

## *Editorial*

### **What have you all been reading?**

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I would like to start this Editorial with a couple of apologies. The first is the lateness of this edition, planned for February and delayed by me taking ages to work out how to embed video. The second is that I misjudged you, dear clinical scholars. I thought that you went straight to the 'meat' and didn't pause to read these editorial *amuse-bouches*. However, while studying the download reports for the journal I realised that some of you do and from now on, I will make extra effort to include something nutritious.

The IJCLE has been online since 2014 and in that time, more than 20,000 papers have been downloaded. A quick analysis of the data gives some interesting messages: the ten 'digital age' issues have an impressive performance in bringing clinical scholarship to a wider audience, over 10,000 downloads and an average of over 300 per paper, which is on a par with established journals like the *Law Teacher*. The Special Issue on Assessment attracted the most attention as a collection of papers – so please send your ideas for special issues to me!- and currently the most popular paper is Paul McKeown's [Law Students' attitudes towards Pro Bono](#). This seems likely to change (sorry Paul!) not only as new papers are published but as the visibility and use of

papers in the archive continues to build. As the numerate amongst you will already have noticed, half of all downloads are from the 'pre-digital' editions, despite many of these being available via HeinOnline. This data cheers me enormously for at least two reasons:

1. We can demonstrate the impact of clinical scholarship and the vitality of the audience for the IJCLE: it is worth sending your papers here. They will be read, challenged and contribute to the clinical discourse.
2. Clinical scholars are heeding the messages from recent systematic reviews<sup>1</sup> and heading back into our history to elicit the lessons buried there. We are becoming more critical and sophisticated in using our traditions, as well as engaging beyond our disciplinary boundaries.

To add a degree of randomness or serendipity to this process, I'm instituting an idea from my favourite food blog, [smitten kitchen](#) – the Archive Dive. Therefore from this issue we direct your attention back to [Volume 11](#) where you'll find papers on multicultural (Ada Okoye Ordor) and indigenous (Anna Cody and Sue Green) perspectives, an overview of CLE within Law (Margaret Barry) and a paper on ethics (Kevin Kerrigan). These are still hot topics and I'm delighted to say that you can catch some of these clinicians at the IJCLE, ENCLE and CLEO conference in July this year – more details below.

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<sup>1</sup> Mkwebu, T IJCLE 22, 3, 2015; Dunn IJCLE 24, forthcoming.

Meanwhile, in this edition, we have an important paper on research methods to investigate the impact of clinic from Lisa Bliss, Sylvia Caley and Leslie Wolf, crystallising the learning from their intensive programme of investigation at Georgia State University. Many of you who have been able to take part in their interactive seminars at GAJE/IJCLE at Anadolu University in Eskisehir, Turkey in 2015 and IJCLE/ACCLE at the University of Toronto in 2016 have been asking for more and we are delighted to be able to provide this paper.

We return to the debate around assessment and the value of clinical education for students with the first of our practice reports from Patrick Koroma and Nicola Antoniou which looks at the perceived benefits of CLE. Do our students value their clinical experience and can they parlay that into employment? If these things are not simple and linear, is that in part due to what we as academics appear to value, in part due to the values of the profession and in part due to issues of translation?

In the second practice report, we bring you the artefacts from a very exciting day conference held at London South Bank University on the 11<sup>th</sup> November 2016. The report contains the material shared by the participants before the event and videos of the clinicians describing their work and answering questions – click on the pictures on the last page to access the videos, you may need to right click then select ‘Open hyperlink’.

And finally, the inevitable reminder that three organisations are coming together for the 2017 conference. Registration is open and we look forward to welcoming you to Newcastle!

## IJCLE – ENCLE - CLEO

The *International Journal of Clinical Legal Education*

in association with the

*European Network for Clinical Legal Education*

and the

United Kingdom *Clinical Legal Education Organisation*

**CONFERENCE 3-5 JULY 2017**

at the University of Northumbria, Newcastle upon Tyne, UK

*“Bringing It All Together: Clinical Legal Educators in the 21st Century University”*



Clinicians wear many hats: teacher, group facilitator, project manager, lawyer, researcher, mentor, activist, administrator, supervisor, academic, fund raiser, practice manager, collaborator, role model, counsellor...

This year's conference continues our exploration of the key, often overlapping, issues arising for clinical legal education in the 21<sup>st</sup> century from the clinician's perspective; juggling sometimes competing priorities and often making difficult choices. These will be explored by our Keynote panel: Lisa Bliss, Mary Anne Noone, Shuvro Sarker and Veronika Tomoskova.

Our welcome keynote comes from Professor Kevin Kerrigan:

"If I ruled the world - can clinic be required in every discipline?"

"Such happiness as life is capable of comes from the full participation of all our powers in the endeavor to wrest from each changing situation of experience its own full and unique meaning."

John Dewey, the granddaddy of experiential learning, was not referring here to the discipline of law. His was a broad pedagogic philosophy that was not discipline-specific.

It is well known (although not always acknowledged) that clinical education was not invented by lawyers and although clinical legal education has developed into a distinctive and highly successful strand of experiential learning, it remains a methodology that is at least potentially applicable right across the academy. Where university education is closely linked to professional training or development, there is often a motivation to deploy a clinical approach but it is much more challenging to envisage a clinical approach right across the subject spectrum. I am unaware of any institution that has attempted to deliver a comprehensive suite of academic programmes via meaningful clinical engagement.

During the selection process for my current role I pitched the idea that we could develop a live client clinical approach right across the undergraduate curriculum. The good news was I got the job. The bad news was that they took my idea seriously.

So, can clinic be required in every discipline? Even if it can, does it make educational sense?

Maths clinic anyone?

## **MEASURING THE IMPACT OF SOCIAL JUSTICE TEACHING: RESEARCH DESIGN AND OVERSIGHT**

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### Introduction

Research and the production of scholarship is a fundamental part of being a legal academic. Such endeavors identify issues and answer questions that further understanding of the law, the profession, and the justice system itself. Research and scholarship in the legal academy traditionally meant the study of law and legal theory. A growing body of legal academics are focusing research and scholarship on legal education itself, as well as research that measures the impact of legal education. The impact of clinical legal education on students' development of practical and professional skills, as well as the impact on communities that clinics serve are important areas of scholarly inquiry.<sup>1</sup> This article explores how thoughtfully designed research projects can

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measure the impact of social justice teaching, using examples and experience gleaned from the evaluation and research component of a medical legal partnership<sup>2</sup> and its affiliated law school clinic. The article examines principles of good research design, the art of formulating research questions, and the potential uses for resulting data. It also identifies critical steps and issues to consider when developing a research project.

Part I explains the reasons that engaging in research is a useful<sup>7</sup> and increasingly necessary<sup>7</sup> method of measuring the effectiveness and impact of clinical legal education and social justice teaching, and the ways research informs approaches to teaching and client service. It also describes a medical legal partnership (hereinafter “MLP”) known as the Health Law Partnership (hereinafter “the Partnership”),<sup>3</sup> and the Health Law Partnership Legal Services Clinic (hereinafter “the Partnership Clinic”)<sup>4</sup> at the University

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Law, Health & Society at Georgia State University College of Law, with a joint appointment in the School of Public Health.

<sup>1</sup> See, e.g., Jeanne Charn & Jeffrey Selbin, *The Clinic Lab Office*, 2013 WIS. L. REV. 145 (2013); Steven Hartwell, *Promoting Moral Development through Experiential Teaching*, 1 CLINICAL L. REV. 505 (1995); Stefan H. Krieger, *The Effect of Clinical Education on Law Student Reasoning: An Empirical Study*, 35 WM. MITCHELL L. REV. 359 (2008); Margaret E. Reuter & Joanne Ingham, *The Practice Value of Experiential Legal Education: An Examination of Enrollment Patterns, Course Intensity, and Career Relevance*, 22 CLINICAL L. REV. 181 (2015); Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57 (2009).

