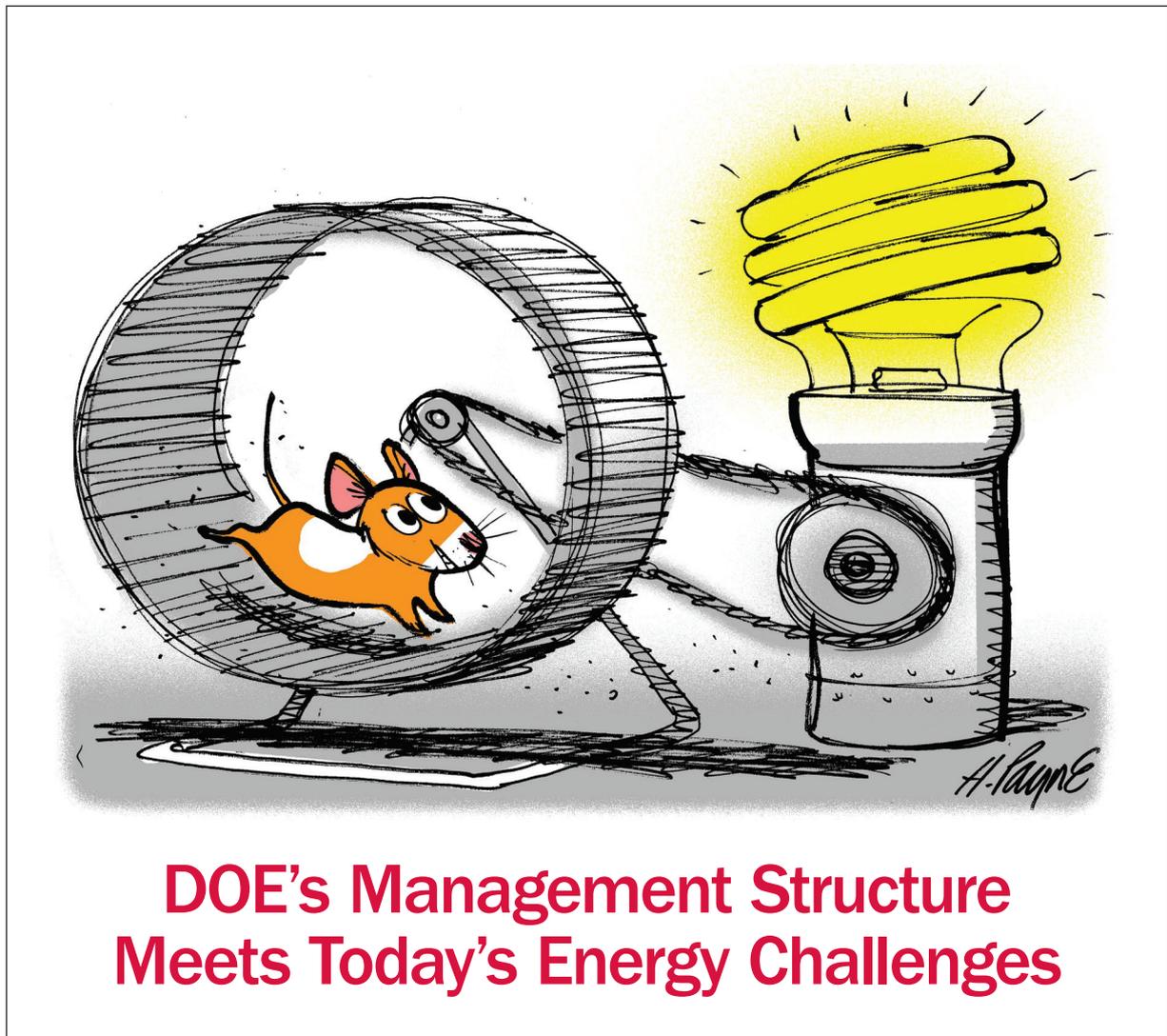


# The Environmental FORUM<sup>®</sup>

*Advancing Environmental Protection Through Analysis • Opinion • Debate*



## **DOE's Management Structure Meets Today's Energy Challenges**

### **TSCA, Redux**

*New Bills Aim to Reap  
Old Law's Promise*

### **eLawyering**

*Modernizing Law  
School Clinics*

### **Getting to Results**

*Why the Climate Treaty  
Never Quite Works*

# An Idea Whose Time Has Come

*Reaching environmental justice clients online will broaden the base of law school clinics, improving lives at the same time as it improves legal education. An ABA task force is on the case, but are its recommendations sufficient to get the job done?*



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**Rebecca Purdom** is Vermont's associate dean for innovation and new programs.

