do not execute any kind of retainer.

53. *See* Marshall, *supra* note 17, at 221–23 (recognizing the existence of conflicts in several clinic projects, Marshall recommends the creation of a joint retainer with the various parties up front to define goals, guide the lawyer's efforts, and avoid future ad hoc discovery of conflicts).

54. The critical elements for successful lawyering to a collaborative problem-solving process, as discussed further *infra* Part III, include a grounding in theories of organizational behavior; identification of the community issue to be addressed; identification of the collaborative to serve as the client to address the particular issue; a clear definition of what the contours of the relationship is and will be among the members of the collaborative client and between the client and the lawyer; and attending to the maintenance of the collaborative including self-conscious reflection on the effectiveness of the problem-solving efforts.

between the collaborative client and the lawyer. I use the Yale CED clinic's experience with the Real Options Overcoming Foreclosure (ROOF) Project to illustrate the critical elements of these identification and definition processes.

A. Community-Driven Work

"Community Lawyering" covers a number of different theories of practice,[55] but all share the recognition that progressive lawyering must include the community as an active participant.[56] They also share, therefore, the challenge of defining the needs of the community, given the range of relevant institutions and interests. Perhaps as a result of this constant examination process, these practitioners and scholars engaged in community lawyering are open to new approaches to achieve justice and change for the communities they serve. The result is a rich literature examining a variety of approaches to using clinical programs to pursue effective change. These variations on community-driven theory and practice explore a range of relationships between the lawyer and the community.

Some scholars define community lawyering as an approach which has lawyers collaborating with communities because that is "the locale of the problem" and, therefore, the community should be "an integral part of the development and implementation of the solutions to those problems."[57] It is the lawyer's goal of developing a trusting relationship with the community which leads to "productive problem-solving."[58] "The zeal is aimed at the pressing community problems, not necessarily at an individual client."[59] In this theory of practice, the relationship of the lawyer to the community is one of building trust and empowerment, using a range of modes of engagement from client-centered counseling[60] to collaborative lawyering, which engages clients as problem-solving partners.[61]

Others envision an even more proactive role for lawyers to play in mobilizing communities towards change. Sameer Ashar recently presented a vision of law schools as centers for social justice, based upon his belief of the primacy of collective mobilization, where collaborations can be born and nurtured.[62] He describes "a place where organizers and collective members interact with each other, build alliances, or

55. *See, e.g.*, Lawyers' Ethics, *supra* note 9, at 187–223 (the section on "Community/Rebellious Lawyering" includes pieces by Gerald López, Christine Zuni Cruz, and Victor M. Hwang); Stephen Loffredo, *Poverty Law and Community Activism: Notes from a Law School Clinic*, 150 U. Pa. L. Rev. 173, n.17 (2001) (citing Michael Diamond, Richard D. Marsico, Ann Southworth, and Lucie White).

56. *See* Marshall, *supra* note 17, at 147.

57. Marshall, *supra* note 17, at 147–48, n.3.

58. *Id*. at 207.

59. *Id*.

60. *See, e.g.*, Stephen Ellmann, *Client-Centeredness Multiplied: Individual Automony and Collective Mobilization in Public Interest Laywers' Representation of Groups*, 78 Va. L. Rev. 1103, 1110 (1992); Tremblay, *supra* note 15, at 398.

61. *See* Piomelli, *supra* note 17, at 441–43.

62. Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 Clinical L. Rev. 355 (2008).

mediate disputes (that seem inevitably to arise in progressive work)."[63] Gerald López, the father of "Rebellious Lawyering" advocates for a greatly expanded understanding of the appropriate role of lawyers working on behalf of poor communities and communities of color.[64]

> Instead of focusing principally on the practice of law, I could just as readily, and just as importantly, have concentrated on any institutional order, any specialized practice, or any instance of "ordinary folks" dealing with daily hassles. To be sure, the focus on progressive law practice has served for me and for others as a particularly compelling way of drawing attention to how we work in and with this country's low-income, of color, and immigrant communities and how we work with and in developing nations across the globe. *But the rebellious vision prescribes and provokes ever-evolving ways to improve the quality of problem solving within all institutions and populations and across the critical zones of democratic life (market, politics, civil society). Fastening on our need and capacity to improve—time and again—on what we inevitably together do (poorly or well) is at the heart of the vision I endorse through all my work*.[65]

Scott Cummings and Ingrid Eagly provide an excellent history of the struggle of practitioners and theorists to define the appropriate connection between law and social justice, which is also community-driven.[66] In light of what they saw, in 2001, as the need to define innovative advocacy "to address the needs of the poor in this prosperous post welfare, post civil rights era," they identify the various forms of what they call the "law and organizing" movement.[67] This is a "politically revitalized approach to progressive legal practice" that insists that lawyers can advance social justice by shifting power to low-income communities through the joining of advocacy and grassroots organizing campaigns.[68] The authors then go on to take a critical look at this approach to "initiate a deeper discussion of the parameters of effective social change lawyering."[69]

My vision of lawyering for a collaborative problem-solving process differs from and builds on many of these concepts of community-driven lawyering. First, my focus is on the identification of an urgent issue facing a community and then lawyering to a collaborative formed to address the problem. Therefore, unlike the objectives of many other practitioners and theorists, my primary goal is not to empower communities for empowerment's sake. In this way, lawyering to a

63. *Id.* at 356.

64. *See generally* Gerald P. López, Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice (1992).

65. Gerald López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. Rev. 59, 69 (2004) (emphasis added).

66. Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. Rev. 443, 443–47, 450–67 (2001).

67. *Id.* at 447.

68. *Id.*

69. *Id.* at 450.

collaborative focuses less on political mobilization. Success is measured by whether the problem has been effectively addressed and whether lasting change has been made. Second, as discussed by Cummings and Eagly, many theorists and practitioners were and are attracted to community organizing and other forms of community-driven lawyering in response to compelling critiques of law, particularly litigation, because it "discourage[s] clients initiatives, divert[s] resources away from more effective strategies, and [leaves] larger social change undone."[70] My critique of litigation (and other court-centric legal strategies) is that they do not *allow for* collaboration, which I believe is necessary to solve major issues that impact poor people most severely (e.g., failed public education, lack of access to financial products, and limited access to quality food). In another article, Cummings describes CED as, by its nature, non-adversarial, in part because the projects themselves are dependent upon the financial resources they receive from market and state sources.[71] Cummings asserts that the community avoids adversarial tactics so as not to antagonize needed supporters.[72] While I acknowledge that this is often true, my avoidance of adversarial tactics has more to do with what I believe is required to develop successful solutions to complex problems, including the development of trusting relationships and joint efforts across interest groups.[73]

B. The Role of the Client

The answer to the fundamental question of "Who is the client?" provides the lawyer with access to guidance through the applicable state's Rules of Professional Conduct. Therefore, whenever a lawyer initiates work on a "project," whether that project is a case in litigation, negotiation of an agreement, or providing advice, asking and answering this question takes on a sense of urgency. Any clinician, but particularly those working in community lawyering projects, knows how challenging it can often be to answer this question under "normal" circumstances. Efforts to identify and address complex issues confronting communities bring lawyers into novel territory with increased lack of clarity in terms of who or what is the client. Because this movement towards "complex clinical clients" is new,[74] there is little convergence of views about the role of client, or if identifying a client is even necessary.[75]

Collaborative community-oriented work often involves the clinic in activities beyond those using traditional legal skills (e.g. program development, outreach,

70. *Id.* at 455, n.39 (quoting Ann Southworth, *Lawyers and the "Myth of Rights" in Civil Rights and Poverty Practice*, 8 B.U. Pub. Int. L. J. 469, 470–71 (1999)).

71. *See* Cummings, *supra* note 17, at 311–12.

72. *Id.*

73. Because the opportunity for pursing litigation for the collaborative, or even, in most cases, for the individual participants, in a related matter will be foreclosed, it is essential that the lawyer engage the collaborative in a conscious decisionmaking process, up front, to discuss the implications of the loss of this legal tool.

74. *See Complex Clinical Clients: Lawyering Beyond the Individual Client*, *supra* notes 18, 46.

75. *See* Cummings, *supra* note 17, at 325.

education, etc.). This fact, together with the often diminished emphasis on litigation, may suggest that this work is not "lawyering" and, therefore, that identifying a client is unnecessary. I believe, however, that the identification of the client is essential to both keep the potential domination of the lawyer in check, and also to ensure that the focus on the problem-solving agenda is preserved.[76]

The prerequisite of defining a client relationship gives necessary structure to the concept of lawyering to a collaborative. It starts with defining the contours of the particular collaborative. An important step forward in providing guidance and clarity in this area can be found in a recent paper by Paul Tremblay.[77] His paper provides a thorough analysis of both the range of roles that a lawyer can have when representing groups and, most importantly for the purposes of this article, a framework to help lawyers define the lawyering relationship within these new, dynamic environments. I discuss this framework in greater depth in Part IV.[78]

In lawyering to a collaborative as part of a problem-solving effort, the issue itself retains a place of primacy while the structure of the cooperative group is put in place. Sometimes the lawyer will help build the collaborative that will then become her client. Of course, this raises many challenges. The experience of international human rights clinics can be instructive in that their relationships to issues and clients share many of these same challenges:[79]

> Unlike direct services clinics, where the client is the object of the case, international human rights clinics are not a client-centered program. They support, instead, a norm-centered pedagogy. . . . The subject may be a variety of legal and non-legal strategies. "Clients" are rarely individuals, and they are often physically distant from the clinic itself. Indeed, although projects are generally organized through non-governmental organizations, it is more accurate to refer to these as partner organizations than as clients.[80]

The domestic collaborative problem-solving approach is novel because, generally, the lawyer will be helping to *develop* the client by first encouraging the engagement of the participants in a collaborative process and, second, by managing the

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76. "The project retainer is another occasion for the community and the lawyer to think through and reflect upon goals, strategies and roles. It is also another way to begin to move away from the rigidity of the traditional attorney-client role and to carefully think through new models." Marshall, *supra* note 17, at 223.

77. *See* Tremblay, *supra* note 15.

78. *See infra* Part IV.A.3.

79. Practitioners in international human rights clinics struggle to understand how the concept of lawyering fits in with the reality of the work. "Is the human rights clinic best understood as a model law firm (as reflected in the 'professional,' client-based mode of practice), an NGO (which uses the law to advocate an identified set of objectives in support of a particular agenda), neither, or both? Clinics resolve this question in different ways." Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 Yale J. Int'l L. 505, 545–46 (2003).

80. *Id.* at 533. *But see* Dina Francesca Haynes, *Client-Centered Human Rights Advocacy*, 13 Clinical L. Rev. 379, 381 (2006) (arguing that a powerful way to address common concerns and criticisms of the practice of human rights law is to emphasize a client-centered approach).

collaborative process to ensure that the "client's" interests are clear and being served. In a sense, as in the international human rights arena, the issue comes first and provides the energy for parties to come together to collaborate. Because domestic work allows for direct connection—in terms of both physical meetings and shared environments—it is more feasible to support the creation of a collaboration that can become the "client"[81] to which the lawyer owes her duties and loyalties.[82]

C. Collaborative as Client

The concept of collaborative as client grew organically out of a clinic project to address the mortgage foreclosure crisis in New Haven. Using the lessons learned in this project, I have identified and refined key elements required for success. I start with a description of the project and how it developed organically into a collaborative problem-solving process. I then explore the key elements to successful lawyering to a collaborative problem-solving process, identified by reflecting on this first project. Those elements are: locating the issue, identifying the collaborative, defining the relationship between the collaborative and the lawyer, and maintaining and sustaining the collaborative.