<sup>2</sup> Medical legal partnership brings together legal and health care providers to holistically address the socio-economic barriers to health. For more information on medical-legal partnerships and the need for such partnerships, see *The Need for Medical-Legal Partnership*, NAT’L CTR. FOR MED.-LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/need> (last visited Aug. 31, 2016).

<sup>3</sup> The Health Law Partnership (“the Partnership”) is a community collaboration among the University, the Legal Aid Society, and Children’s Healthcare of City. For the components of the Partnership, see *infra* Part I. For more information, see THE PARTNERSHIP L., <https://healthlawpartnership.org> (last visited Aug. 31, 2016).

<sup>4</sup> *The Partnership Legal Services Clinic*, UNI. ST. U.C.L., <http://law.UNI.edu/clinics/the-Partnership-legal-services-clinic> (last visited Aug. 31, 2016).

Law School (hereinafter “the University”) and the design and evolution of the research and evaluation component of this project. Part II describes the special needs and concerns that governed the approach to designing and implementing an effective evaluation tool in this context. Part III turns to fundamental principles of research. It identifies important steps to take when establishing a research project, and issues that researchers must confront in doing so, including ethical implications and the need for adherence to international principles of ethical research, as well as university regulations and guidelines. Finally, the article concludes with reflections on the Partnership research project and advice for those considering engaging in similar research, particularly those who wish to evaluate the impact of clinical legal education and justice education.

#### Part I – Why Engage in Research and Evaluation?

This section explains the reasons that engaging in research and evaluation is increasingly important to law clinics and the benefits to be gained from engaging in research. It argues that clinical educators must not only engage in the rigorous self-evaluation that we ask of our students, but that we must also prioritize evaluation of the impact of our work for several reasons. Primary among those reasons is to ensure we are accomplishing our educational goals and objectives. From the inception of the Partnership and the Partnership Clinic, we committed to a robust research and evaluation agenda. Our work

over the last decade informed our understanding of the importance and challenges of conducting this kind of research. Because we draw on these experiences, we provide a brief description of the development of the Partnership project and its research agenda before moving to the broader questions of why and how to measure the impact of education, services, and other activities.

#### A. Designing the Partnership Project Components and Evaluation and Research

Conceptualizing and developing the Partnership took place over a protracted period. From the outset, the legal partners, leaders from the Legal Aid Society<sup>5</sup> (“hereinafter LAS”) and the University were firmly committed to building a partnership between law and medicine in City. It took more than a decade to find the right and willing medical partner. While they searched for the right medical partner, the legal partners built a strong trust relationship and cemented the goals each wanted to achieve from a collaboration specifically designed to combine the expertise of health providers and lawyers to provide more holistic services to low-income health consumers. The overarching goals they identified were to improve health care outcomes for low-income

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<sup>5</sup> The Legal Aid Society helps low-income people meet basic needs by providing free legal services and legal education. The organization services clients throughout the Metro Area. For more information, see LEGAL AID SOCIETY, <http://www.CITYlegalaid.org/> (last visited Aug. 31, 2016).

patients while also preparing graduate students in law, medicine, and related health professions to be better problem-solvers. The legal partners recognized that the project needed to include evaluation and research components to assure that goals were met.

When Children's Healthcare of City<sup>6</sup> (hereinafter "Children's") agreed to join and create the Health Law Partnership, faculty at the University secured the services of an independent program evaluator to assist in developing metrics targeted at determining whether goals were met. The partners, along with assistance from the program evaluator, developed the following program areas for the Partnership: (1) delivery of direct legal services to low-income children and their families receiving health care services at Children's,<sup>7</sup> (2) providing education on two planes: (a) to hospital professionals to familiarize them with the effects social determinants have on health and how the Partnership could assist in addressing health-harming legal needs, and (b) to professional and graduate students in law, medicine, and social work to enhance their education in

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<sup>6</sup> Children's Healthcare of City, a non-profit pediatric health system, is the largest provider of healthcare services to children in State. Children's has 3 hospitals, 27 neighborhood locations, and handles more than 870,000 patient visits annually. Children's offers access to more than 60 pediatric specialties and programs and is ranked among the top children's hospitals in the country by U.S. News & World Report. For more information, see CHILDREN'S HEALTHCARE CITY, <http://www.choa.org> (last visited Aug. 31, 2016).

<sup>7</sup> "Public health legal services" are civil legal services provided by attorneys to low-income persons that, collectively, improve population health. D. Schulman et al., *Public Health Legal Services: A New Vision*, 15 GEO. J. ON POVERTY L. & POL'Y 729, 732-33 (2008). Public health legal services are provided to the Partnership clients either through the Partnership Clinic at the University or by Partnership staff attorneys employed by LAS.

effective interprofessional collaboration, holistic problem-solving, addressing the social determinants of health, and overall skills development, and (3) engaging in systemic advocacy to address population health issues.<sup>8</sup> Because so much emphasis was placed on the importance and role of program evaluation and research, the partners agreed to create a fourth program area of research and evaluation to place these functions on equal footing with the other three programmatic components. Once the partners had a vision for the function, the services, and the role for each of the programmatic components, the team set out to develop tools to facilitate data collection and analysis.

### 1. Evaluating Legal Services and Health Provider Satisfaction

The first component to be developed was the delivery of direct services. The partners focused on decisions regarding a list of parameters and priorities:

- Establishing clients' financial eligibility for free legal services

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<sup>8</sup> A full explanation of the development and design of the Health Law Partnership and its four components is beyond the scope of this article. For details about the project and its four components, including the delivery of public health legal services, education in the form of professional graduate education, in-service education, systemic advocacy and its public health impact, and program evaluation, research, and scholarship, see Robert Pettignano, Lisa Radtke Bliss & Sylvia Caley, *The Health Law Partnership: A Medical-Legal Partnership Strategically Designed to Provide a Coordinated Approach to Public Health Legal Services, Education, Advocacy, Evaluation, Research and Scholarship*, 35 J. LEGAL MED. 57, 57–79 (2014).

- Determining how clients would be referred to the Partnership
  - Developing a plan to capture data on provider referral practices to the Partnership
- Establishing the geographic location of children to be served
- Identifying the types of legal services to provide to children and families
- Identifying clients having types of diagnoses who might be prioritized for legal service
- Determining how to capture data on all clients referred for free legal services
- Identifying, quantifying, and describing benefits received by children and families as a result of the free legal services to be provided
  - Determining how to prove that the services provided by the Partnership contributed to improved health outcomes for the children served
- Developing a plan to educate health providers to identify and refer eligible children and families for free legal services

Using these parameters and priorities as a guide, the team determined the important data points and then developed a lengthy intake questionnaire designed to capture them. The program evaluator and staff built a customized data base to capture all data elements associated with clients' experiences with the Partnership and developed uniform

procedures for interviewing clients to reduce errors, encourage uniformity, and minimize bias.<sup>9</sup>

In addition to the intake questionnaire, the team developed a pre and post survey to be given to the parents/guardians of all children referred to the Partnership for legal services. The pre-survey questions aimed to gather information regarding the parents/guardians perceptions of their own physical health, emotional health, financial well-being, and overall well-being and that of their children. The post survey explored these same areas in order to determine whether there was improvement in self-reported status. The survey also asked whether the parents/guardians felt better equipped to deal with similar problems, at least initially, should they arise in the future. All instruments, including the intake questionnaires and the surveys, received Institutional Review Board (IRB) approval at the University.<sup>10</sup> While all children and families determined to be eligible for free legal services at the Partnership had the opportunity to participate in the research study, families received Partnership services regardless of their decision to participate or not to participate in the study. Participating families were required to provide informed consent prior to their enrollment in the study. All faculty and staff

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<sup>9</sup> Staff attorneys serving clients were trained in how to collect the information on the intake questionnaire. Only one person, the Partnership's office manager, entered all data elements into the database to ensure any errors which occurred would at least be uniform errors.