In 1852, in his *Histoire d'un Crime*, Victor Hugo, the French poet, novelist, and dramatist, wrote, "An invasion of armies can be resisted, but not an idea whose time has come." We believe that environmental law school clinics that provide legal services online and/or through broadband technology to minority and/or low-income communities throughout the United States is, indeed, an idea whose time has come.

Beleagued and often geographically distant, community-based environmental justice groups desperately need legal assistance. While environmental law school clinics have had notable accomplishments over the last two decades on a variety of legal issues, those victories have been limited to the clients clinics could reach through traditional in-person lawyering. But new online attorney tools can expand the capacity as well as extend the reach of clinics. This innovative idea would not only allow those clinics to succeed in communicating and collaborating with potential new grassroots community-based environmental justice group clients across a broad geographical area, but would also address several serious pedagogic issues that the legal education community currently faces.

First, over the last decade, there has been considerable discussion in the American Bar Association, law schools, law student associations, faculties, state supreme courts, bar admission authorities, law firms, and corporate law departments regarding the need for substantial changes in the delivery of legal education. For more than a hundred years, attorneys in the United

States have been trained using the casebook method, where students read and analyze appellate court decisions before class, and the law professor, subsequently, engages them using the Socratic Method to distill the fundamental principles of law embodied in the cases. The casebook method of law study provides excellent training on legal principles and legal theory, critical thinking, reading comprehension, and logical reasoning but, according to its critics, insufficient training in the practical skills necessary for representing clients.

Recently, the discussion regarding the need for substantial changes in the delivery of legal education has accelerated. In August 2011, the ABA House of Delegates adopted Resolution 10B urging the association to take steps to assure that law schools, law firms, law examiners, and others concerned with continued professional development provide the knowledge, skills, values, habits, and traits that make up the successful modern attorney. The House of Delegates further urged legal education providers to implement curricular programs to develop "practice ready" lawyers.

A year later, in August 2012, the ABA established the Task Force on the Future of Legal Education — consisting of representatives from the judiciary, organized bar, legal education system, and legal practice regimes — to review and make recommendations on the key challenges facing the bench, bar, and the legal education community. In announcing the establishment of the task force, the ABA president acknowledged the growing public attention to the costs of a law school education, the uncertain job prospects for

graduates, and the role of law schools in improving the delivery of legal services in a changing market.

Working through two subcommittees — one dealing with the economics of legal education, and the other with the delivery of legal education and its regulation — the task force, among other activities, held public hearings in Dallas and San Francisco, solicited written comments from interested parties, held a mini-conference in Indianapolis, reviewed literature on problems and solutions, and reviewed a considerable number of comments submitted to its website. This past January, the task force issued its final report and recommendations.

The task force was charged with, among other things, examining ways to improve practical skills training at law schools because of the need for recent graduates to be able to function much more quickly, effectively, and efficiently as practicing attorneys in the legal marketplace. In short, law schools must become more engaged in the professional development of embryonic attorneys and, consequently, must develop curriculums designed to focus on developing core lawyering competencies.

This has led some law schools to expand their clinical programs, and to take the lead in legal education reform before the task force completed its work. Thus, some law schools have begun to offer more hands-on learning experiences — from clinics and externships to practice-based curriculum changes.

Washington and Lee University School of Law in Lexington, Virginia, is at the forefront of this burgeoning trend. All third-year students at Washington and Lee must participate in a diverse range of simulated and real practice-oriented experience. The year consists of four components that blend the practical and the intellectual pursuits. The first is a two-week-long skills immersion at the beginning of each semester, one week focusing on litigation and conflict resolution, the other on transactional practice. The next component consists of four elective courses, one real-client experience, and three additional electives taught in a problems-based, practicum style. Then there is at least 40 hours of law-related service. Finally, the students participate in a semester-long professionalism program. In short, Washington and Lee's third-year students have begun their transition from law students to lawyers.