1. The Emergence of the Model—The ROOF Project[83]

In fall 2007, the United States was on the brink of the worst economic disaster since the Great Depression. And while the full implications of this crisis would not be known for many months, the mayor of New Haven approached the Yale CED clinic to participate in a task force created to look at what this crisis might mean for the city. The group, composed of representatives of organizations providing direct services to at-risk homeowners,[84] the Greater New Haven Community Loan Fund ("Loan Fund"), concerned city aldermen, city staff, and others, looked to the clinic first to help define the problem.

Defining the problem became a major project for that semester, involving a number of students from both the law school and the management school. The students studied the causes of the crisis, collected data on its projected impact in New Haven, researched national best practices, and studied relevant existing and

81. While I still believe that, theoretically, it is possible for that "client" to be an idea (i.e., issue), it is difficult to manage the reflective process that is required (i.e., a lawyer must continually ask herself if she is acting in the best interest of the client). In a sense, with the "issue as client" the lawyer is put in a conflict, as she must define the interests, or ensure that the interests are being defined, and then maintain her duties to further that interest.

82. The precise understanding of how to meet these duties and loyalties in this new context requires discussion and documentation in the MOU.

83. The development of this collaborative problem-solving process is described more fully in Golden & Fazili, *supra* note 4, at 43–56.

84. Services provided come under the umbrella of loss mitigation and include helping eligible homeowners to obtain modifications or refinances of their existing mortgage. If the homeowners cannot successfully restructure their mortgage, counselors will assist them in getting out of their mortgage in the least disruptive way, through a short sale or deed in lieu.

proposed federal and state legislation. This work resulted in a major report that outlined recommendations for a comprehensive response to the crisis and steps to take to implement the response.[85] The report and its recommendations were accepted by the mayor and the task force. The clinic, working with the executive director of the Loan Fund, was tasked by the group to lead the design and implementation of what was soon named the Real Options, Overcoming Foreclosure (ROOF) project, a comprehensive response to the mortgage foreclosure crisis in New Haven. The task force became the steering committee for the effort.

The urgency of the foreclosure crisis called for action. Defining the problem and developing responses required input from a large variety of organizations and interests. Frequent changes in the legal and policy landscape and the constantly shifting reality of the worsening plight of homeowners and renters demanded a flexible approach. In retrospect, it is clear that, given these elements, the ROOF project provided the perfect opportunity for a collaborative problem-solving process. By struggling to engage my students and the clinic in an effective effort to support this process, I uncovered the major elements of a new model of lawyering. The elements, as described below and as informed by the ROOF experience, include: locating the issue, identifying the collaborative as client, defining and monitoring the relationship between the lawyer and the collaborative, and sustaining the legitimacy and maintaining the focus of the collaborative.

2. Problem-Solving Focus—Learning About Locating the Issue

In the case of the ROOF project, the enormity and complexity of the crisis required a collaborative response. The community organizations that were providing homeownership counseling were suddenly inundated with homeowners facing foreclosure. The complexity of the governing documents in the mortgage industry, and the misinformation given out by servicers responsible for considering loan modifications, created a logjam that appeared unbreakable. City workers were at a loss for how to protect neighborhoods from the flood of vacancies and their corollary challenges (e.g., crime, vandalism, and disinvestment). By working together, and addressing all aspects of the crisis simultaneously, New Haven was able to provide proactive assistance to its residents, particularly those in the hardest hit and most vulnerable neighborhoods.

In his critique of the reigning approach to problem-solving, Gerald López lays out the ideal structure for successful problem-solving:[86]

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85. A copy of this report, much of which is still relevant four years later, can be obtained from the author.

86. His critique is worth noting:

> The reigning approach [to problem-solving] revolves around powerfully familiar models of human and organizational behavior. In these models, experts, who collaborate principally and often exclusively with one another, rule. . . . [T]hese experts issue top-down directives with which subordinates typically comply in order to be rewarded for doing their job. This approach and those who operate within its sway show too little interest in regularly adapting ends and means to what unfolding events and relationships reveal; too little curiosity about the institutional dynamics through which routines and

> The rebellious vision challenges the reigning approach along virtually every dimension. The rebellious vision depends upon networks of co-eminent institutions and individuals. These co-eminent collaborators routinely engage and learn from one another and all other pragmatic practitioners (bottom-up, top-down, and in every which direction at once). They demonstrate a profound commitment to revising time and again provisional goals and methods for achieving them; to endlessly striving and foraging about for how better to realize institutional, network, and individual aspirations; and to vigilantly monitoring and candidly evaluating from diverse perspectives what's working and what's not and what such feedback may reveal about both future possibilities and current practices.[87]

As a network of engaged institutions and individuals, the ROOF project reflected the rebellious vision described above. For example, through frequent sharing of information and joint deliberation, ROOF project participants developed a deep understanding of all aspects of the crisis. When it became clear after a year of focusing exclusively on homeowners that whe plight of renters in this crisis was dire, ROOF was able to expand quickly to include representatives from the local legal assistance office who had begun working on behalf of renters. This focus became a key priority because of the development and advocacy of new legislation to protect renters. Also, Connecticut state lawmakers, when considering new legislation to address various aspects of the foreclosure crisis, consulted with members of the ROOF project. These lawmakers not only recognized that, through the work of the students, information had been gathered on national best practices and the latest legislative solutions. They also understood that the members of the ROOF collaborative, individually and collectively, were tracking what was happening to those who were most directly affected by the crisis. The ROOF Project could inform lawmakers about the impact of existing law on at-risk homeowners and renters, and we could help lawmakers anticipate the actual impact of any legislative changes. By keeping the focus on the collaborative problem-solving effort to address this crisis, the clinic could be flexible about addressing the most emergent aspects and develop a deep expertise on the whole range of mortgage foreclosure issues.[88]

3. Problem-Solving Partners—Identifying The Collaborative

From the beginning, the clinic and the other members of the task force understood the importance of assembling a coalition to address the mortgage foreclosure crisis,

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> habits form; and a decided aversion to discovering how well any strategy or the overall approach involves and works for everyone affected by its reign.

López, *supra* note 65, at 72.

87. *Id.*

88. Our local work has also informed policy proposals on the national level. The CED Clinic participated in the development of a White Paper to identify the most effective and feasible strategies to address the nation's mortgage foreclosure crisis and resulting economic distress in communities of color. The White Paper was presented to members of Congress and the Obama administration on November 30, 2010. *See CED Clinic Goes to Washington, Uses Local Experience to Find Solutions to the National Foreclosure Crisis*, Yale Law School (Dec. 14, 2010), http://www.law.yale.edu/news/12560.htm.

particularly in terms of its impact on New Haven. It was clear that the complexity of the issues that contributed to the crisis and to need for multi-faceted solutions, demanded more than discrete responses from individual organizations. In addition to the participation of representatives of those affected by the crisis, the students' research on national best practices informed us about the additional organizations that needed to be "at the table" in order to craft and implement comprehensive solutions.[89]

For a full five months, the clinic worked with the task force to address the mortgage foreclosure crisis without an identified client and without an engagement letter. As the supervising attorney the lack of an identified client made me extremely uncomfortable. I had always emphasized to students the importance of knowing, "Who is the client?" Answering this question in the CED context, even when you know which *entity* is your client, is enormously complex (i.e., what happens if there are divergent voices on the board, or the executive director begins to act in ways that appear to be counter to the wishes of at least some of the board members?). Conversations about who the client is always provide students with rich learning opportunities related to professional responsibility and client management. My concern was that without at least the starting point of an identified client, such inquiries would have no foundation. Despite my discomfort, we continued without a client because the need was urgent and the participants seemed satisfied with how the clinic's work was being done and the general progress being made in addressing the crisis.

Eventually, once money was raised to hire a full-time coordinator to be housed in the Loan Fund, the clinic entered into a formal engagement letter with the Loan Fund as the client.[90] However, the ROOF steering committee, a group that is not formally affiliated with any single entity, still meets quarterly, and a smaller executive committee meets monthly, to review status reports on existing projects and discuss emerging new issues and needed responses.[91] In subsequent semesters, the students and I were able to separate those "projects" that were being undertaken on behalf of our single identified client (the Loan Fund), such as the development of documents to use in implementing the neighborhood stabilization program, and those that were more appropriately guided by the collaborative group (the steering committee), such as working with legal services providers to create pro se materials for homeowners in counseling and also advocating for legislation to protect renters in foreclosed buildings.

89. For example, we added representatives from the local legal services office, which was looking at the impact of the crisis on renters, and from an organization focused on data collection and analysis.

90. The Loan Fund is the specific client for the neighborhood stabilization work, where students work on every aspect of design and implementation of New Haven's $3.2 million in federal funds including drafting documents, developing policy, and designing programs.

91. One example of an urgent issue that was identified later in the process, is the plight of pro se defendants in foreclosure actions. Traditional legal services cannot assist these people because of income restrictions and many are unaware of the free help available from HUD certified counselors. In response to this issue, the steering committee has been expanded to include an attorney from the Connecticut Fair Housing Center. ROOF is working on a pilot program with court services in New Haven to train local attorneys to staff a table at foreclosure court to provide pro se litigants with basic information to help them avoid immediate loss of their homes and determine appropriate next steps.

In our engagement letter, we separated these tasks. But we did not formalize the relationship between the clinic and the collaborative, something I advocate for and have done in the self-conscious collaborative project discussed below.

4. Learning About Defining the Relationship Between Lawyer and Collaborative

At the outset of our rapidly developed, collaborative response to New Haven's mortgage foreclosure crisis, I took a leadership role, which I continue to hold, as chairperson of the ROOF steering committee. Given what I now understand about the unsettled nature of guidance on multiple representations by the Model Rules,[92] I would not have taken on that role. My experience in this project also supports my conclusion that a lawyer should refrain from taking a *formal* leadership role in the collaborative that she is also supporting.[93] The tension between my formal leadership role and my responsibilities as lawyer for the collaborative is most apparent as it relates to agenda setting. As chairperson of the steering committee, I feel an urgency to push the group towards action on areas that I think will be most effective to address the crisis. As the attorney, and student supervisor, I recognize the importance of ensuring that the agenda is set by the group. My role as lawyer for the collaborative should be a check on the domination by any individual participant. This creates an obvious conflict that could have been avoided by my not accepting a formal leadership position.

In the next section, I introduce the concept of the Memorandum of Understanding (MOU), which I believe is one of the most essential tools to use in defining the relationship between the lawyer and collaborative client and in maintaining that relationship to support effective change. At the end of this paper, I provide a model MOU used in a current project. I also suggest additional ways that the lawyer's relationship to the collaborative can be structured to minimize lawyer domination, including appropriate training, appropriate division of labor as between the lawyer and the members of the collaborative, and accountability measures.