<sup>10</sup> Institutional Review Board approval is just one part of the legal and ethical requirements for undertaking human subject research. For further discussion, see *infra* Part III.

associated with the Partnership underwent training in Human Subject Research through the Collaborative Institutional Training Initiative.<sup>11</sup>

In addition to evaluating the benefits of providing free legal services to low-income children with the hope of improving their health outcomes and those of their parents/guardians, the Partnership also wanted to evaluate the experiences of providers when referring clients to the Partnership. Again, an IRB-approved survey instrument was developed to assess the providers' satisfaction with both the ease of referral and the receipt of feedback from the Partnership. In addition, survey questions inquired whether referral to the Partnership freed providers to handle matters more within the provider's scope of practice, and whether the provider perceived that referral of a child or family to the Partnership resulted in any reduction in preventable visits to the Emergency Department, reduced the length of hospitalization, or reduced readmissions to the hospital. The program evaluator distributes the provider survey once annually to all attending physicians, residents, and social workers. Data collected from the surveys have contributed both to program improvement and to publications.<sup>12</sup>

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<sup>11</sup> COLLABORATIVE INSTITUTIONAL TRAINING INITIATIVE, <https://www.citiprogram.org> (last visited Aug. 31, 2016).

<sup>12</sup> See, e.g., Robert Pettignano, Sylvia Caley & Susan McLaren, *The Health Law Partnership: Adding a Lawyer to the Healthcare Team Reduces System Costs and Improves Provider Satisfaction*, J. PUB. HEALTH MGMT. & PRAC., July–Aug. 2012, at e1.

## 2. The Partnership Clinic and Education for Law, Medical and other Professional Students

Experience gleaned from providing free legal services for the purpose of resolving health-harming legal problems, coupled with data on successful outcomes, built credibility for the Partnership, strengthened the Partnership, and created general interest in the concept of MLP. The partners wanted to develop the second component of the Partnership, education of professional graduate students. Development of this component, however, required fund-raising for adequate financial resources to build an in-house clinic at the law school. The data, experiences, and descriptive reports outlining the positive results obtained in the legal services component, along with the evident commitment of the partners, encouraged a major local donor to contribute the funds necessary to develop the Partnership Clinic.

Using the same principle applied to the legal services component and the evaluation of provider satisfaction, the partners developed IRB-approved instruments to assess learners' experiences with the enterprise. The first instrument, which remains in use, is a qualitative post-experience survey originally designed for law students. Perhaps the most significant question on this particular survey asks whether the learners will engage in public interest activities in their professional careers. While faculty in the Partnership

Clinic hold no expectations that students enrolled in the clinic will become public interest lawyers upon graduation, the hope is that students will be aware from their experiences in the Partnership Clinic of the negative effects disparity and inequity have on individuals and communities. When lawyers become aware of social injustice and of impediments to access to equal justice and decide to volunteer time and resources, change can happen and injustices can be ameliorated. Our proxy for determining our success in motivating students to get involved in addressing social justice is to ask about their intentions.

Four years ago, the Partnership Clinic faculty decided to develop a qualitative survey to evaluate attainment of key values associated with interprofessional clinical legal education.<sup>13</sup> In developing the instrument, faculty interviewed students, met with educational testing experts, held many working sessions, and tested the instrument on two classes of students completing their semester in the clinic. The instrument remains a work in progress, but the plan is to develop and implement a useful instrument as a first step in developing a longitudinal study to include current students and program graduates. Preliminary information gleaned from this instrument will help to inform

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<sup>13</sup> See Linda Morton et al., *Teaching Interdisciplinary Collaboration: Theory, Practice, and Assessment*, 13 QUINNIPIAC HEALTH L.J. 175, 193–196 (2010); Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Courses as a Context for Nurturing Intrinsic Values*, 13 CLINICAL L. REV. 839, 862–64 (2007).

whether the goals of the education component are being met and, as necessary, how and where to make adjustments in the curriculum to achieve goals that remain elusive.

The Partnership has conducted other research projects focused on medical learners specifically. Two different studies have been underway for several years to evaluate changes in awareness and attitudes by medical students and pediatric residents following prescribed exposures to the Partnership and an educational curriculum focusing on the social determinants of health. Additional work is underway, in collaboration with two other MLPs, to develop a new uniform instrument to be used as pre- and post-survey for all learners involved with the MLP.<sup>14</sup>

### 3. Evaluating the Systemic Advocacy Component

The systemic advocacy component of the Partnership is carried out through a class taught at the law school entitled Health Legislation and Advocacy. Students enrolled in the class work with non-profit community partners to address issues affecting the health and well-being of State Residents. A pre- and post-survey instrument was developed for use with

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<sup>14</sup> The Partnership is one of three MLP centers to be awarded a grant from the American Association of Medical Colleges in 2015 entitled Accelerating Health Equity, Advancing through Discovery (AHEAD). The thrust of this three-year grant is to develop and implement uniform metrics across three domains: patient and community; cost savings, institutional benefits, and efficiencies, and learners, including medical students, residents, fellows, and law and social work students. The goal is to determine the influence MLPs have on outcomes and performance.

these students, and it was administered twice with varying success. The next phase of planned research will focus on discreet pieces of legislation enacted into law that were developed in the legislation class to determine whether changes in the law improved the situations the laws were designed to address. For example, the class researched whether increasing the age that children must be placed in booster seats while riding in motor vehicles in State would result in fewer deaths and significant head, neck and back injuries. Compelling arguments were made that State's law was too lax and that children would be safer if the age was increased. Both the legislature and the governor agreed, and an age increase was enacted into law. Now that the amended law has been in place for a few years, it is possible to develop a new research project to determine whether the new law has contributed to fewer deaths and serious injuries in young children following motor vehicle accidents. Demonstrating a reduction in these types of serious injuries would help to demonstrate that systemic advocacy is a vital component of change within the MLP model.

#### B. Measuring the Impact of Clinical Legal Education

While clinical educators know that clinical legal education methods enable students to learn essential knowledge, skills and values, it is difficult to quantify the impact that clinical legal education has on students because the clinical education experience touches

so many aspects of professional identity and development. Indeed, scholars have noted that existing research does not help reveal, explain or otherwise inform our understanding of the relationship between clinical legal education and the professional development of law students.<sup>15</sup> This gap in the research has motivated scholars to explore different aspects of clinical legal education and its effectiveness.<sup>16</sup> Through formal evaluation processes, we may discover valuable information about the impact of the clinical legal education experience on student learning, development, beliefs, attitudes, and understanding. While the process of measurement can be challenging, the information gained can create new opportunities and should offset the costs.<sup>17</sup> Without an evaluation process, we have no way of confirming our intuitions about the value of clinical and interprofessional education and of establishing whether we are meeting our teaching and social justice goals, nor are we able to make policy decisions informed by evidence.<sup>18</sup> The importance of the information that evaluation can provide in the clinical legal education context mandates that we continue efforts to study it.

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<sup>15</sup> Sandefur & Selbin, *supra* note 1, at 78.

<sup>16</sup> See, e.g., Stefan H. Krieger, *The Effect of Clinical Education on Law Student Reasoning: An Empirical Study*, 35 WM. MITCHELL L. REV. 359, 363 (2008).

<sup>17</sup> But see Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL ED. 531, 542 (2013) (“Compared with other work, empirical research has higher costs and lower rewards [for academics]. It is typically more expensive and time consuming than doctrinal or theoretical scholarship, requires greater interdisciplinary expertise and risks dismissal in some circles as ‘merely descriptive.’”).

<sup>18</sup> See also *id.* at 532 (discussing need for greater research about access to justice in American in order to inform legal service policies, education, and allocation of resources).

Fundamental to clinical pedagogy is the process of self-reflection, which has long been used as a tool for informally evaluating students' reactions to the clinical experience. Clinical legal education is rooted in David Kolb's experiential learning model, which describes a cycle of learning that moves from actual experience, to observation and reflection, to the formation of abstract concepts, to testing and applying the learned theories and concepts to new situations.<sup>19</sup> Learning through reflection is at the core of clinical pedagogy and is essential to the learning process.<sup>20</sup> Clinical education emphasizes the importance of continuous self-reflection and critical examination of experiences.<sup>21</sup> Self-reflection by students occurs in multiple venues during the clinic experience. It can be done through journals, essays, one-on-one meetings with supervisors, in classroom discussions, online discussions, and other contexts. Reflection can also be prompted and measured through formal evaluation processes, and the results used to inform and improve clinical education.