Recognizing that there are two models of law schools (research-oriented and practice-oriented), the task force stated that, whatever their individual differences, law schools have a basic societal role: to prepare individuals to provide legal and related services. The task force did not state that there is a universal core

of competencies that every law school graduate must have. But it did take the firm position that educational programs should be designed so that graduates have some competency in delivering legal services.

The task force added that whatever particular set of competencies a law school should ensure is a matter for the school to determine but that the educational program should be better shaped with reference to the fact that most students attend law school desiring to practice; that there are available studies of competencies sought by employers or considered broadly valuable for long-term professional success; and that the mission and strengths of the particular law school will figure in which competencies are valued. In sum, the task force determined that there needs to be a substantial increase in the professional skills requirement, and that bar examiners should now design tests that tend to encourage greater reliance on experiential learning in law schools. The bottom line is that a drastic transformation in legal education is currently taking place.

**S**econd, in addition to being exposed to the real world of practice like the students at Washington and Lee, we believe that law students should also be exposed in the clinics to the growing area of virtual law practice, and the delivery of online legal services, which the ABA calls “eLawyering.” In 2004, the co-chair of the ABA's eLawyering Task Force of the Law Practice Management Section described eLawyering as all the ways in which attorneys can do their work using the web and associated technologies. He stated that these include new ways to communicate and collaborate with clients and other lawyers, produce documents, settle disputes, and manage legal knowledge. He further stated that one should think of eLawyering as a set of active verbs — interview, investigate, counsel, draft, advocate, analyze, negotiate, manage, and so forth — and that there are corresponding electronic tools and techniques for each.

According to the ABA, eLawyering or virtual law practice refers specifically to the delivery of legal services online through a section of a law firm's website that is known as a “secure client portal.” Under this definition, a virtual law firm is not simply an attorney who does not have a physical office and communicates with clients by e-mail. Instead, the firm must have a secure section of its website where a client can log in with a unique user identification and password.

Virtual law firms are growing rapidly. Last year, Clearspire announced that it intends to expand its nontraditional legal services model across the country with the addition of 50 to 100 lawyers each year for the next five years. The model allows Clearspire Law Company — a law firm that outsources all business processes, technology administration, and commoditized legal work to its sister company, Clearspire Services Company — to cut overhead costs by 50 percent compared to traditional law firms. Consequently, according to the firm, this reduces client fees on complex legal matters and maintains market salaries for staff. Lawyers and clients are connected through a \$5 million online platform, Coral, of virtual offices and high-end teleconferencing. Attorneys and staff stay connected by navigating Coral's virtual hallways, where they are grouped by geographical location, practice area, and client matter.

In addition to establishing virtual law firms, the legal community has also established virtual legal clinics where clients can gain access to badly needed services. For example, in Illinois, Lieutenant Governor Sheila Simon, a former prosecutor and founder of the domestic violence clinic at Southern Illinois University School of Law, expanded her virtual legal clinic program to provide assistance to domestic violence victims in southern Illinois' Cairo Women's Shelter. The program allows victims of domestic violence to get free legal consultation via webcams and high-speed internet. The clients obtain advice on a variety of issues including child custody and visitation, marriage and divorce, elder abuse, immigration, and property disputes.

In Colorado, the Four Corners Bar Association has established a new Virtual Pro Se Clinic where people can learn to represent themselves in court proceedings. Four Corners has partnered with local courts to present a series of virtual free legal clinics at the Mancos Public Library, where individuals can confer online in one-on-one sessions with experienced attorneys who can explain to them the legal process and court procedures. The individuals obtain free legal advice covering all civil areas including property law, probate issues, family law, landlord-tenant, foreclosures, collections, appeals, civil protection orders, etc.

Thus, the legal community has been introduced to a myriad of computerized, cloud-based tools that are changing the way practicing attorneys do their work. Students, whether sitting in a bricks-and-mortar environmental law clinic or at home with a laptop, have both the right and the responsibility to learn how to be good, efficient, and effective "eLawyers." In fact, it's

a matter of professional responsibility. According to Rule 1.1: Comment 6 of the ABA's new Model Rules of Professional Conduct, attorneys must maintain their basic legal competence, which includes understanding the benefits and risks associated with relevant modern technology.