5. Learning About Maintaining and Sustaining the Collaboration

During the first two years, when the crisis held the attention of the entire country, meetings were held frequently and tremendous momentum carried the work of the project forward. The initial process of defining the contours of the problem and crafting a multi-tiered, comprehensive response provided sufficient shared purpose and vision to sustain the collaborative initially. We never, however, formalized the task force as a "client" of the clinic, even after the task force became the steering committee. Formalizing the relationship of the clinic to the collaborative as a client would have required each participant to proactively agree to be both part of the

92. The adoption, and then rescission of Model Rule 2.2, traces the most recent struggles of the profession to provide guidance to lawyers who engage in multiple representations. *See* Bennett, *supra* note 14, at 81–83.

93. An entire paper can and should be written that explores fully the contours of what a leadership role can and should look like for someone who is also lawyering to a collaborative.

collaborative and a client of the clinic. Each participant would also have had to get permission from his or her primary organization to serve as a representative of that organization within the collaborative. All of these processes would have allowed both the individual participants and the collaborative as a group to create a shared identity. This identity would then have helped sustain the collaborative going forward. In addition, had we formally identified the clinic's "client" from the outset, members of the collaborative would have better understood their relationship to the "work" being done by the students and the group would have been more effective at maintaining the focus of the collaborative.

Given the particular challenge of maintaining the effectiveness of a collaborative effort (i.e., helping to maintain a shared focus among disparate groups), accountability processes take on added saliency. In addition, it is important to consider accountability in both the context of concrete accomplishments and process. The ROOF project has always ensured that its work is measured against data. The steering committee receives monthly reports on such things as: the number of new foreclosure cases; the number of new intakes to counseling; the number of successful modifications; the number of new vacant buildings; and the number of properties put back into productive use. We did not, however, develop a shared understanding of how to measure and ensure the success of the collaborative itself. Had we, for example, worked together to draft a joint document that reflected our goals (i.e., an MOU), and what we as a collaborative would have viewed as success, that joint goal setting would have provided a foundation of shared effort. Those defined goals would also have enabled the group to reflect on its success (i.e., whether the goals were met, what were the obstacles and what adjustments were needed going forward). Such efforts would have created a shared identity for the collaborative which would have helped to sustain its focus and energy. As we have found in the neighborhood planning collaborative project discussed below, the process of drafting and approving a document such as an MOU at the outset of the project, provides the space to develop shared understandings of the nature of the problem, approaches to addressing the problems, and measurement of success in both the concrete and process realms.

Without the efforts described above (i.e., having each participant formally become a member of the collaborative and joint development of an MOU) the ROOF collaborative has experienced problems sustaining its joint momentum. Individual members of the collaborative have begun to turn inward to focus on the aspects of the continuing crisis that most affect their organizations. New people have taken key positions in partner organizations. These new players do not have the shared history of the past two and a half years. I believe that a more formal process of defining the relationships and the purpose of the effort would have been helpful to the collaborative in times of transition.[94] Despite the fact that the financial crisis is far from over in New Haven, and that the issues which need to be addressed are still critical, community attention has begun to move to other urgent issues such as school reform.

94. In recognizing this, it is possible that the members of the collaborative will reinvigorate the process. But, this may also represent the natural end of the collaborative in its current incarnation. There is an effort to take the model and apply it regionally. *See infra* note 107.

These experiences with the ROOF Project provided lessons learned to apply proactively in future Yale CED Clinic projects, as discussed below.

IV. COLLABORATIVE AS CLIENT—LOCATED IN PRACTICE

The model of lawyering to a collaborative problem-solving process is a powerful tool in achieving effective change for disadvantaged communities. Applying the lessons learned from the ROOF Project experience, my students and I were able to assist a collaborative of organizational representatives and concerned neighborhood leaders come together to build a vision of positive economic and community development for their neighborhood. Using the frame of our proactive application of the model to this neighborhood development project, I return to the key elements (identifying the issue, defining the collaborative, defining the relationship between the collaborative and the lawyer, and maintaining and sustaining the collaborative) required for success in lawyering to a problem-solving collaborative.

A. Conscious Application–Neighborhood Planning Project

The Yale CED clinic has been serving numerous community development corporations (CDCs) as clients for over twenty years. In a particular neighborhood, strategically located between the university and a major thoroughfare, the clinic currently has no fewer than five such clients with projects that are in some stage of development.[95] This area has a rich history for the New Haven African American community, and is the location of a successful HOPE VI project.[96] However, this area has never reached its potential, particularly as a retail and economic center for the community.

1. Problem-Solving Focus—The Issue in Application

Beginning in the fall of 2009, as the CED students and I reviewed the projects for which these five clients were requesting assistance for the coming year, I was struck by the amount of attention being focused, individually, by each client within the same geographic area. While we could, and would, provide assistance to each group to further their individual goals, it seemed clear that all of our clients would benefit from some general information (e.g., infrastructure investments planned by the city, market data, traffic studies, historic data, environmental condition data,

95. Most recently, the clinic has helped these clients individually complete two elderly housing projects, assemble properties for a new mixed-use development, and plan for the redevelopment of an older retail property.

96. Hope VI is a major grant program of the U.S. Department of Housing and Urban Development (HUD) meant to revitalize the worst public housing projects into mixed-income developments. *See Main Street Grants Notice of Funding Availability*, U.S. Dep't of Housing and Urban Dev. http://hud.gov/offices/pih/programs/ph/hope6/ (last visited Aug. 3, 2011).

grant opportunities) and that the community and city as a whole would benefit from a coordinated planning process.[97]

While the mortgage foreclosure crisis offered an emergent crisis that could benefit from collaborative problem-solving, here was another ripe opportunity for collective action. The development of a neighborhood plan was not a crisis, but the need for collective action was no less important. For decades, these organizations had accomplished significant discrete projects (e.g., the creation of elderly housing, job development programs, etc.); but these were individual successes, not tied together in any meaningful way and not leading to successful economic development on the neighborhood level.

Self-consciously applying the idea of lawyering to a collaborative, we approached each of the current clients individually to determine its interest in working together on a neighborhood planning process. The client groups included several church-based CDCs, an elderly housing development, and a merchants association. The response from all clients was positive, if somewhat skeptical (several past neighborhood wide planning efforts had resulted in no real progress). The clients identified other important groups that had to become engaged if this were to be a true neighborhood-wide collaborative. Most importantly, an organization was trying to reopen the historic community center that had been an anchor of this community for decades. The clinic, as a trusted entity for each client,[98] would facilitate the movement of the groups towards this joint effort.[99] Aware of the history of past planning attempts, the clinic, working with other community resources, was committed to ensuring that this effort be perceived as a success and that it would result in meeting certain objectives established by the group.

Given the willingness of the various groups to collaborate on a joint problem-solving process, it was now left to my students and me to take the lessons learned through the ROOF project and ensure the effectiveness and legitimacy of this effort.

2. Problem-Solving Partners—The Collaborative in Application

As we began to imagine how to formalize the problem-solving group, we were fortunate to have the benefit of Susan Bennett's article on collective representation.[100] In beginning to imagine an environment where lawyering to multiple entities might provide effective advocacy for all participants, Bennett first presents a story of lost

97. This proposed collaborative shares many similarities (focused geographic location, similar types of entities, need to make best use of scarce resources) with the one envisioned by Susan Bennett, *supra* note 14, at 77–80.

98. The trust was earned, for the most part, from years of successful representation of these individual clients.

99. The skepticism was strongest from representatives of organizations that were not past individual organizational clients of the clinic. After a full year of work, the skepticism has begun to disappear as the relationships between the representatives have deepened.

100. *See* Bennett, *supra* note 14.

opportunity.[101] Two public housing tenant organizations, both clients of one lawyer, would both benefit from a federal grant opportunity that the lawyer could assist them with. However, the lawyer feels constrained by the rules of professional responsibility. Despite the willingness of both clients to waive any potential conflict, the lawyer decides that she cannot help either organization apply for the grant. And, in the end, neither organization is successful in obtaining the grant.[102] From this starting point, Bennett imagines the possibility of establishing a continuing relationship among a number of organizational clients and an attorney which would then allow for many different types of representation: "[R]epresentation of one client in one matter, or two or more clients jointly in one matter, or of multiple clients in a planned succession of linked matters."[103]

Given the range of possible community issues to be addressed, it makes sense that collaborative problem-solving efforts can take many different forms. How the appropriate collaborative is identified will change depending upon these varying circumstances. In the ROOF project, it was necessary to include representatives from all relevant areas impacted by the crisis, from those working directly with at-risk homeowners, to those engaged in stemming the damage to the neighborhoods. In the case of the neighborhood planning effort, the existing clinic clients identified additional key players to invite.[104] Consultation with other engaged parties, such as New Haven and Yale University, also added to the understanding of the key interests in the neighborhood.

Invitations went out to a group of individuals and organizations identified by the clients. The initial meeting was hosted by a local church that was not a current client of the clinic. This location provided an important sense of neutrality to the setting. Over thirty individuals and organizations were represented. After introductions, the students facilitated a discussion exploring such questions as: Does your organization currently have redevelopment projects planned or desired in the area? What would you like to see developed in the area outside of your scope? Are there currently other groups working toward similar goals? How could we all best work together and consolidate efforts? What should be the mission of this collaborative group? Who else should be a part of it?

A rich conversation followed, during which many concerns were aired and addressed (e.g., Was the clinic there to represent and press for Yale's interests? Was this group going to take away from urgent efforts of individual organizations?). By the end of that first introductory meeting, everyone agreed that there was value in working collaboratively and that progress meetings should be held quarterly. The

101. *Id.* at 68–69.

102. *Id.*

103. *Id.* at 77.

104. There have already been adjustments made to the group members. At each of the first two meetings, the general consensus of the group was that a particular group that needed to be represented was missing. Between meetings, efforts were made, and have thus far been successful, at encouraging the identified participant to attend the next meeting and become a member of the steering committee.

participants agreed that a smaller subgroup should meet more frequently to take steps to formalize the clinic's relationship to the effort. This smaller group was ultimately formalized into the steering committee for the collaborative.

3. Defining and Maintaining the Relationship Between Lawyer and Collaborative in Application

Once the multiple parties are identified, some formal written document should be created that outlines key issues such as sharing information and creating processes for dealing with potential, perceived, or actual conflicts of interest. It is essential that the lawyer—and in the clinic setting, the students—fully engage in the ethical implications of this work with the participants and then reflect that joint understanding in the document.

In terms of what form this document should take, Bennett suggests that each individual entity that decides to join a consortium should sign its own copy of a document that she calls the Community Client Retainer Agreement ("Agreement").[105] The Agreement outlines the expectations of membership.[106] Each individual group must get its own board's approval before signing a copy of the Agreement.