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<sup>19</sup> Alice Y. Kolb & David A. Kolb, *Learning Styles and Learning Spaces: Enhancing Experiential Learning in Higher Education*, 4 ACAD. MGMT. LEARNING & EDUC. 193, 194 (2005).

<sup>20</sup> Susan Bryant et al., *Learning Goals for Clinical Programs*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 13, 23–24 (Susan Bryant et al. eds., 2014).

<sup>21</sup> Lisa Radtke Bilss & Donald C. Peters, *Delivering Effective Education in In-House Clinics*, in BUILDING BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 188, 202 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo Lopez eds., 2015). *See also* Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLINICAL L. REV. 489, 500 (2013); Kimberly E. O'Leary, *Evaluating Law Teaching—Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. KY. L. REV. 491, 494–95, 503 (2002).

Through evaluation, teachers and researchers may determine the levels of student understanding and achievement in different concepts, goals, or ideas, and how such understanding may have changed as the result of the experiences students are exposed to in a clinical course. Moreover, asking students self-assessment questions, and engaging in pre-clinic and post-clinic surveys about the student experience forces students to think more deeply about their own experience, thus supplementing their opportunities for reflection, which are a critical part of the learning cycle. Surveys can also measure and track how often students engaged in particular activities, and how well they think they performed them or developed their abilities in a particular skill. Students can be asked about their learning goals and whether they believed that they were able to meet them through the clinical experience. Surveys can explore particular values, attitudes, and ethics of students and how their experience in a clinic may have changed those values, attitudes, or ethics.

Evaluation contributes to a better understanding of clinical legal education's effectiveness. Knowing how the clinical experience has impacted students' knowledge, skills, and values is valuable information both to understand what clinical education offers as part of a legal education curriculum and to understand where a clinical program may be falling short of its express mission or goals. Evaluation results can also provide concrete information about where a clinical program is meeting its goals. For example, if

one goal of a clinic is to help students form an awareness and understanding of social justice and how social factors may affect an individual's ability to get justice in particular circumstances, students may be surveyed about their awareness and understanding of such issues before taking a clinical course and after taking a clinical course. The resulting survey information is important to clinic teachers. It can be studied and used to inform future iterations of the course and the clinic to ensure that the educational goals outlined for students will be met. Survey data can be used to identify the necessity of making changes to course content and experiences where needed, and to identify those aspects of the course that have been demonstrated to be effective and should be continued. This information is not only important for the success of the program, but it is valuable knowledge for clinic teachers in their own professional development, for the development of clinical legal education, and education in general. A program that is regularly evaluating is also a program that is constantly innovating, because it can be responsive to the feedback that evaluation provides.

Research from the Partnership's IRB approved research project has shown that employing its interprofessional education model that has medical students, law students, social work students and others learning and working together fosters a sense of collaboration and cooperation among them, thus positively influencing the professional attitudes and behaviors of the next generation of providers of health, legal and other

related services.<sup>22</sup> Working across disciplines to achieve a common goal of addressing children's health and the socioeconomic barriers to health changes preexisting professional attitudes toward collaboration across disciplines. This change creates future professionals who will have knowledge of and access to multiple resources that enable them to better serve their patients and clients.

Measuring students' progress, career choices, and social justice engagement after they leave the clinic can also help educators to understand the impact of the clinical experience more generally. For example, some clinics might want to specifically evaluate whether students believe that their participation in a clinic made them more likely to do pro bono work,<sup>23</sup> to advocate for marginalized populations, or to become public interest lawyers.<sup>24</sup> Researchers targeting clinical education specifically could also generate new knowledge about the impact of clinical education by identifying the specific legal knowledge, skills

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<sup>22</sup> For example, the Partnership Clinic has surveyed medical students to determine whether their exposure to the Partnership model increased their level of awareness that social determinants of health affect health outcomes, their willingness to screen patients to determine whether their health may be affected by health-harming legal problems, and, if patients screen positive, to refer them to the Partnership for evaluation and possible assistance. While the data is not yet complete, early results indicate that exposure to MLP-styled interprofessional education favorably influences medical students' behavior. As part of the American Association of Medical Colleges grant, *supra* note 16, the Partnership will be testing a survey instrument designed to measure the attitudes of law and medical students prior to the start of their work with the Partnership Clinic and after completion of their work with the Partnership Clinic in order to identify changes that have occurred in attitudes or beliefs.

<sup>23</sup> See Sandefur & Selbin, *supra* note 1, at 90–107 (recounting analysis of findings from data from a national survey of early-career attorneys entitled "After the JD").

<sup>24</sup> *Id.*

and attitudes they hope clinics impart, describe the methods they use for doing so, and measuring how effectively their clinics achieve such goals.<sup>25</sup>

### C. Measuring the Impact of Legal Services Provided by Clinics

Another critical area of research is a law clinic's impact on the clients and the communities a clinic serves. Many law school clinics engage in different processes to determine client satisfaction. However, satisfaction is just one measure of impact and effectiveness. Other questions may be asked that allow researchers to understand more completely the impact of legal services and legal interventions on individuals as well as communities. For example, through its evaluation process and the data it generates, the Partnership and the Partnership Clinic have been able to identify the impact that legal interventions have had on particular populations of children, such as those with chronic asthma or those with sickle cell disease.<sup>26</sup> Researchers can track multiple outcomes that are relevant to the type of service being provided to determine whether and the extent of impact a clinic had on a client's ability to obtain needed services or benefits, housing,

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<sup>25</sup> *Id.* at 105.

<sup>26</sup> See Robert Pettignano, Lisa Radtke Bliss, Sylvia B. Caley & Susan McLaren, *Can Access to a Medical-Legal Partnership Benefit Patients with Asthma Who Live in an Urban Community?*, 24 J. HEALTH CARE FOR POOR & UNDERSERVED 706, 706 (2013) [hereinafter Pettignano et al., *Benefit Patients with Asthma*]; Robert Pettignano, Lisa Radtke Bliss & Sylvia Caley, *Medical-Legal Partnership: Impact on Patients with Sickle Cell Disease*, PEDIATRICS, Dec. 2011, at e1, e1 [hereinafter Pettignano et al., *Patients with Sickle Cell Disease*].

jobs, community support, judgment, improvements in health, and other outcomes, and on a community's ability to address environmental issues, economic development, human rights and myriad issues that clinics are formed to address.

The results of research can suggest ways to improve the quality and delivery of client service as well as the ability of clients to connect with the services a clinic provides. Knowledge gained through research can identify the most fruitful referral sources for clients. For instance, if most clients self-identify as having legal problems and self-refer to the clinic for assistance in addressing these problems, the educational and promotional materials used to attract clients will differ substantially from materials employed to educate medical professionals about the clinic's services. Research can identify target audiences for these materials, identify where and how a clinic should invest resources in client education, and suggest where improvements may be made in the client intake process, overall program awareness, and in-service training of hospital professionals to educate them about legal issues, the eligible client population, and the legal services available.