Legal education providers have begun to recognize the growing influence and importance of modern technology with respect to the practice of law. A few law schools have taken up the challenge. For example, Suffolk University Law School's Institute on Law Practice Technology & Innovation was established to study how technology is revolutionizing the practice of law, creating both opportunities and challenges for lawyers in every practice setting. The institute offers programs, courses, public lectures, and other information designed to educate students, the legal profession, and the public about technology's transformation of the practice of law and the delivery of legal services. Additionally, Vermont Law School's Center for Legal Innovation offers students a variety of courses in using the online and electronic tools of legal practice, and hosts the *Journal of Innovation in Legal Education*.

Florida Coastal School of Law has created the Center for Law Practice Technology, which offers students certificates in legal technology and law practice management. Students learn how to create a virtual law firm that provides 24/7 access for clients, how to automate frequently used legal documents, how to leverage social media to develop a law practice, and the legal ethics surrounding the delivery of online legal services.

Recognizing that law schools and law faculties should collaborate to facilitate innovation and improvement of pedagogy, the ABA task force stated that innovation cannot come from a directive to experiment and take risks. Nor can it come simply from the removal of real or perceived barriers to innovation. Rather, it must come from a change in attitude and outlook, and from openness to learning, particularly from other fields. The task force noted that incentives, resources, and encouragement can be powerful supports for innovation, and that the ABA Section of Legal Education can support innovation by modifying or eliminating standards (including those governing variances) that constrain opportunities for experimentation and risk-taking by law schools. Thus, granting a variance to a law school for establishing a virtual environmental justice component of an existing clinic would be subject to sound evaluation of the innovative idea.

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## Remaining Competitive in Today's Legal Market

**L**aw practice management courses cover traditional functions of lawyers who offer legal services to individual clients at physical locations. However, practice today is becoming more dependent on technology, creating a demand for new business models. Practicing law now requires both knowledge of how technology can be used to make lawyers more effective in serving clients and an understanding of how the Model Rules of Professional Conduct impose limits on the design and delivery of legal services.

As a result of technology, the legal profession is about to enter a period where the market for legal services will be more open, negatively impacting solo practitioners and small firms, employment prospects for law students, and the viability of law schools that feed their graduates into small practices. Most existing law school curricula are wholly inadequate to train future lawyers in technology and practice management. Appropriate training is a critical solution that will align the skills that law students must have upon graduation with the employment needs of a radically changing legal market.

Today, law school curricula must address the intersection of information technology and law practice. They must also provide students with a basic understanding of how to assess the risks and benefits of technology. Schools must prepare students for new roles in the legal profession that are arising as a result of these changes. Such roles include legal knowledge engineer, legal technologist, legal hybrid, legal process analyst, legal project manager, legal management consultant, and high risk manager. Every lawyer will need to have some knowledge of the skills embodied in these new job descriptions, if only

to be able to hire or retain these specialists to augment or participate in many different ways in the work that the firm produces.

Last year, the Center for Law Practice Technology was founded by Richard Granat and myself with the intent to prepare students for the changed legal marketplace. The curriculum is designed to be hands-on, exposing students to the use of different practice management technologies and working with them to produce practical deliverables with each course, which they may use in their own careers. The CLPT is funded by the Florida Coastal School of Law and is one of only a handful of ABA-approved law schools addressing this need for an updated curriculum.

With the CLPT, students have the option to take individual courses to supplement their law degrees or work toward a certificate in legal technology and law practice management. All of the classes are offered online. The classes include both synchronous and asynchronous components and the students have access to an online learning platform. Because the courses are taught online, this allows the CLPT to include among its faculty legal technologists and some of the leading experts in law practice management from across the country, rather than depend on local adjunct professors or pull in tenured faculty who may not have the relevant experience in law practice management and technology.

Our goal with the CLPT is to expand the courses offered in law practice management and technology and to offer these to other law schools, law students, and eventually, practitioners and legal professionals who need to go back to

learn these skills in order to remain competitive in the changed legal arena.

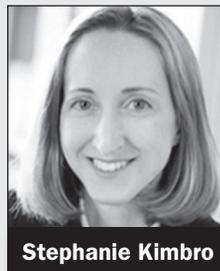
These courses teach the students how to leverage technology to serve clients more effectively and efficiently. Students learn skills, such as how to create a virtual law firm, automate legal documents, leverage social media to develop a brand, and ensure legal services are delivered ethically using technology. Students are given access to a number of technology platforms, and the course assignments require that they learn how to navigate and produce work product with these tools.