The structure suggested by Bennett would work well when a decision is made to create a consortium that will exist for an extended period of time to address a series of issues for a particular group of organizations. I see the need for collaborative problem-solving to be more focused on particular urgent issues that emerge, change, and even, eventually, dissipate. My analysis suggests the use of a single document, the MOU, that all participants will sign jointly. The mortgage foreclosure crisis, and the corresponding response reflected by the ROOF project, provides a perfect illustration of when an MOU should be used. A permanent or even semi-permanent coalition was not needed for the members of the ROOF project to successfully assess and design a response to the foreclosure crisis. While the effects of the crisis are not over, the participants in the ROOF project are beginning to see the need to transform the collaborative response and, in fact, to even think about eventually phasing out the ROOF project altogether.[107] And, the funding sources to help support such a response are drying up. If an MOU had been developed, I believe that the transition process that the ROOF project will go through over the next twelve months could have been anticipated, at least in part. Because no document required regular assessments of the goals of the collaborative, the group has been caught somewhat

105. Bennett, *supra* note 14, at 73.

106. Bennett also believes it is important that each entity separately "guarantee[s] that it governs itself under internal institutional rules . . . [which in turn] serves as the lawyer's assurance that her client's decision, including consent to any conflict, are fully informed and deliberated, and that the client is articulating the substance of the decisions to her accurately." *Id.* at 94.

107. The ROOF Project sees a need to regionalize its efforts and bring the coordinated response to neighboring towns. They have put in a proposal to the local Council of Governments and expect to receive some funding. In New Haven, ROOF needs to figure out how to transition the project for the future. An MOU and periodic assessment process would have been helpful to have established up front to assist with the transition.

off-guard in the need to plan for a successful transition which will maintain those elements that need to continue (i.e., the completion and ongoing monitoring of the neighborhood stabilization program).[108]

A single MOU outlines the shared understanding of all the participants around the particular issue that is being addressed—such as a comprehensive response to the mortgage foreclosure crisis or a joint vision for the physical and economic development of a neighborhood—by the collaborative. The MOU defines the obligations of the lawyer to the collaborative as opposed to individual participants, some of whom remain individual clients of the clinic, and the processes for dealing with information sharing and conflicts of interest. Importantly, defining who signs the MOU clarifies which organizations are part of the decisionmaking process for the collaborative. Paul Tremblay has identified the key conditions required for successful lawyering to an informal group:

> [W]hen the lawyer works with a loosely-structured group . . . with no formal corporate existence, her responsibilities increase substantially, as do her risks of getting things wrong, of course. . . . [U]nder the law of lawyering and as a matter of substantive "corporate" law a lawyer may represent an informal group as an entity, rather than as a collection of individuals in the form of joint representation. . . . The critical consideration for the lawyer is transparency—to be certain that the individuals who form the membership within the loose association understand that the representation is as a group and not as an aggregation of individuals. *The buy-in of the membership to the concept of group representation is a necessary (but not a sufficient) precondition to her proceeding on behalf of the entity. . . .[T]he lawyer [must] obtain from the unincorporated association a decisionmaking scheme binding upon the group. Without that element . . . the lawyer cannot effectively proceed to represent the group.*[109]

These conditions require that there be an identifiable group, that the lawyer know who is in the group and who is not (and that the members know whether they are in the group), and that there is an agreed upon decision making structure. All of these conditions reinforce the need for and value of using an MOU.

Originally, the clinic's conception of the neighborhood planning group was that the group would be open to all interested community parties willing to attend meetings. The participants themselves soon determined that such a large group could not function effectively. A smaller group, such as a steering committee, was needed to meet more frequently and to ensure that progress was made, and that decisions could be made in a timely manner. All interested community members are considered participants in the larger collaborative and their role is reflected in the MOU. However, it is the members of the smaller steering committee, identified by the larger group, that are expected to sign the MOU and serve as the problem-solving

108. Needless to say, this could have been anticipated without an MOU and, the clinic is now helping facilitate an orderly transition. But the creation of an MOU, signed by all participants, would set out necessary expectations that assist in the maintenance of a successful collaborative.

109. Tremblay, *supra* note 15, at 395 (emphasis added).

group. As required by Tremblay's analysis, the steering committee is a group that has bought into the concept of membership for the purposes of group representation.[110]

In order to sign the MOU, each individual that is representing another organization must get the governing board of that organization to formally acknowledge the MOU and approve the representative's participation.[111] This requirement ensures that parties to the MOU are recognized, both internally to the collaborative group and by their "home" organizations as legitimate representatives. Parties to the MOU are held to higher expectations in terms of disclosing information and agreeing to work through potential conflicts.

The students drafted an MOU along the lines discussed above. They started by reviewing and adopting many of the elements in Bennett's sample document[112] and made changes to reflect its use as a single document to be signed by all collaborative participants. The students had several meetings with the participants to discuss the various elements in the MOU. In the process of these discussions, it became clear that the MOU needed to define a decisionmaking process,[113] beyond consensus, when needed.[114] The MOU, therefore, helped the collaborative define an additional element required to lawyer to an informal group as identified by Tremblay.[115] Finally, the MOU identified the process through which the collaborative will identify and assess goals and progress.[116] The MOU explicitly outlines the goals to be accomplished during the current semester. The MOU lasts until the end of the semester, at which point a process of assessing progress made on each of the goals is conducted. The MOU is to be re-signed at the beginning of each new semester, after the group has defined the goals for the next semester.

Despite the newness of this effort, we have already experienced the emergence of potential conflicts of interest and the ability of the collaborative to work through them successfully. The collaborative was provided with an opportunity to obtain a small planning grant. In order to do that, an application had to be created that

110. *Id.* at 438.

111. In the process of executing this first MOU, we discovered that there were participants on the steering committee who could not formally bind their organizations. For example, the representative from the New Haven's Department of Economic Development would have required Board of Alderman approval for such a role, which would have taken months and might not have been approved. In that case, we had a letter prepared by the organization, and signed by the director of economic development, which acknowledged the MOU and the representative's role as a liaison between the collaborative and the organization.

112. Bennett, *supra* note 14, at 73–77.

113. Interestingly, the situation that raised the need for the decisionmaking process was a desire by the more active members to ensure that they could progress (i.e., make decisions and move forward), even when not all steering committee members were present.

114. *See infra* Part III.B. and app.

115. *See* Tremblay, *supra* note 15, at 395.

116. The students held the first formal goal assessment and planning status process with the steering committee. The level of engagement amongst the representatives was something that this author has not seen in the twelve years she has been involved with community work in New Haven.

outlined the initial priorities for the collaborative despite the fact that each individual organization had its own development priorities (e.g., several of the CDCs were primarily interested in housing development), the entire group was able to agree on two priorities, which represented the immediate interests of only two of the participants. The collaborative realized that these two initial priorities (redevelopment of the retail strip and preservation of a historic African American cultural organization) were foundational to any successful overall neighborhood plan. Another example of the opportunity for the collaborative to work through potential conflicts of interest was somewhat more contentious. At the meeting where the application had to be approved (in order to meet the application deadline), one of the organizational representatives refused to agree to the draft until she was able to get approval from her board at a formal meeting. The individual claimed that she was not authorized to agree to anything on her own.[117] Finally, after the urging of others on the steering committee, she agreed to call all of her board members and email their approval (with changes) by midnight, allowing the application to be submitted on time.

By actively engaging all of the participants of the steering committee in the process of creating the collaborative and defining the elements of the MOU, the group has formed a common foundation to help them navigate conflicts as they arise. In the end, I also believe that this larger effort will improve the chances of success of each of the individual organizations' efforts.[118]

4. Sustaining the Collaboration in Application

Maintaining the effectiveness, legitimacy, and viability of the collaborative requires effort. López is explicit about the need for accountability in collaborative work:

> Research about problems and problem-solving resources—regular inventories, periodic check-ups, full-blown evaluations—must become part of ordinary operating procedure, part of "business as usual," and linked through healthy feedback loops to street delivery of services. This is true no matter the social problem addressed (health, environment, economic development, or criminal justice) and no matter the mix of public and private organizations implicated in overlapping networks of resources.[119]

Lawyers can help promote these processes by establishing regular meetings, each with a clear agenda, the elements of which are established jointly. Early on, the group should define what they all will recognize as "success" and how progress to achieve that success can be measured concretely. At the regular meetings, reports should be given on progress made toward the identified goals. Minutes should be taken and

117. The MOU had not been finalized at this point and, if it had been, might have helped prevent this incident.

118. One immediate benefit to all of the participants, which was anticipated by Bennett, *supra* note 14, at 86–87, and was apparent at the first meeting, was the creation of a forum in which they could share information.

119. López, *supra* note 65, at 81.

distributed prior to the next meeting. In addition, on a regular basis, new relevant information should be provided to the group (potentially collected by the students)[120] on the current status of the issue that is the basis of the collaboration. If, based upon this new information, changes to the approach are needed, critical new members added to the group, or questions raised about the continued need for the group, there must be a process by which such information can be presented, absorbed, and processed. In the neighborhood planning project, the clinic students have been proactive about supporting regular meetings, documentation, establishing success measures, and researching and presenting relevant information.

Supporting collaborative problem-solving efforts, which are essential to address complex issues that have resisted more traditional lawyering processes, requires that lawyers engage in different roles and develop new sets of skills. The next section explores some of the most significant challenges involved in this kind of work, and the concepts that will help lawyers address those challenges.

V. CHALLENGES AND RESPONSES

A. The Importance of Process

As powerful as I believe this model is to allow lawyers to engage in substantive, community-driven change, without significant attention to process in practice each collaborative is likely to lose its legitimacy and its ultimate effectiveness. Specifically, attention must be paid to the establishment and maintenance of the collaborative and to ensuring accountability to the purpose for which it was formed. The nature of collaborative problem-solving efforts is that they are made up of individuals who "represent" a variety of interests.[121] Most obviously, each participant represents the organization that she works for or is on the board of (e.g., one of the church-affiliated CDCs). Like Susan Bennett, who borrows social science concepts to explain the structure and potential benefits of this kind of collaborative work,[122] I take some guidance from the field of organizational behavior, most particularly the areas of group and intergroup behavior.[123] Organizational theory about these "representational"

120. In the case of ROOF, the new information was often data about what was or was not working in the implementation of responses to the crisis or new legislative changes being considered on the state or federal level that would have an impact locally. In the case of the neighborhood planning project, this information was often about funding opportunities, data collected on properties within the target area, etc.

121. David N. Berg, *Senior Executive Teams: Not What You Think*, 57 Consulting Psychol. J.: Prac. & Res 107, 109–12 (2005) (describing the representational dynamics when individuals form a group, such as a senior executive team, where the individuals both represent their part of the organization and are members of the team).

122. Bennett, *supra* note 14, at 95–110.

123. My undergraduate degree was in this field and I have integrated several sessions, one on "group development" and one based upon Clayton P. Alderfer, *Consulting to Underbounded Systems, in* 2 Advances in Experiential Social Processes 267 (Cary L. Cooper & Clayton P. Alderfer eds., 1980), into my CED class that use organizational behavior theory to assist students in understanding interactions with the client, and using that understanding to improve their client work.

groups suggests ways that a lawyer can help ensure their success.[124] I have adapted these recommendations for the specific work of lawyering to collaborative problem-solving efforts.