#### D. The Value of Data on Clinical Education and the Impact of Legal Services

The impact of a clinic's services on clients and community, and the impact on student learning can all be explored through research and evaluation, in order to ensure that

clinics are meeting student needs and learning goals, that teachers are meeting their objectives for the clinical learning experience, and that the clinics themselves are achieving their stated mission. Without gathering the relevant data, it is difficult to demonstrate effectiveness, ensure quality, or be alerted to environmental changes that might affect a program's effectiveness and/or sustainability. Data is useful in identifying strengths, which can be leveraged, and weaknesses, which can be targeted for improvement. Data can be used to assess impact and discoveries yielded can generate the publication of research and scholarship. Publication of research enables the information discovered to be shared with a wider population. It also inures to the benefit of the participating institutions. In fact, the Partnership project has yielded multiple opportunities to share research results, knowledge gained, and to share the development of the project as a model for others to replicate through conference presentations, workshops, consultations, speeches, and publications.<sup>27</sup> Finally, data is also critically

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<sup>27</sup> John Ammann, Emily A. Benfer, Lisa Bliss, Sylvia Caley, Elizabeth Tobin Tyler & Robert Pettignano, *Advancing Health Law & Social Justice in the Clinic, the Classroom and the Community*, 21 ANNALS HEALTH L. 237, 237–56 (2012); Lisa R. Bliss, Robert Pettignano & Sylvia Caley, *Bridging the Quality Gap with Medical-Legal Partnerships*, 39 PHYSICIAN'S EXECUTIVE J. 44, 44–49 (2013); Lisa Bliss & Sylvia Caley, *Exploring Cultural Competence in the Context of Medical-Legal Partnerships*, *Recent Developments in Health Care Law: Culture and Controversy*, 25 HEC FORUM 14, 14–21 (2012) [hereinafter Bliss et al., *Exploring Cultural Competence*]; Lisa Bliss, Sylvia Caley & Robert Pettignano, *A Model for Interdisciplinary Clinical Education: Medical and Legal Professionals Learning and Working Together to Promote Public Health*, 18 INT'L J. CLINICAL L. EDUC. 149, 149–164 (2012) [hereinafter Bliss et al., *Interdisciplinary Clinical Education*]; Sylvia B. Caley, Lisa Radtke Bliss & Robert Pettignano, *Speaking Their Language: Developing a Scorecard for Medical-Legal Partnerships to Balance Quality and Productivity*, 5 INT'L J. HEALTH, WELLNESS & SOC'Y 9, 9–17 (2015); Pettignano et al., *Benefit Patients with Asthma*, *supra* note 28; Robert Pettignano, Sylvia Caley & Lisa Bliss, *A Case for Including Lawyers on the Care Team*, PHYSICIAN EXECUTIVE J. 34, 34–38 (2011) [hereinafter

important to institutions and funders that provide resources to support clinical legal education, because it provides evidence of outcomes.

## Part II What Does a Clinical Legal Education Research Project Look Like?

### A. Social Justice and the Social Determinants of Health

Many definitions of social justice exist. A common thread is the focus on equal economic, political, and social rights and opportunities.<sup>28</sup> Professionals in disciplines such as law, medicine, social work, public health, and ethics have long applied social justice principles to structural problems confronting the communities they serve. Each discipline uses its existing principles and organizational structures to address the needs of its constituencies. Within the healthcare field, there is a growing imperative to achieve

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Pettignano et al., *Case for Including Lawyers*]; Robert Pettignano, Lisa Radtke Bliss & Sylvia Caley, *Collaborative Diagnosis: Interdisciplinary Problem-Solving Between Physicians and Lawyers*, 2 INT'L J. HEALTH, WELLNESS & SOC'Y 37, 37–41 (2013); Robert Pettignano, Lisa Bliss & Sylvia Caley, *The Health Law Partnership: A Medical-Legal Partnership Strategically Designed to Provide a Coordinated Approach to Public Health Legal Services, Education, Advocacy, Evaluation, Research and Scholarship*, 35 J. LEGAL MED. 57, 57–79 (2014) [hereinafter Pettignano et al., *Health Law Partnership*].

<sup>28</sup> Pamela Edwards & Sheila Vance, *Teaching Social Justice Through Legal Writing*, 7 LEGAL WRITING 63, 70 (2001). Two scholars have provided the following definition of social justice issues:

“Social justice is the process of remedying oppression, which includes ‘exploitation, marginalization, powerlessness, cultural imperialism, and violence.’ Issues of social justice include problems involving race, ethnicity, and interracial conflict, ‘class conflict, gender distinctions, . . . religious differences,’ and sexual orientation conflicts. Social justice also includes public interest work in its many guises.”

*Id.* at 64.

health equity by addressing the social determinants of health, in order to improve health outcomes and reduce healthcare costs.<sup>29</sup> Increasingly, healthcare providers are recognizing that they need to expand the healthcare team to include lawyers as well as problem-solvers from other disciplines in order to successfully address the complex social justice problems fermented by disparity and inequity.<sup>30</sup> Successfully addressing such problems depends upon educating the next generation of professionals from all disciplines about the principles of social justice, and the tools and collaborative models that can be employed to address social inequity.

Clinical legal education has been recognized as an ideal vehicle to promote teaching and learning of social justice.<sup>31</sup> Effectively teaching social justice requires the infusion of social justice principles and values not only in law clinics, but throughout the curriculum.<sup>32</sup> Justice education can equip students with the skills and experiences necessary to

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<sup>29</sup> Council on Cmty. Pediatrics, Am. Acad. of Pediatrics, *Poverty and Child Health in the United States*, PEDIATRICS, Apr. 2016, at 1, 1; Michael Marmot, *Social Determinants of Health Inequalities*, 365 THE LANCET 1099, 1099 (2005).

<sup>30</sup> Bliss et al., *Exploring Cultural Competence*, *supra* note 29; Bliss et al., *Interdisciplinary Clinical Education*, *supra* note 29; Lisa Bliss, Sylvia Caley & Robert Pettignano, *An Interdisciplinary Collaborative Approach to Wellness: Adding Lawyers to the Healthcare Team to Provide Integrated Care for Patients*, 1 INT'L J. HEALTH, WELLNESS & SOC'Y 129 (2011); Pettignano et al., *Benefit Patients with Asthma*, *supra* note 28; Pettignano et al., *Patients with Sickle Cell Disease*, *supra* note 28.

<sup>31</sup> Lauren Caraskik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 23 (2006).

<sup>32</sup> See Ammann et al., *supra* note 29, at 237–56.

promote social change and to increase equality among individuals.<sup>33</sup> Interprofessional collaboration is a particularly effective way to address the multiple determinants of health and to promote health and social equity. In the United States, the triple aim of providing interprofessional education combined with addressing social justice principles and improving health outcomes is embodied in the medical-legal partnership movement.<sup>34</sup> Documenting outcomes and performing research that focuses on measuring the success of such collaboration is essential to better understanding the value of this approach. Such research can also ensure quality and continued improvement of the services provided by partnerships, promote the sustainability of partnerships, and encourage the formation of more MLP programs.<sup>35</sup>

## B. Measuring the Impact of Social Justice Teaching in Clinical Legal Education

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<sup>33</sup> Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 288 (2001). Scholar Jane Aiken aspires to not only the Partnership students learn about justice through their clinical experience, but to also be a “provocateur” for justice, meaning one who inspires others to action, and who “actively imbues her students with a lifelong learning about justice, prompts them to name injustice, to recognize the role they may play in the perpetuation of injustice and to work toward a legal solution to that injustice.” *Id.*

<sup>34</sup> The National Center for Medical-Legal Partnership states that across the United States 155 hospitals, 139 health centers, 34 health schools, 126 legal aid agencies, and 52 law schools have some form of medical-legal partnership to address the social determinants of health. *Partnerships Across the U.S.*, NAT’L CTR. FOR MED.-LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/need> (last visited Aug. 31, 2016).

<sup>35</sup> Pettignano et al., *Health Law Partnership*, *supra* note 29, at 57–79.