The students leaving with a certificate from the CLPT will have a portfolio to provide to prospective employers showing their training, acquired skills, and the deliverables they created.

If they go out into solo practices, they will be better equipped to face those challenges and compete in the legal marketplace.

A handful of other law schools have added law practice management classes and a few have expanded this to include programs in legal technology. This is a start. The teaching of law practice management can no longer be marginalized as a course of study within the J.D. curriculum. When a large percentage of graduating law students are faced with the prospect of starting their own practice upon graduation, the need for being "practice ready" is now an imperative. This means more than learning the principles of substantive law — it means having essential knowledge in law practice management in a digital age.

**Stephanie Kimbro** is co-founder of the Center for Law Practice Technology and founder of Curo Legal.



Stephanie Kimbro

**T**hird, and perhaps more importantly, the task force understood that by designing legal education programs to develop competencies in the delivery of legal services, law schools will consequently increase opportunities for students to be involved in delivering legal services. In this way, the ABA recognized that by utilizing the skills of law students, more legal services can be made available to persons in need. The task force stated that, most strikingly, poor and lower-income populations remain underserved. Funding for lawyers to serve these populations is far less than what is needed, and there are few alternatives, other than the extensive use of law students in clinics with special licenses.

The ABA recognizes that there continues to be an unmet need for legal services in minority and/or low-income communities with respect to environmental justices concerns. The ABA has long understood that, for example, toxic waste incineration plants are often sited in such communities which, consequently, are disproportionately exposed to environmental harms. These neighborhoods need legal representation to address the social justice, procedural justice, and geographic justice issues that emanate from the siting and operation of these pollution-generating facilities. These communities face diverse challenges such as alarmingly high asthma rates, high incidences of cancer, scarce open-space resources, and brownfields redevelopment concerns. In short, these communities have to face daily a nearly inexhaustible supply of environmental and public health concerns.

To address these issues, a law school establishing a virtual environmental justice legal component of an existing clinic, or via a new clinic altogether, is consistent with the association's environmental justice resolution that was adopted by the House of Delegates in 1993. The ABA urged not only that there should be the "delivery of legal services in minority and/or low-income communities" but also that law schools should "consider the expansion of curricula and clinical programs to educate students to deal with these problems."

One law school that has taken the lead in improving access to legal services for low-income residents in underserved communities throughout a state is North Carolina Central University School of Law. Through the school's The Virtual Justice Project, NCCUSL has established a broadband infrastructure with Legal Aid of North Carolina to deliver vital services. Legal Aid of North Carolina is a statewide, non-profit law firm that provides free legal services in civil matters to low-in-

come individuals, families, and communities with legal problems affecting basic human needs, such as family, housing, employment, and income. This broadband technology project provides videoconferencing access through 20 Legal Aid offices. Clinical students work with Legal Aid attorneys and clients through virtual counseling to reach underserved areas, providing not only needed legal services but important skills for students who may well find their future law practices conducted outside of traditional in-person client counseling and representation.

Minority and/or low-income communities with major environmental and public health concerns should be able to have access to legal services even if they live far from a law office or clinic. And students studying to be environmental lawyers should have the opportunity to develop skills and serve clients beyond the clinics' traditional geographical reach, using modern technology.

Students wishing to become engaged in environmental justice work will need to understand how the body of hard environmental justice law developed over the last three decades. The students will learn how civil rights lawyers and poverty lawyers joined forces to serve their traditional clients, people of color and the poor, to address instances of environmental injustice. In many respects, a new specialty in legal practice has developed in that these poverty and civil rights attorneys, acting in concert with environmental lawyers, use the traditional legal theories and strategies of both civil rights litigation and environmental law litigation (e.g., citizen suits) to address racial and economic-status bias in the disproportionate siting of pollution-generating facilities in such communities. Clinical students will have the opportunities to address environmental justice concerns in all branches of government at the federal, state, and local levels.