Transparent steps must be taken first in the establishment of the collaborative group[125] to ensure that all necessary parties are represented and that the framework for the lawyer's work with the group is fully defined. This includes ensuring that all of the participants understand the implications of the collaborative as client on the lawyer's ethical responsibilities to the individual participants versus the collaborative. I prepare my students for this work by introducing, through lecture, reading, and experientially, critical concepts of organizational dynamics. Initially, the students go through a community building process with their fellow students at the beginning of the semester. In that process, they explore the implications of their own individual group memberships (e.g., religious, ethnic, socioeconomic, etc.) on their work with other students and their anticipated work with clients. This same kind of process needs to be facilitated when a collaborative client group is forming. In this case, in addition to whatever individual level identities the participants might have, they are also representatives of their organizations. Space must be made for the individuals to express the interests of the organizations they represent. Instead of being asked or expected to adopt a monolithic set of interests defined by the collaborative, part of the value to the problem-solving effort is derived from each participant retaining her original, sometimes conflicting, interests. These individuals then work together to find and implement solutions to shared concerns.

As part of the maintenance of the collaborative system, a process must be defined up front—and then followed—that allows for reflection and adjustment of the group's strategies, when needed, to align them with any changed reality surrounding the defined problem. This includes allowing for new information to be researched and presented to the group on the current status of the issue that they are working together to address. And accountability measures—defined at the establishment phase—must be reported, reviewed, and discussed by the group. In this way, the collaborative group develops a shared understanding of the goals and can then agree on what success is and whether they have achieved it. The accountability measures must also extend to the collaborative itself. So, for example, one concrete goal of the collaborative might be to obtain grant funding to support the development of the initial phase of the neighborhood plan. A process goal would be to reassess, as a group, the overall goal of the collaborative at the end of each semester. The MOU, which defines goals to be accomplished for each semester and a process for assessing progress, will assist in ensuring that these accountability measures take place.

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124. Berg, *supra* note 121, at 112–16. These include: allowing individuals to own their competing and conflicting group memberships; enabling open discussion by participants of their parochial interests; developing shared understandings explicitly, instead of assuming that views about facts and experiences are shared; and creating strong but permeable boundaries.

125. I include in the notion of "establishing" the collaborative both assisting in the creation of a brand new group and formalizing an existing group into an identified collaborative with which an attorney or clinic would establish a formal relationship.

Also to help prepare students for facilitating the maintenance and accountability of the collaborative, they explore the theories of "consulting to under-bounded systems."[126] Generally speaking, nonprofit organizations tend to suffer from "underboundedness" (i.e., the lines of authority are unclear and the boundary defining who is "inside the organization" and who is "outside the organization" is fluid), making decision making difficult. On the other hand, many for-profit corporations or organizations, like the military, experience symptoms of "overboundedness" (i.e., lines of authority are inflexible and discourage critical information sharing).[127] Understanding the differences between these two extreme conditions allows students to help the collaborative participants reach and maintain an equilibrium which allows for optimum flow of information and ideas, while still enabling efficient decision making and implementation. Simple tools, such as taking notes, making agendas, and starting meetings on time can facilitate effective operations.

Requiring that the governing boards of the "home" organization of each representative review and acknowledge the MOU is an important way to manage the boundaries of the collaborative. The "home" organization learns about the work of the collaborative by reviewing the MOU and must engage in discussion to determine what role its representative will have in the collaborative. Not having an MOU for the ROOF project meant that this important process did not occur and, as a result, the ROOF project has a much more difficult time distinguishing itself from its partners. Having gone through this process with the neighborhood planning project has proven to be extremely helpful in getting larger organizations (such as the New Haven Department of Economic Development) to define how they can appropriately be supportive to the effort.

Facilitating client meetings, which requires the sharing of information, and engaged (sometimes difficult) discussion to reach consensus, is not easy. The supervising attorney must be hyper-observant to data from client meetings (i.e., who spoke up, who did not speak up, whether the participants were making decisions or looking to the clinic for guidance). This data should be discussed and analyzed by students and faculty during supervision to ensure that the clinic is supporting effective control of the process by the participants themselves and that progress continues towards the accomplishment of the shared goals.

B. Ethical Issues

This kind of collaborative effort strives to work across interests. Lawyers should therefore anticipate, and find ways to plan for, the conflicts that will arise. My model is just one of an increasing number of strategies used by law school clinics which are exploring opportunities to move beyond the students' individual client work.[128] To

126. Alderfer, *supra* note 123, at 268–69.

127. *Id.* at 270–76.

128. *See supra* note 44. The author received the following description of work being done at the University of California Hasting College of the Law, which was mentioned during a panel discussion at the recent Arrowhead conference by Professor Mark Aaronson:

prepare for this work, students must spend significant time reading and discussing the relevant rules up front (instead of waiting for an issue to arise). But clinical faculty must also help them to explore the rich and growing literature about how those ethical rules can and should be applied to lawyering. In this section, I cover some of the critical ethical issues that must be dealt with proactively in order to engage effectively in the collaborative as client model.

As identified by Susan Bennett and Paul Tremblay, the treatment of multiple representations within the Model Rules provides, at best, conflicting guidance.[129] But, Bennett ends her analysis by concluding that, "the Model Rules of Professional Conduct, and (perhaps) norms of responsible practice, at least condone if not encourage lawyers to represent multiple clients."[130] In fact, Bennett finds a potential benefit in that clients have to be more actively engaged as they cannot "place unthinking trust" in the lawyer, given that she must divide her loyalties.[131] As discussed earlier, Tremblay

> The CED Clinic . . . targets as its client base the adjacent low-income Tenderloin neighborhood in San Francisco. In establishing the Clinic's project docket, the Clinic's supervising professor, who has worked with Tenderloin community organizations for thirty years, seeks out and responds to specific requests for legal assistance. Part of the outreach effort involves monitoring land-use and other social policy developments that are likely to be of priority concern to Tenderloin residents and groups. Sometimes an issue arises that is of community-wide importance but is not likely to come to the forefront for a prolonged period of time. During such a period when there is not yet a clear group client, Clinic students monitor developments and provide reports on what is happening to neighborhood leaders and at neighborhood forums. Part of this community education function involves informing neighborhood organizers when it is timely to mobilize neighborhood residents and organizations. A good example is the proposed development of a major new hospital complex bordering the Tenderloin, which was stalled in the San Francisco entitlement and environmental process for several years. When the land-use review process was re-instigated by the hospital developer, community organizers on the staffs of several neighborhood organizations convened a neighborhood meeting that led to the formation of a neighborhood coalition. The coalition now is an active participant on multiple fronts as the hospital developer seeks necessary governmental approvals and also has become the Hastings CED Clinic's group client.
>
> E-mail from Mark N. Aaronson, Prof. of Law, University of California Hastings College of the Law, to Robin S. Golden, Selma M. Levine Clinical Lecturer in Law and Ludwig Community Development Fellow, Yale Law School (Nov. 24, 2010, 16:04 EST) (on file with author).

129. Tremblay, *supra* note 15, at 409–10; Bennett, *supra* note 14, at 80–85.

130. Bennett, *supra* note 14, at 109. Bennett takes her readers through a description of the relatively short-lived Model Rule 2.2 Intermediary, which was suggested by the ABA's Kutak Commission, adopted in 1983, and then eliminated after the 2000 Commission provided its report. *Id*. at 81–85. Model Rule 2.2 was generally recognized as an attempt to specifically address lawyers' participation in multiple representation, even codifying Brandeis's concept of "counsel for the situation." Dzienkowski, *supra* note 14, at 740. Due to the ABA's discomfort with what it presumably saw as the presumptive conflicts involved in multiple representation, the rule required "the drastic remedy of withdrawal from the representation of all the clients in the group (including former individual clients) if any one client requested it or if any unforeseen factor threatened to throw off the delicate balance of individual interests." Bennett, *supra* note 14, at 82–83. Lawyers now seeking guidance on multiple representations are to refer to the expanded Comments to the more lenient Rule 1.7. *See* 1 Geoffrey C. Hazard, Jr. & William Hodes, The Law of Lawyering 11–41 (3rd ed., 2004 Supp.).

131. Bennett, *supra* note 14, at 85.

sets out the essential elements necessary for lawyers to appropriately engage in group representation in more informal community settings.[132]

The key ethical issues facing lawyers, and participants, in multiple representations revolve around confidentiality and conflicts of interest. First, all participants must understand that they lose "any claims in litigation of privilege for their joint communications to each other and to their lawyer."[133] Second, all participants must be willing to waive their "concurrent" conflicts in advance, which is allowed under the Model Rules and most states (after sufficient explanation by the lawyer to each participant).[134] Participants cannot, however, be asked to waive issues of confidentiality in advance. "It is the prospect that any one client in a multiple representation may refuse to divulge information critical to the project, not the possibility of any substantive conflict, that may compromise the future of the Consortium irreparably."[135] Therefore, the lawyer must continually engage the participants whenever an issue of sharing potentially confidential information arises. Armed with this initial guidance, any clinic that seeks to undertake this kind of representation must spend significant time with the students reviewing the history, the plain language of the appropriate state code, and the commentary. Thoughtful articles like Bennett's[136] will also provide a strong foundation students can use as they confront anticipated, potential, or actual conflicts in their work on behalf of collaborative problem-solving efforts. Walking the collaborative participants through the various sections of the MOU, for example, serves to flag both the importance of confidentiality and the importance of a commitment to sharing critical information.

Finally, as indicated by Tremblay's thorough and careful analysis, the only way to successfully manage the many ethical challenges inherent in collaborative work of this kind is to do the difficult work of defining the client and the relationship of the lawyer to that client.[137] Innovations can develop from the foundation of that relationship in a way that achieves effective change while maintaining the professional obligations of the lawyer.

C. The Lawyer in Collaborative Problem-Solving

Is lawyering necessary or even desirable to provide support to collaborative problem-solving efforts? Some might say that a non-legally trained "project manager" or an experienced practitioner in organizational behavior should be able to do just as good of a job as a lawyer in supporting such an effort. Involving various facilitators

132. Tremblay, *supra* note 15, at 395.

133. Bennett, *supra* note 14, at 89.

134. *Id. See, e.g.*, Wick R. Chambers, *Informal Opinion 09-01:Collaborative Divorce*, Connecticut B. Ass'n (Jan. 21, 2009), http://forctlawyers.com/wp-content/uploads/2009/12/CT_INFORMAL_OPINION_09-01_Collaborative_Divorce1.pdf (finding that a client's *informed* consent to concurrent conflicts does not conflict with Rule 1.7(a)(2) in the case of Disqualification Agreement in a Collaborative Divorce process).

135. Bennett, *supra* note 14, at 89.

136. *Id.*; *see also* Marshall, *supra* note 17.

137. Tremblay, *supra* note 15, at 421–29.

from different fields might, in fact, be desirable depending upon the size of the effort and the nature of the problem being addressed (think again about the popularity of MDP among clients and practitioners). However, I believe that having legally trained advocates supporting these collaborative efforts is both desirable and, for many projects, necessary.[138] Nevertheless, engaging lawyers brings risks of domination, particularly if the lawyer is actively involved in defining the collaborative group that will become the client. This section first discusses the value of having lawyers involved in such processes and then addresses ways to avoid lawyer domination.