While much is written about assessment and evaluation in law school education, experience in measuring the social justice impact of students' clinical experience is very limited.<sup>36</sup> To the extent that clinical programs employ the MLP interprofessional model, wide-ranging program research and evaluation focused on determining outcomes is nascent.<sup>37</sup> Interprofessional learning experiences, in and of themselves, involve challenging and complex relationships particularly because most are created, at least in part, to contribute to transformative change in problem-solving.<sup>38</sup> These interdisciplinary experiences are created not only to facilitate students' transition from didactic learning to clinical practice, but also to expose students to complex issues facing our society.<sup>39</sup>

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<sup>36</sup> Lisa Colarossi & Mary Ann Forgey, *Evaluation Study of an Interdisciplinary Social Work and Law Curriculum for Domestic Violence*, 42 J. SOC. WORK EDUC. 307, 307–23 (2006); Suellyn Scarnecchia, *An Interdisciplinary Seminar in Child Abuse and Neglect with a Focus on Child Protection Practice*, 31 U. MICH. J.L. REFORM 33 (1997); Elizabeth Tobin Tyler, *Allies Not Adversaries: Teaching Collaboration to the Next Generation of Doctors and Lawyers to Address Social Inequality*, 11 J. HEALTH CARE L. & POL'Y 249 (2008); Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Courses as a Context for Nurturing Intrinsic Values*, 13 CLINICAL L. REV. 839 (2007).

<sup>37</sup> The National Center for Medical-Legal Partnership has developed performance measures to facilitate program evaluation efforts and systematic data collection by MLPs. These performance measures are currently being tested in the field by the members of the National Center. For more information, see *Measuring Impact*, NAT'L CTR. FOR MED.-LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/resources/measures> (last visited Aug. 31, 2016). This effort is not focused on the particular needs of MLPs located within law school clinics. The metrics project is currently under development through a grant from the American Association of Medical Colleges, *supra* note 16, and includes an investigation of learner outcomes, including outcomes for law students.

<sup>38</sup> P. V. August et al., *The T Assessment Tool: A Simple Metric for Assessing Multidisciplinary Graduate Education*, 39 J. NAT. RESOURCES & LIFE SCI. EDUC. 15, 16 (2010).

<sup>39</sup> Karim S. Bandali et al., *Innovations in Applied Health: Evaluating a Simulation-Enhanced, Interprofessional Curriculum*, 34 MED. TCHR. e176, e176–177 (2012), <http://dx.doi.org/10.3109/0142159X.2012.642829>.

Because of this complexity, developing research projects and creating tools to evaluate effectiveness can be challenging. Moreover, few validated tools exist. Within the clinical legal education model, traditional assessment criteria are insufficient.<sup>40</sup> Success is not simply mastery of a body of knowledge. The common methodology, testing, is not indicative of development of skills and values. Thus, there is both opportunity and challenge in developing evaluation and research projects employing realistic metrics.

Clinicians pursue developing MLP clinics not only because they believe in the benefits of interprofessional collaboration, but also because those very clinicians appreciate the complexity of the problems facing the disabled and chronically ill and understand that lack of equity is a root cause of health disparities.<sup>41</sup> Studies have shown that patient outcomes, quality of care, and patient and provider satisfaction are improved in a collaborative practice setting.<sup>42</sup> Socio-economic determinants of health affect health outcomes and legal intervention has the potential to effect improvement. Engaging in interprofessional problem solving creates a natural opportunity for students to practice, learn, and have significant impact on those they serve. Developing research protocols to

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<sup>40</sup> Michael Field & Russell Lee, *Assessment of Interdisciplinary Programmes*, 27 EUROPEAN J. EDUC. 277, 278 (1992).

<sup>41</sup> Pettignano et al., *Case for Including Lawyers*, *supra* note 29, at 34–35.

<sup>42</sup> J. G. Baggs, *Intensive Care Unit Use and Collaboration Between Nurses and Physicians*, 18 HEART & LUNG: J. CRITICAL CARE 332 (1989); William A. Knaus, Elizabeth A. Drapter, Douglas P. Wagner & Jack E. Zimmerman, *An Evaluation of Outcome from Intensive Care in Major Medical Centers*, 104 ANNALS OF MED. 410 (1986); *Nurse-Physician Communication Affects Patient Care*, 16 HEALTH AFFAIRS 29 (1984).

evaluate whether these learning opportunities achieve the goals of improving health outcomes, addressing the social determinants of health, promoting social justice, and educating law students will facilitate further development of MLP law school-based clinics. Key ingredients in determining the effectiveness of interprofessional efforts to address issues of social justice, include recognizing that measuring success is directly related to the learning objectives established in the curriculum; emphasizing the unique goals of the project or endeavor that is the focus of the educational experience; creating an evaluation method that matches the goals; and employing an array of assessment techniques.<sup>43</sup>

One option for other clinics interested in developing evaluation and research projects is to create an independent research team of students to help with study design and implementation. Using this model, students are able to engage in all of the steps of a well-designed research project. By creating a “research clinic,” law students receive an applied learning experience that is as educational as other clinic models. A research clinic project may also make evaluation much more feasible for a program that may lack the resources to take on this kind of important assessment. Finally, some students may bring valuable

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<sup>43</sup> Field & Lee, *supra* note 42, at 282. See also Barbara Glesner Fines, *Outcomes Assessment for Improving Student Learning*, in BUILDING BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, *supra* note 23, at 94, 94–100; Judith Welch Wegner, *Assessment Plans that Support Student Learning*, in BUILDING BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, *supra* note 23, at 25, 25–36.

skills to such a project that improve it and can be incorporated into future projects. Of course, as described below, a research clinic would need to comply with any research ethics obligations, which may include training for participating students if they are engaged in human subjects research.

### C. Establishing the Objectives for Measuring Impact and Success

The overarching goal of inter-professional collaboration is creating the climate in which participants are able to develop understanding of and embrace differences among the professional groups in order to develop common understanding.<sup>44</sup> Interprofessional programs have complex outcomes, and selecting metrics is difficult if those outcomes are not clearly identified.<sup>45</sup> Common themes emerge from these widely held objectives and goals. Most faculties engaging in interprofessional work aspire to develop specific core attributes in their students following their exposure to the work. These core skills include: discipline role clarity; ability to understand the roles of other disciplines; skills in negotiating roles and managing role conflict; developing effective communication skills;

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<sup>44</sup> Gunilla Öberg, *Facilitating Interdisciplinary Work: Using Quality Assessment to Create Common Ground*, 57 HIGHER EDUC. 405, 406 (2009).

<sup>45</sup> Donald E. Stowe & Douglas J. Eder, *Interdisciplinary Program Assessment*, ISSUES INTEGRATIVE STUD. 77, 84-85 (2002).

developing group process skills, becoming more self-aware, and developing a positive attitude toward collaborative work.<sup>46</sup>

Common threads connect varied disciplines when examining motivations behind developing interdisciplinary educational experiences. Themes include integration of knowledge, need for innovation, development of deductive reasoning, promoting sophisticated analysis, developing the ability to reason by analogy, and, ultimately, development of synthetic thinking.<sup>47</sup> Developing synthetic thinking involves employing integrative devices of “epistemic frames that enable [students] to articulate 2 or more disciplinary understandings.”<sup>48</sup> Scholars have identified 21 cognitive skills associated with integrated experiences ranging from the development of critical thinking and recognition of bias to enhanced awareness of ethical issues.<sup>49</sup> Fundamentally, the common objectives of interprofessional education are to improve the students’ foundation in their chosen disciplines, to advance their overall ability integrate problem-solving skills from other disciplines, and to arrive at a heightened level of critical awareness at the conclusion of the experience.<sup>50</sup>

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<sup>46</sup> Colarrossi & Forgey, *supra* note 38, at 307.

<sup>47</sup> Veronica Boix Mansilla & Elizabeth Dawes Duraisingh, *Targeted Assessment of Students’ Interdisciplinary Work: An Empirically Grounded Framework Proposed*, 78 J. HIGHER EDUC. 215, 217–18 (2007).

<sup>48</sup> *Id.* at 226.

<sup>49</sup> *Id.* at 217.

<sup>50</sup> *Id.* at 222–29.