The idea is a simple one: use the tools of the 21st century to address long-standing environmental justice concerns while, at the same time, addressing the major pedagogic issues facing the legal education community. There are currently 23 environmental law school clinics in the United States. However, there are no virtual environmental justice legal components at these law schools. Developing virtual practices for students is a win-win-win situation for all stakeholders: the ABA, law schools, student associations, faculties, bar admission authorities, and, most especially, the currently underserved clients who are grassroots, community-based environmental justice groups. It's an idea whose time has come. •

## Legal Technology: A New Frontier Is Here

**T**he concept of reaching people across distances is not new. Telemedicine has been around for a while. Business schools and corporations also have been deploying telepresence and high-definition video conferencing solutions with huge investments. The missing ingredients for widespread use have been broadband affordability and access along with programming vision. But a new frontier is here.

North Carolina Central University School of Law delayed entry into distance education until the technology became stable and scalable enough to provide life-like, synchronous education. Starting in the 2010-11 school year, two technological innovations facilitated virtual education. The first was the development of the Virtual Classroom and the second was the purchase of a Telepresence Room.

The Virtual Classroom is a custom-designed space with two 54-inch plasma screens, a table that can accommodate the professor in a seated or standing position, and an electronic white board, all in an ambiance of the familiar teaching environment. Students connect to the Virtual Classroom using their computers, which are all equipped with a camera, microphone, broadband, and Polycom's Desktop Video Conferencing Client software. The Virtual Classroom can connect up to 32 students at different locations, 16 on each screen. The professor can see all 32 with their names displayed under their images. Students can see up to 16 images at a time or hear whoever is speaking and any associated content.

The law school purchased Polycom's telepresence system, which provides a real-life experience, with four screens and seats for 18 people. Telepresence is cutting-edge technology that incorporates furniture, lights, acoustics, and high-def

video conferencing. Together, they provide the user with interactive learning analogous to a live, in-person experience. The Telepresence Room can connect up to a maximum of 64 locations at one time (16 images per screen). This room was made possible from a Department of Commerce Broadband Technology Opportunities Program grant.

BTOP projects have laid a strong foundation for launching and operating virtual projects throughout the United States. Technology without program purpose is useless. Pamela Glean, assistant dean of clinical and professional skills, could easily see the vision for virtual legal services and clinical education. She developed the programs associated with our Virtual Justice Broadband Project. This three-year project allowed the law school to expand its nationally ranked clinical programs to four other state schools plus 20 legal services offices using high-def video conferencing, telepresence, and desktop video conferencing.

Discussions around asynchronous and synchronous delivery options continue to be debated. The practice and the study of law have both experiences. Synchronous best mirrors the way legal education has been delivered for many years. Inherent in this model is a sense of familiarity and a proven method of delivery. Being able to see facial expressions, body movement, and instantly ask questions in real time is critical when talking with individuals separated by long distance.

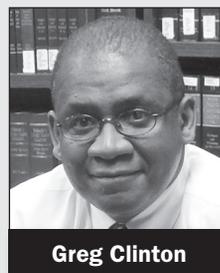
Telepresence and high-def video conferencing solutions are beginning to penetrate academic communities. Skype has done a lot to gain widespread acceptance of real-time broadband video across

distances. Polycom, CISCO, and Life Size are the players in this market. Current technology solutions allow for one-on-one meetings, group meetings, as well as large community interactive meetings.

The idea of having a virtual environmental law or environmental justice clinic in today's marketplace is a logical next step. Using technology to bring client and attorney together or providing community education and outreach has become easy and affordable. With modest investments and appropriate bandwidth, collaboration and dissemination of information can occur across multiple locations. Supplementing video communications with web-based software and appropriate portals adds to the diversity of electronic options. Students are coming to law schools equipped for this type of virtual learning.

Technology that supports virtual clinics and distance education is evolving rapidly. In the near future virtual video will become similar to another utility like cable. However, the need for programs to use existing technology to have a profound impact on the lives of individuals will still exist. There have been many lives changed from our Virtual Justice Project that included saving clients' homes, preparing wills for the elderly, providing "knowing your rights" programs to interactive audiences as large as 300 individuals at one time, and, finally, CLE programs and preparing students for the study of law. Now is the time for law schools to continue to be innovative in their use of technology to educate and serve.

**Greg Clinton** is director of information technology and facility management at North Carolina Central University School of Law.



Greg Clinton