1. A Role for Lawyering

First, the status of lawyers in our society provides almost immediate legitimacy to endeavors involving attorneys (at least attorneys with good reputations).[139] Just as others have noted that particular lawyers with significant reputations can lend "prestige and weight" to an issue during high-stakes litigation,[140] I believe that having lawyers involved, particularly those affiliated with a law school clinic, can provide legitimacy to a community effort. This is particularly true where a law school clinic has a long history of successful work with a variety of community groups as clients.[141]

Second, operating under any of the states' rules of professional conduct, despite their shortcomings,[142] provides lawyers with a framework to develop critical skills in handling heterogeneous interests. Lawyers are, if adequately exposed and engaged in the study of professional ethics,[143] uniquely qualified to manage the disparate voices in a collaborative process, and many already address these issues regularly.[144] Further, by learning and incorporating theories from group and intergroup behavior, lawyers can enhance their ability to successfully manage their role in these multiple representations. As noted by Trubek and Farnham:

> [T]he legal profession has often been noted as embodying both/and approaches; lawyers can represent criminals in the name of upholding justice.

138. It is possible that a lawyer is even more essential to these collaborations than I suggest here. I look forward to collecting more "data" over the next few years and then exploring this issue in more depth in a future article.

139. *See* Trubek and Farnham, *supra* note 43, at 260–61 ("Thus, lawyer status legitimates the role of nonlawyers as actors. It also contributes to the ability of community organizations to attract support from for-profit institutions.").

140. *See* Davis, *supra* note 35, at 120–21.

141. In the neighborhood planning project, the success of the first meeting can be attributed directly to this dynamic.

142. As discussed at length by Bennett, *supra* note 14, at 79–85, the Model Rules focus on traditional one-on-one representation and provide limited or at least less useful guidance to those interested in multiple representation.

143. Many have bemoaned the fact that the study of professional responsibility receives minimal attention in law schools, but, as noted by Robert Gordon, in his forward to Carle's critical reader on ethics, law schools are starting to do better, and there is a growing literature to support that change. *See* Gordon, Forward to Lawyers' Ethics, *supra* note 9, at xiv–xv.

144. *See* Bennett, *supra* note 14, at 79–81.

> The social justice practices are able to figure out how to be both conscientious lawyers and dedicated collaborators. They understand when clients are protected by sharing information rather than hiding it. They create protocols and use the time-honored waivers when necessary to deal with conflicts or confidentiality. They are exploiting the opportunity of moving between the private and the public sphere by assisting entrepreneurs. They are active in associations of lawyers to preserve their skills and identify with their professional status. They are able to contribute this status to the benefit of the other professionals they work with and to the benefit of their clients.[145]

Transactional lawyers craft agreements between parties with disparate interests and partnerships are formed using one attorney. Lawyers who serve corporate clients are often faced with managing potential and actual conflicts of interest (such as between the board and management or between different classes of stockholders).[146] This is even more apparent for lawyers who serve not-for-profit clients in situations where diverse interests may be reflected in board membership through requirements in the bylaws.[147]

Third, in my experience, discrete legal tasks and general legal skills are required at various points within a collaborative problem-solving process—for example, drafting operating agreements and contracts, negotiating the design of institutional structures, researching the current legal environment, and developing proposed legislation to change the legal environment. While it is possible to outsource each discrete legal task to an outside lawyer when it arises, having a lawyer at the table throughout the process facilitates the completion of the legal tasks and improves the quality of the product.[148] Further, it is cost-effective. Imagine the transaction costs and time that would be required if, alternatively, each of the various participants engaged its own attorney to negotiate for its own particular interest in structuring a relevant agreement within the collaborative. In the world of community and economic development, most participants would have limited, if any, funding to pay for legal representation, and securing pro bono services cannot be assumed. Importantly, because not all needs for legal skills present themselves as discrete tasks, or even lawyer-necessary issues, including a lawyer as a key participant who is consistently present to identify tasks and issues is essential.

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145. Trubek & Farnham, *supra* note 43, at 261.

146. It has even been proposed that an increased need for lawyers to advise corporations in Brandeis's day, may have contributed to the understanding of lawyering beyond pure advocacy. *See* Dzienkowski, *supra* note 14, at 755–56.

147. For example, many community development corporations (CDCs) which are common clients for CED clinics have by-laws that require that certain representatives serve on the board (i.e., the local alderman, someone from the block watch, or neighborhood management team).

148. For example, as part of the clinic's mortgage foreclosure project, the students have drafted all of the relevant documents for the Neighborhood Stabilization Program (NSP) (a federal grant program to enable cities hard hit by the foreclosure crisis to purchase and renovate foreclosed properties). Because the students were immersed in these issues, the resulting documents were so excellent that many have been used as models by the State of Connecticut Department of Community and Economic Development for use by other Connecticut NSP recipients.

Finally, many students in law school have professional goals which will engage them in leadership and problem-solving roles in their communities, whether for their vocation (e.g., elected office, government or nonprofit leadership roles, or facilitators of complex deals) or avocation (i.e., roles on board of directors). They will engage with complex issues stemming from their leadership roles on a frequent basis. Exposure to interdisciplinary and complex problem-solving while in a learning environment is critical. In my direct experience supervising law school students in this kind of interdisciplinary work, I have found that a large number of them wish to be "a lawyer" in an expansive way that encompasses problem-solving, not just discrete client representation.[149]

These students welcome the need to develop a variety of skills and the opportunity to struggle with their role vis-à-vis the client, the law, and the problems to be addressed. I have had students who take my clinic for one semester[150] and then decide that they are more suited to litigation. I suspect that the students are self-selecting and that those who leave would experience a greater sense of role confusion.[151] The reason I advocate for the collaborative problem-solving model in the clinic setting is to train practitioners to be nimble advocates. This requires that they have both a grounding in theories of organizational dynamics and debriefing sessions in which the supervising attorney models the self-reflective stance that is required for this work to be successful.

2. Avoiding Lawyer Dominance

Unlike traditional lawyer-client relationships, a participant in a collaborative cannot depend upon the lawyer to keep her information confidential as to the other participants and cannot be guaranteed that conflicts of interest will not exist.[152] This requires the participants to "do more thinking for themselves"[153] and, therefore, "assum[e] greater responsibility for decisions."[154] This does not mean, however, that a collaborative as client will be safe from undue influence from the lawyer. For example, lawyers can play an important role in the identification of the collaborative. In particular, those who have represented individual participants in the collaborative in

149. Recognizing this approach as legitimate lawyering, I believe, will allow for its wide application. A recent Yale Law School graduate went to work for the City of New Haven on a fellowship to address prisoner reentry issues. Her approach was to create a round table of individuals and organizations working on this issue to share ideas and develop strategies to implement. This work led to changes in hiring policies for the city and to a proposed program to open public housing to the formerly incarcerated. *See* Victor Zapana, *City Focuses of Prison Reentry*, Yale Daily News (Oct. 9, 2008) *available at* http://www.yaledailynews.com/news/city-news/2008/10/09/city-focuses-on-prison-reentry/. Interestingly, this roundtable is currently a client of CED which is supervised by a different attorney. He is using a traditional retainer for this group, despite the fact that it is not a formal entity.

150. At Yale, students are able to be engaged in a clinic for up to five semesters.

151. *See* Cummings & Eagly, *supra* note 66, at 495.

152. *See* Bennett, *supra* note 14, at 85.

153. *Id.*

154. *Id.* (quoting López, *supra* note 64).

the past have therefore likely earned the trust of their former clients and others in the community. This past relationship might lead to a greater risk of lawyer domination of the lawyering relationship due to the lawyer's perceived status with her former clients. In this case, there is a major risk that lawyers will, either consciously or unconsciously, control the agenda of the group and in turn dominate and define the goal-setting work of the collaborative.[155]

There may be no way to guarantee that this kind of undesirable influence does not develop. In fact, because having the lawyer actively engaged in the collaborative effort is desirable, the issue is one of line drawing. How can the lawyering relationship with the collaborative be structured to enable the lawyer's productive involvement while also protecting against her domination? There are steps that can be taken to minimize lawyer domination, including ensuring the appropriate role in the collaborative for the lawyer, being explicit about the need to have all voices heard in setting agendas and goals, and setting expectations for accountability.

Keeping this dynamic in check requires a self-conscious awareness on the part of the lawyers (and law school students). This need for "reflection" is the mark of the most effective professionals in any field.[156] In *Appreciating Collaborative Lawyering*, Ascanio Piomelli captures both the importance and challenge of the work:

> [W]e engage in careful introspection on our lawyering experience (and the experiences of others that we observe or learn about). Such reflection is not undertaken to develop scientifically verifiable truths, but rather to improve our craft and refine our understanding of what it means to do our jobs well. Like many professional problem-solvers, we regularly act in conditions of uncertainty. . . . As lawyers, we understand that we will rarely be able to avoid ambiguity. We do, however, try to think deeply about experiences, attending to as many aspects of a situation as we can and examining as many perspectives and dimensions as possible. These reflections lead us not to verities, but hypotheses—hypotheses that we test by acting and then reflecting upon the results.[157]

As discussed earlier, based upon my reflections on the ROOF project, I argue that lawyers should not take on formal leadership roles in a collaborative that is or will be a client.[158] My clinical work with students on the neighborhood planning project

155. Concern regarding lawyer dominance has been noted during other efforts on the part of lawyers to pursue social justice. *See, e.g.*, Matthew Diller, *Law and Equity: Poverty Lawyering in the Golden Age*, 93 Mich. L. Rev. 1401, 1410 (1995) (discussing in a review of Martha F. Davis Brutal Need: Lawyers and the Welfare Rights Movement, 1960–1973 (1993) Edward Sparer's "test-case" model as being ill-suited to poverty law because it put lawyers at the center of power and decisionmaking and not clients); Tremblay, *supra* note 35, at 959 (suggesting that rebellious lawyering, which defers present benefits for greater future community benefits, requires the imposition of future interests by, in some cases, the lawyers).

156. Piomelli, *supra* note 17, at n. 21 (citing Donald A. Schon, The Reflective Practitioner: How Professionals Think in Action 21–69, 128–67, 287–354 (1983)).

157. Piomelli, *supra* note 17, at 514.

158. A more in depth examination of the lawyer's role in the collaborative is needed than is possible in this article.

follows this recommendation. At our first meeting, the participants looked to me and the students and asked, "What is Yale's plan for the neighborhood?" We assured them that we were not there to represent Yale, but rather to facilitate their collaboration. We continue to resist taking control in defining the agenda, even if that means that progress would be slower than it might otherwise be. Over time, the participants have come to accept our role as facilitators. Their understanding of this has proven critical in allowing the various community organizations to settle into a process of developing trust and sharing information amongst themselves.