One identifier for determining whether some degree of integration is taking place within an interprofessional experience is to evaluate whether “considered judgment”<sup>51</sup> is at play. Properties of considered judgment include the ability to weigh options, make compromises, and make decisions from the best available data. Engaging in considered judgment develops disciplinary foundations, promotes assimilation of other disciplines’ problem-solving methods, and instills understanding of the goals, benefits, and limitations of interprofessional practice. Success of an integrative experience may be measured by the “degree to which it achieves its purpose.”<sup>52</sup>

One tool employed by most clinicians in facilitating learning is to require that students engage in some form of regular, reflective journaling. Reflection, facilitated through activities, such as journaling exercises and the practice of reviewing memorialized reflections over time, provides insight into the development of critical awareness. Examining structured reflections permits the opportunity to assess problems identified, options available, choices made, compromises reached, degree of collaboration achieved among the interdisciplinary participants, issues of conflict, ethical dilemmas, and advances in thinking.

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<sup>51</sup> *Id.* at 229.

<sup>52</sup> *Id.*

#### D. Identifying the Metrics

Within discipline-related legal education courses or clinical experiences, the goals of learning and the assessment principles are common and generally agreed upon.<sup>53</sup> Also familiar is the need for assessment tools to measure change across the experience.<sup>54</sup> These common, agreed upon features can be incorporated into an evaluation or research protocol. Educators in interprofessional programs share the need to determine whether students' have developed knowledge of their own discipline's role, practices, ethics, and duties as well as those of the disciplines of their collaborators. Also important is assessing knowledge attainment of the specific content—health law, tax law, small business issues, or elder issues—and the role of other disciplines in holistically solving problems confronting clients. Assessing the extent to which the students developed skills necessary to perform the work required of the experience is an important component. Did the interprofessional experience enhance their acquisition of interviewing, counseling, negotiation, problem-solving, and/or conflict resolution skills? Were members of the interprofessional teams able to effectively deploy the acquired skills? How did attitudes and understanding of professional values evolve over the learning period? Were client experiences and outcomes improved due to the interdisciplinary collaboration?

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<sup>53</sup> See Bliss & Peters, *supra* note 23, at 188–215.

<sup>54</sup> Colarrossi & Forgey, *supra* note 38, at 309.

Some interprofessional legal education programs utilize validated student evaluations to assess development of knowledge, skills, and values.<sup>55</sup> Some examples of assessment tools include Attitudes Toward Interdisciplinary Teams Scale, Team Skills Scale (measures improved knowledge about teaming skills, ability to carry out tasks that contribute to quality teaming), and the General Intellectual Skills test.<sup>56</sup> The Educational Testing Service maintains information of available tests.<sup>57</sup> Using standardized, validated instruments to document student performance can establish that the interprofessional program at issue is performing well, attaining predetermined benchmarks, and is worthy of retention and support. Standardized instruments permit comparisons with similarly situated programs.

In interprofessional education programs, qualitative measures may be more useful.<sup>58</sup> Quantitative measures evaluate attainment of clearly specified learning objectives and a numerical measure is affixed to performance. Assumptions made in statistical analysis can be problematic.<sup>59</sup> Qualitative measures, on the other hand, may be more flexible. “The

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<sup>55</sup> Constance L. Coogle, Iris A. Parham, E. Ayn Welleford & F. Ellen Netting, *Evaluation of a Distance Learning Course in Geriatric Interdisciplinary Teaming*, 28 EDUC. GERONTOLOGY 791, 796 (2002).

<sup>56</sup> *Id.*

<sup>57</sup> See EDUC. TESTING SERV., <https://www.ets.org> (last visited Aug. 31, 2016).

<sup>58</sup> Field & Lee, *supra* note 42, at 279.

<sup>59</sup> *Id.*

complexity of human thought and discourse does not necessarily lend itself to numerical analysis.”<sup>60</sup>

Challenges are associated with measuring the impact of social justice teaching. To what degree has a student’s understanding been advanced because of the interdisciplinary experience? What is the value-added achieved by the combination and balancing of multiple disciplinary views? Can students from different disciplines enrolled in an interprofessional experience be evaluated in the same manner? Will assessing students’ performance be useful and relevant to them as they move along their paths to professional identity and completion of their studies?<sup>61</sup> How do we determine the key features to be evaluated? For instance, should we determine whether differences in problem-solving approaches were managed effectively?

#### E. A Final Word on the Partnership’s Experience with Evaluation and Research

While the delivery of free legal services, educational endeavors, and systemic advocacy represent the core programs of the Partnership, program improvement, growth, and sustainability would not have been possible without the evaluation and research

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<sup>60</sup> *Id.*

<sup>61</sup> Öberg, *supra* note 46, at 406–09.

component. Engaging in evaluation and research has brought all participants in the Partnership—partners, faculty, staff, contractors, learners, clients, and members of the Partnership Advisory Council<sup>62</sup>—together in a coordinated effort to prove the utility of the Partnership’s version of the MLP model. In many respects, research and evaluation is the glue that binds the discreet actors into a cohesive and successful collaboration.

### Part III Developing an Empirical Research Project

Most legal scholars are not trained in empirical research. Legal research generally is a relatively solitary activity – a scholar identifies a question of interests, searches and reviews the literature, and writes. Rarely does a legal scholar report the paths her research took her along and what parts were included or excluded from the final product. Empirical research is quite different. It demands a specific research question matched with an appropriate research methodology that provides data that will answer the question. There is an expectation that the research question and the methodology will be

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<sup>62</sup> The founding partners of the Partnership determined during the process of establishing the partnership that creating an advisory council to assist with the development, growth, and sustainability of the project would benefit the endeavor. Initially, members of the Partnership Advisory Council were lawyers practicing in healthcare law at private firms in City, State. Over time, as relationships developed, the Advisory Council membership diversified. Today, membership includes physicians, social workers, nurses, and former students as well as lawyers specializing in healthcare law. The group meets quarterly and has proven to be instrumental in increasing the profile of the Partnership.

explicitly described when the results are published and that deviations from the methodology will be explicitly described and justified.<sup>63</sup> In addition, the research typically cannot be commenced until it has been reviewed and approved by an oversight committee.<sup>64</sup> This section provides guidance for developing a research question and navigating the research oversight system.

### A. Developing a Research Question

The first step is to develop a research question. In short, the researcher needs to ask herself what she wants to know. Steven R. Cummings and colleagues developed the FINER criteria for developing a good research question (See Table 1).<sup>65</sup> According to this approach, a good research question is Feasible, Interesting, Novel, Ethical, and Relevant.

Table 1: FINER Criteria for a Good Research Question

From: STEPHEN B. HULLEY ET AL., *DESIGNING CLINICAL RESEARCH: AN EPIDEMIOLOGIC APPROACH* 19 (2nd ed. 2001). Reprinted with permission by Wolters Kluwer

<sup>63</sup> For a useful resource describing research methods that can fit legal analysis, see *PUBLIC HEALTH LAW RESEARCH: THEORY AND METHODS* (Alexander C. Wagenaar & Scott Burris eds., 2013). The Robert Wood Johnson Foundation, which has supported the empirical research in public health law, has made some of the material contained in the book available on its website. See *PHLR Methods*, PUB. HEALTH L. RES., <http://publichealthlawresearch.org/resources/methods> (last visited Aug. 31, 2016).

<sup>64</sup> The oversight committee may have different names in different countries, although their functions are similar. In the United States, these are referred to as Institutional Review Boards (IRBs), whereas in the UK and other countries these are referred to as research ethics committees (RECs). Having already mentioned the IRB approval for the Partnership research program, we will continue to use this term.

<sup>65</sup> STEPHEN B. HULLEY ET AL., *DESIGNING CLINICAL RESEARCH: AN EPIDEMIOLOGIC APPROACH* 19–21 tbl2.1 (2nd ed. 2001).