Paradoxically, perhaps, it takes leadership to ensure that a collaborative is self-reflective, self-correcting, and adaptive. While I think that lawyers can and should play a role in ensuring this happens, such a role does not come without risks of lawyer domination.[159] Lucie White provides a clear description of this issue:

> There is always going to be tension in a community-based work that aspires to be both participatory and emancipatory, between the directive role that an organizer, lawyer, leader, or teacher, must play to get the work going and keep it on track, and the teacher's aspirations to draw out, rather than dictate, the group's own voices. William Simon has referred to this paradox as "the dark secret" of community-based poverty lawyering. You need powerful leadership to get a community-based group together and to help it undertake meaningful action. Yet with that leadership comes the obvious risks of domination and exploitation.[160]

Scott Cummings, in describing a successful project involving multiple entities, indicates that the lawyers were successful at managing their multiple roles (both as members of the team and "lawyers" for particular aspects of the project) by being consciously self-reflective.[161] The best way to ensure that the clinic students and supervising attorneys manage this tension successfully is by exposing students to appropriate theories of organizational behavior and then engaging in reflective discussion during supervision sessions.

If the steps outlined here are followed, and the participants are informed, educated, and engaged in both the reasons for these procedures and their development, lawyer dominance will be minimized and effective collaborative problem-solving can occur. In this way, lawyers and communities can work together to make their world a better place.

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159. Paul Tremblay raises some critical questions about conflicts between the rebellious lawyering goal of client-empowerment and the reality of imposing a long-term, deferral of benefits view. He suggests that by working with groups, this conflict can be diffused. *See* Tremblay, *supra* note 35, at 969–70.

160. Lucie E. White, *Facing South: Lawyering for Poor Communities in the Twenty-First Century*, 25 Fordham Urb. L. J. 813, 825 (1998).

161. Cummings, *supra* note 17, at 325.

VI. CONCLUSION

The relationship between lawyering and the pursuit of social justice[162] has been examined from multiple angles.[163] Many people enter the legal profession in hopes of improving society. In practice, justice is protected most often through the adversarial system and lawyers' zealous representation of the rights of specific clients. This dominant paradigm means that a lawyer's ability to engage in the pursuit of social justice is limited,[164] often leading to a lack of fulfillment[165] or even a disconnect between a lawyer's work and self-identity.[166]

Instead of arguing that lawyers have a responsibility to pursue social justice,[167] I start from the premise that if a lawyer feels she has a responsibility to pursue social justice—or, if not a responsibility then a strong desire to do so—the tools for realizing that work as a lawyer should not be limited by the narrow interpretation of a Model Rule of Professional Conduct or by the domination of the adversarial approach to lawyering.[168] To me, it is not a question of *whether* the legal profession should embrace a more expansive concept of lawyering; rather, it is a question of *how* it should do so.

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162. Here I use the phrase "social justice" in order to connect my paper to a recognizable shared history. *See supra* note 3 (explaining the use the phrase "effective change" in the rest of the paper).

163. *See, e.g.*, Lawyers' Ethics, *supra* note 9, at 145–223 (presenting a variety of clinical perspectives on the lawyers role in pursuit of social justice from client-centered to rebellious lawyering); David Luban, Lawyers and Justice: An Ethical Study (1988) (providing a thorough ethical accounting of the conflict between role morality and common morality and a lawyer's obligation not to forego the later for the former); Shdaimah, *supra* note 34, at xii ("Law has long been seen as a problematic but necessary tool for working for social justice (however defined)"); Simon, *supra* note 2 (presenting an approach, the "contextual view" that supports lawyers taking actions in regards to particular cases that seem likely to promote justice).

164. *See* Ashar, *supra* note 62, at 357–58 ("[T]he kinds of advocacy currently taught and reinforced in most law clinics . . . which focus nearly exclusively on individual client empowerment . . . are not sufficient to sustain effective public interest practice.").

165. Deborah L. Rhode, *Law, Lawyers, and the Pursuit of Justice*, 70 Fordham L. Rev. 1543, 1545 (2002) ("Only one-quarter of lawyers find that legal practice has lived up to their expectations in contributing to the social good, and this lack of contribution is the greatest source of career dissatisfaction." (citing ABA Young Lawyers Div. Surv., Career Satisfaction 19 (2000); ABA Young Lawyers Div. Surv., Career Satisfaction 11 (1995))).

166. *See* Markovits, supra note 31, at 2 ("[L]awyer's professional obligations to behave in ways that would ordinarily be immoral are not simply the result of excessive or perverse partisanship. Instead, they are deeply ingrained in the genetic structure of adversary advocacy."); Mitchell M. Simon, *Navigating Troubled Waters: Dealing With Personal Values When Representing Others*, 43 Brandeis L.J. 415, 417 (2005) (describing story of young legal services lawyer who left her job after winning a case that allowed a mother to keep her children when it was clear to the lawyer that the children were better off in foster care; she went to work for a non-profit that worked on child advocacy issues).

167. I do, however, find such arguments compelling. *See* Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 Fordham L. Rev. 1929, 1929 (2002) ("[T]he public interest requires law students to learn that they have a social and professional responsibility to challenge injustice and to pursue social justice in society.").

168. Litigating for the rights of individuals or groups can and does further social justice. I do not mean to suggest otherwise. However, as the dominant mode, the adversarial stance to achieving public interest objectives diminishes the opportunity for other forms of lawyering and may make problem-solving more difficult.

My concept of lawyering to a problem-solving collaborative is informed by the range of scholarship exploring the importance of community-defined agendas and lawyering processes that work "with" rather than "on behalf of" client communities. My concept has the added dimension of looking at the characteristics of the issues themselves. The intractability of difficulties facing disadvantaged communities and the complexity of larger societal issues suggest that it is often the *nature of the problems themselves* that requires collective action, and not just the urgency to engage the community or wisely use scarce resources. The complexity of such issues as school reform,[169] integrating immigrants into the fabric of our communities,[170] and creating sustainable local economies[171] requires sustained collaborative efforts at defining the issue, developing solutions, and implementing change. Those most impacted by the issue, and often least able to exert pressure for change, must be represented[172] at the table. Furthermore, the collaborative process must involve constant reflection to ensure that the work is held accountable to the needs of those most affected. However, I contend that success in defining and addressing these complex issues requires that many different parties—in addition to direct representatives of the affected community—should be participants in the collaborative process.[173] By supporting such collaborative problem-solving efforts, lawyers and law school clinics can help achieve effective change and expand the concept of lawyering.

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169. *See* Derrick A. Bell Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 Yale L.J. 470 (1976) (calling into question the efficacy of such tactics for achieving better schools for blacks, in part because the goals of individual clients to achieve educational improvements were not easily achieved through school desegregation litigation); Golden & Fazili, s*upra* note 4, at n.12.

170. *See* Golden & Fazili, *supra* note 4, at n.13.

171. *Id*. at n. 14. The Yale CED clinic held a conference in April 2010 to bring together disparate interest groups to collaborate on strategies to reform the 2013 farm bill. *See Developing Food Policy: U.S. & International Perspectives*, Yale Law School (Apr. 16–17, 2010), http://www.law.yale.edu/news/foodpolicyconference.htm; *See also Developing Food Policy: U.S. and International Perspectives April 16–17 at Yale Law School*, Yale Law School (Mar. 29, 2010), http://opac.yale.edu/news/article.aspx?id=7395.

172. There are various ways for affected people to be represented in this kind of process. In the mortgage foreclosure project, at-risk homeowners were represented by front line counselors who saw dozens of individual homeowners a week and, therefore, could provide current information on what they were experiencing and if any interventions were working. Renters were represented by legal services attorneys who were either directly representing or had interviewed dozens of renters facing eviction from foreclosed homes. Affected people can also be represented by community organizations (such as community development corporations) that have boards composed of residents and neighborhood entrepreneurs. In 1998, I first emphasized the importance of representative organizations to empower disadvantaged communities to engage in problem-solving. *See* Golden, *supra* note 7, at 532.

173. López identifies the need for "public and private problem solvers" to engage client communities, but also

> to coordinate effectively with one another; to study systematically the effectiveness of a variety of problem-solving approaches and particular interventions; to adapt flexibly to what research reveals about what works and what does not; and to cultivate the willingness to challenge over and over whatever we happen to create, no matter how successful and comfortable the regime.

López, *supra* note 65, at 76. *See also* Golden & Fazili, *supra* note 4, at 73–77 (arguing that in some cases government and business should have a seat at the table).

APPENDIX: SAMPLE MEMORANDUM OF UNDERSTANDING (MOU)

THE MEMORANDUM OF UNDERSTANDING BETWEEN AND AMONG THE COMMUNITY AND ECONOMIC DEVELOPMENT CLINIC AT YALE LAW SCHOOL AND [NAME OF COLLABORATIVE PROJECT]

I. INTRODUCTION AND PURPOSE

The [Name of Collaborative Project ("Consortium")] is a collaborative comprised of a group of engaged community leaders and representatives from community organizations working to [BRIEF DEFINITION OF JOINT INTEREST AND/OR PROBLEM TO ADDRESS]. The Community and Economic Development Clinic at Yale Law School (CED) has been providing free legal counsel to individual organizational clients within New Haven for over 15 years. [ADD INFORMATION THAT LED TO THE CREATION OF THE COLLABORATIVE PROJECT, SPECIFIC TO THE PARTICULAR NEIGHBORHOOD]

The [NEIGHBORHOOD] has not yet realized its full potential as a vibrant mixed-use, mixed-income area. Therefore, this Consortium will serve as a means to bring together key community actors to discuss and document the overlapping goals and needs for the [NEIGHBORHOOD]. This Consortium aims to better serve community members by gaining a wider perspective than that of any single organization and, more importantly, to benefit the community as a whole with the products of this joint knowledge.

The Consortium's shared goals are:

- To develop a shared plan for [THE NEIGHBORHOOD],
- To identify specific aspects of the plan for implementation, and
- To work cooperatively to realize the successful implementation of those aspects of the plan.

CED believes that the goals above are best achieved not by creating a new formal organization, but rather by facilitating work on shared interests among distinct participants who retain their separate organizational structure and identity. CED will represent the Consortium as its client in order to help the Consortium realize its goals for [THE NEIGHBORHOOD].

II. ORGANIZATION OF THE CONSORTIUM

The Consortium will neither be a formal for-profit or nonprofit organization nor a formally incorporated entity. As to the work done on behalf of the Consortium,

CED's engagement will be with the entire Consortium and will include identified tasks to support the achievement of the Consortium's shared goals. Notwithstanding the above, members of CED and CED as a whole (both those engaged in representing the Consortium and others who are members of other CED project teams) are not precluded from representing individual Consortium participants, currently or in the future, on work defined in individual engagement letters between CED and that participant. In the event that a conflict of interest arises between the Consortium and an individual participant, CED will follow the steps laid out in section IV of this document.

Each semester, new students will be joining the Consortium CED Team and old students will be graduating or leaving the clinic. The beginning and end of each semester, therefore, provide regularly recurring opportunities for the Consortium to assess progress on the specific tasks defined in the Statement of Objectives and to define tasks for the next semester to be reflected in a new Statement of Objectives.

Although this collaborative will not be organized as a formal for-profit or nonprofit organization, a smaller group of participants will meet more frequently as a Steering Committee ("Committee") in order to facilitate progress. The authority of this smaller group should be agreed upon by the entire Consortium and reflected in the MOU. The Committee will have the discretion to act on behalf of the larger group and to sign the MOU, and will be expected to keep the Consortium informed of its plans and actions by holding quarterly meetings of the larger Consortium.

New members will be added to the Steering Committee when the Consortium feels that there is a participant whose representation on the Committee would benefit the wider group.

III. PARTICIPATION IN THE CONSORTIUM

Participation in the Consortium is open to organizations and individuals who desire to collaboratively pursue the shared goals of the Consortium, as set forth in Section I of this MOU. In order to be a participant, individuals and organizations must agree:

- To sign the Consortium Membership List and provide contact information for use by other Consortium participants;
- To participate in quarterly meetings;
- To assist in the selection of the Steering Committee or support the selection made by other Consortium participants; and
- To acknowledge the authority of the Steering Committee.

A. Collaboration

Each Consortium participant agrees to be an active participant in the Consortium and to act in good faith with regard to the group. Being an active participant in the Consortium includes:

- Agreeing to pursue the Consortium's shared goals as set forth in Section I;
- Attending regularly scheduled Consortium meetings;
- Willingness to collaborate with the other Consortium participants on efforts to achieve the shared goals, including making information and assistance available to other Consortium participants;
- Identifying, defining and working toward Consortium objectives;
- Openness towards expanding the membership of the Consortium to other participants that share an interest in the development of the [NEIGHBORHOOD]; and
- Cooperating in the determination of solutions arising from any conflicts of interest between Consortium participants, or between the Consortium and a participant.

Steering Committee Members agree to all of the items above and, in addition, agree to:

- Sign this MOU and/or other documents that provide clarity about the member's role in the Steering Committee, and, if the member represents a community organization, obtain appropriate approval from the governing board of the organization he or she represents before signing the MOU;
- Attend all Steering Committee Meetings;
- Define how the success of the Consortium's goals and objectives should be measured and regularly evaluate the progress of the Consortium against these measurements; and
- Engage in group deliberations about how responsibilities and resources should best be shared within the Consortium.

B. Voting

Steering Committee members agree by signing this MOU that they are committing to one another, to the Community, and to CED that they will attend all Steering Committee and Consortium meetings. At any official meeting of the Steering

Committee, a quorum will consist of three members. A Steering Committee meeting shall only be considered official if notice is provided at least seven (7) days in advance to all members. Although community organizations may be represented on the Steering Committee by up to two individuals, those individuals will be counted collectively as one member for the purposes of quorum and voting.

The Steering Committee may only take action upon an affirmative vote by the majority of the Steering Committee members present at any official Steering Committee meeting. In no case may action be taken upon the affirmative vote of less than three (3) voting members. When a simple majority of the Committee is present, new matters may be introduced and voted on at a meeting. When less than a simple majority is present, only those matters that all members of the Steering Committee received notice of seven (7) days in advance may be voted on. Such matters may be passed by a majority of those members present, but no fewer than three (3) members.

Members may not vote via email or telephone unless such member is out of town and is, therefore, unable to attend the Steering Committee meeting. When a member is out of town, in order to vote, the member must call into the meeting and must participate in the entire meeting.

C. Sharing of information and confidentiality

Each Consortium participant agrees to provide contact information to other Consortium participants and will receive the contact information of all other participants.

As the strength of Consortium's work depends upon a relationship of trust among its participants, honest discussions are necessary for the group's success. In order to achieve the Consortium's shared goals, all participants are encouraged to disclose information that may be relevant to the group's shared goals, objectives, projects or tasks. General Consortium participants do not have a duty to disclose, however, they are required to act in good faith with respect to the group.

Steering Committee members have an obligation to disclose any information that could harm the efforts of the Consortium if withheld. Committee members agree that they will be candid in discussions and permit CED on an irrevocable basis to disclose to the Consortium any information that if withheld would undermine the Consortium's objectives. If a situation arises wherein CED feels that some piece of confidential information possessed by a Committee member, if withheld, will directly threaten the Consortium's work, CED will encourage the member to make that information available to the group. If the participant does not do so, CED may disclose to the Consortium that such information exists, but only to the degree necessary to avert harm to the group. The Steering Committee members will then work together to resolve this issue. The Clinic will consult to the Steering Committee

about the implications of that resolution (i.e., whether a Steering Committee member should withdraw or whether the issue is serious enough to require the entire enterprise to be disbanded.) CED will not breach ethical and confidentiality responsibilities, and will not raise issues around any client information with the Consortium that does not directly threaten the Consortium's work.

Steering Committee members acknowledge that any information regarding their efforts or information about any project of the Consortium, that CED circulates to other Steering Committee members, will not be protected by attorney-client privilege; that is, if Steering Committee members involved in a project or the organization that a Steering Committee member represents is sued, the Clinic can be compelled to produce that information in court or in pleadings before a matter goes to court.

D. Appointing a Representative to the Steering Committee

Any Consortium participant may nominate an individual to serve on the Steering Committee. The Steering Committee members will vote to elect the individual onto the Steering Committee at any meeting of which there is at least one week's notice. The individual will be offered an opportunity to join the Steering Committee if he or she receives the affirmative vote of two-thirds of the Steering Committee members present at the meeting where the vote is held. For the purposes of this Section, a majority of the total Steering Committee members constitutes a quorum.

If a Steering Committee member is elected pursuant to this Section, the entire Consortium will then vote to ratify the Steering Committee's decision at the next quarterly meeting. There must be at least five Consortium members other than Steering Committee members present at this meeting. To participate in the vote to ratify the Steering Committee's decision, those Consortium members who are not Steering Committee members must have attended at least one other meeting and must have added their names to the membership list and provided contact information.

E. Participation in the Steering Committee of the Consortium by an Organization

In order for any individual(s) to participate in the Consortium as the representative(s) of an organization, the organization must affirm that it has approved its representation within the Consortium by such individual(s) in accordance with its bylaws or other rules of governance ("governing documents"). In addition, the organization must affirm that it convenes regularly in accordance with its governing documents and that it will consult with its membership and/or governing body before taking any action that requires a vote.

F. Participation in the Steering Committee of the Consortium by a Liaison

In order for any individual(s) to participate in the Consortium as the liaison(s) of an organization or entity, the organization or entity must affirm that it has approved of such individual(s) serving within the Consortium in accordance with its governing regulations. Such an individual will have the full rights and obligations of membership in the Consortium but will have no authority to bind the organization or entity for which it is serving as a liaison.

G. Participation in the Steering Committee of the Consortium by an Individual

An individual may participate in the Consortium in his or her capacity as an engaged member of the community, without serving as a representative or liaison for an organization or entity. Such an individual, as a signatory to the MOU, shall have the full rights and obligations of membership in the Consortium.

H. Accountability

All Consortium participants will define the goals and objectives of the Consortium during regular meetings. The Steering Committee may then determine what individual steps need to be taken in order to meet these goals, and take the measures necessary to do so. The Steering Committee is accountable to the larger group for their decisions and will report back to the larger group on their activities at regular quarterly meetings. The feedback that the Steering Committee receives at quarterly meetings will be used to guide and direct any action taken by the Steering Committee in furtherance of the Consortium's goals.

In the event of any participant's failure to act in good faith, the Consortium will decide as a whole, on a case-by-case basis, the appropriate response.

IV. CONFLICTS OF INTEREST

In the event that a perceived conflict of interests arises within the Consortium, CED will identify the parties involved and attempt to help them resolve the situation. If after consultation with the affected Consortium participants or other clients, a perceived or actual conflict exists, participants must sign conflict waivers specific to the situation, that reflect a full understanding of the nature of the conflict. If CED or any Consortium participants are unsatisfied with this waiver option, CED reserves the right to withdraw from work on behalf of the Consortium, and the participants of the Consortium each irrevocably consent to CED's withdrawal under these circumstances.

If CED believes there is a conflict of interests but an affected party does not, or CED does not believe the conflict to be waivable, CED will determine the appropriate steps to take in consultation with outside legal counsel.

V. MODIFICATION AND TERMINATION OF REPRESENTATION

Any participant may withdraw from the Consortium at any time. Upon withdrawal, the participant ceases its right to receive information about Consortium projects and other participants within the Consortium.

If the Consortium participants collectively decide that their interests are better pursued individually, the Consortium may be terminated and CED may cease to represent the Consortium as a group.

CED may withdraw from representation if the Consortium fails to fulfill its obligations under this agreement, or as permitted or required under any applicable standards of professional conduct or rules of court, or upon our reasonable notice to the Consortium. In the event of termination, we will assist the Consortium in the orderly transfer of any legal files to Consortium participants or legal counsel appointed by the participants.

CED and the Consortium may always change the terms of participation in the Consortium, by consensus of the Consortium as a whole.

The Consortium participants understand that by entering into this MOU, CED becomes responsible only for work undertaken during the period of this engagement for the express purposes set forth in this document.

VI. CED'S RESPONSIBILITIES TO THE CONSORTIUM

CED will represent the Consortium in accordance with the Connecticut Rules of Professional Conduct. CED shall provide competent representation, act with reasonable diligence and consult with the Consortium about the means by which its objectives are to be accomplished.

The attached Statement of Objectives outlines the objectives of CED in providing representation to the Consortium and sets forth the time period of CED's current engagement. In representing the Consortium, CED will assume the following responsibilities:

- CED will follow the direction of the Consortium. It will act to facilitate the collaborative efforts of the Consortium by scheduling meetings, disseminating information and helping to allocate responsibilities within the Consortium.

- CED will help the Consortium to identify and define its goals and objectives and to develop criteria measuring the success of these goals and objectives.

- CED will assist the Consortium in reviewing its progress in light of these criteria at regularly scheduled intervals to be determined by the Consortium.
- CED will make every effort to support the Consortium and provide appropriate direction in the event of a conflict of interest between participants.
- CED will ensure that a current "statement of objectives" is prepared, discussed, and executed at the beginning of each new semester. CED will carry out the specifics tasks identified within that "statement of objectives."

VII. COSTS RELATING TO REPRESENTATION OF THE CONSORTIUM

CED will represent the Consortium for no fee. However, the Consortium will be responsible for the cost of disbursements on a case-by-case basis. Disbursements may include, but are not limited to, such costs as long-distance telephone charges, reproduction costs, delivery charges, filing fees, and travel expenses, if any. The Consortium, with the assistance of CED, aims to identity and apply for a planning grant that would cover these expenses.

STATEMENT OF OBJECTIVES

The Consortium and CED agree to undertake the following objectives to be undertaken during the period of engagement specified below:

- [Specific objective]
- [Specific objective]
- [Specific objective]

The Consortium understands that CED's engagement will expire no later than [Insert Date], but may be renewed or continued by CED upon the written extension of this agreement or the execution of a new statement of objectives with the Consortium.

AGREED TO AND ACCEPTED BY: [SIGNED BY EACH REPRESENTATIVE ON THE STEERING COMMITTEE].

Name: _____

Organization: _____

Date: _____