<b>Feasible</b>	Adequate number of subjects Affordable in time and money Manageable in scope Adequate technical expertise
<b>Interesting</b>	To the investigator
<b>Novel</b>	Confirms or refutes previous findings Extends previous findings Provides new findings
<b>Ethical</b>	
<b>Relevant</b>	To scientific knowledge To future research directions To clinical and health policy

Although the authors’ discussion focuses on clinical research – i.e., research designed to test the safety and effectiveness of medical treatment, drugs, devices, and diagnostic tools – the criteria are adaptable to other contexts and serve as a useful guide for developing a good research question for measuring the impact of social justice teaching. Some questions the researcher should be thinking about in developing her research question include (1) who and what she wants to measure; (2) why she wants to measure it (why does the answer matter?); (3) how she is going to measure it; and (4) what is she going to do with the information once she has collected it. This last question is important because

many new researchers collect more information than they need. Doing so can be problematic for several reasons. Too much data can be overwhelming and even hamper the ability to make anything of it. Collection of irrelevant data wastes researcher and participant time and resources. Finally, collection of irrelevant personal data can unnecessarily increase the risks to participants. Unfortunately, many of the things that researchers would like to study do not meet the FINER criteria. For example, clinical educators may want to know whether students who participate in social justice clinics are better lawyers. Even if the researcher could define what counts as a “better” or “good” lawyer and measure it, the study would be hard to conduct because not all students participate in social justice clinics and those who do may be different in important ways from those who do not participate. When the researcher faces such an issue, the FINER criteria help point the researcher towards ways of revising the question so that the research can be conducted. (See Table 2).<sup>66</sup> For example, the question above might be modified to ask whether students who participate in social justice clinics are better lawyers (however that is defined) than those who participate in lawyering skills courses that do not have a social justice component.

**Table 2: The Research Question and Study Plan: Problems and Solutions**

From: STEPHEN B. HULLEY ET AL., *DESIGNING CLINICAL RESEARCH: AN EPIDEMIOLOGIC APPROACH* 21 (2nd ed. 2001). Reprinted with permission by Wolters Kluwer

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<sup>66</sup> *Id.* at 19–21 tbl2.2.

Potential Problem	Solutions
A. The research question if not FINER	
1. Not feasible	
Too broad	Specify a smaller set of variables Narrow the question
Not enough subjects available	Expand the inclusion criteria Eliminate or modify exclusion criteria Add other sources of subjects Lengthen the time frame for entry into study Use strategies to decrease sample size
Methods beyond the skills of the investigator	Collaborate with colleagues who have the skills Consult experts and review the literature for alternative methods Learn the skills
Too expensive	Consider less costly study designs Few subjects and measurements Less extensive measurements Fewer follow-up visits
2. Not interesting, novel, or relevant	Consult with mentor Modify the research question
3. Uncertain ethical suitability	Consult with institutional review board Modify the research question
B. The study plan is vague	Write the research question at an early stage Get specific in the one- to two-page study plan How the subjects will be sampled How the variables will be measured

In developing the research question, the researcher should be thinking about what kinds of research methods and data match the question she is trying to answer. A discussion of all of the different research methods available is beyond the scope of this article, but a researcher should think about whether she wants quantitative data – e.g., data that reflect that the number of graduates who perform pro bono hours following their experience in social justice clinics vs. those without that experience – or qualitative data – e.g., data that gives a rich description of the value graduates place on their experiences in social justice clinics and how their participation impacts the way they practice law.<sup>67</sup> Although these are quite different approaches, they need not be considered mutually exclusive. Indeed, mixed-methods approaches that involve both quantitative and qualitative approaches within the same research project can provide a fuller picture than can be obtained with one method alone.<sup>68</sup> To provide a familiar example, student evaluations typically provide both quantitative and qualitative data. Students usually are asked to rank the professor and the course on a number of metrics on a numeric scale. These responses are relatively easily analyzed because there are limited choices (“closed-questions”) and numeric representations of counts and average ratings have meaning. Because the same questions

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<sup>67</sup> For helpful introductions to different types of research, see the public health research methods materials cited *supra* note 65; HULLEY ET AL., *supra* note 67. There are numerous resources available that provide more detailed information about specific research methods.

<sup>68</sup> For a comprehensive discussion of the benefits and drawbacks of mixed-methods research, see R. Burke Johnson & Anthony J. Onwuegbuzie, *Mixed Methods Research: A Research Paradigm Whose Time Has Come*, 33 EDUC. RESEARCHER 14, 14–26 (2004).

are asked across all courses, the summary rankings of the professor and course can be compared to others. But student evaluations also typically ask students for comments – open-ended questions that allow students free rein to express their opinions about the professor and the course. These data are not easily analyzed, but help to explain why, for example, students rated a professor highly or poorly. Sometimes, these comments may reveal external influences (e.g., an 8 am Friday class time) that result in low professor and course ratings.

The researcher also should think about what is known about the question in terms of designing the research. When no research has previously been conducted, any information may be informative. Thus, a quick snapshot may be sufficient. On the other hand, when one issue has been well-studied, it may be more important to look in a more targeted fashion or to build on that research and add a new dimension.

The researcher also should think about the skills needed to complete the research effectively. Most law professors—clinical and otherwise—are not trained in empirical research methods. Tools such as SurveyMonkey™ have made it easier for people to create surveys,<sup>69</sup> but developing quality surveys that are understandable and produce quality data requires considerable skill. Similarly, although numerous statistical calculators are

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<sup>69</sup> SURVEY MONKEY, <https://www.surveymonkey.com> (last visited Aug. 31, 2016).

available free on the internet,<sup>70</sup> the user needs to understand what statistical test is appropriate to what kind of data. Accordingly, the clinician who wants to study the impact of social justice teaching should consider collaborating with people who have the requisite training to ensure that the project provides useful, valid results. Some universities or university departments may provide consultation services for study design and statistical analysis. If such services are not available, it is worth looking for a colleague or a PhD student with the requisite skill set who would be interested in collaborating on the research project. The value of getting input early in the development of the research project cannot be overestimated. Many a research project has failed to reach its full potential because information required for the desired analysis was not collected or an ambiguity in a survey question was not discovered until after the surveys were completed.

Even with careful planning, research can go awry. Research depends on the cooperation of others. In the context of a clinic, researchers may rely on clinic staff to request participation and/or to complete data collection forms. However, those research activities often are in addition to their regular duties. Accordingly, they may occasionally or regularly, depending on their commitment to the project and the exigencies of their work,

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<sup>70</sup> See, e.g., *Statistical Test Calculators*, SOC. SCI. STAT., <http://www.socscistatistics.com/tests> (last visited Aug. 31, 2016); *QuickCalcs*, GRAPHPAD, <http://www.graphpad.com/quickcalcs> (last visited Aug. 31, 2016).

forget to ask for participation or complete data collection forms. Or they may ask only “cooperative” people to participate, thereby skewing the data. Even when staff members perform all the research tasks perfectly, the people they recruit (e.g., students and clients) may refuse to participate or withdraw from participation after first agreeing to participate, in keeping with their legal and ethical rights (discussed more fully below). Or those participants may agree to participate and simply forget to respond, despite staff members repeated efforts to get them to do so. These kinds of challenges are to be expected at some level in every research project. However, it is important to be aware of them so that planning can help to minimize the negative effects of such issues on the research project. For example, anticipated dropout rates can and should be taken into account in calculating the size of a study sample. Even if research has not been conducted in the study population before, analogous populations can provide a reasonable estimate for dropouts or response rates. Similarly, development of procedures, checklists, and training can increase the consistency of data collection.

Another important consideration for the researcher is how the research will be funded. Much research will be conducted in the ordinary course of a legal academic’s scholarship. The benefit to this approach is that the academic typically does not need to search for external funding. The drawback to this approach is that the demands of the clinic and other obligations may leave little time for the research. In addition, there may be no

funding for methodological and statistical expertise. External funding – e.g., a grant from a government agency or foundation – can provide important resources to support the project, including funds to pay for methodological expertise. However, external funders may prioritize different questions than the researcher. In addition, if their reporting requirements are frequent and detailed, they can distract from the research or even the main mission of the program. Accordingly, it is essential to think carefully about whether the external funding advances the research goals of the program and that the benefits of the funding received outweigh the burdens involved in maintaining that relationship. The Partnership has taken a hybrid approach. Our clinicians have engaged in empirical research from the beginning of the program as part of their scholarship activities. However, we have also allocated money within the Center for Law, Health and Society budget (with which the Partnership is affiliated within the University) and participated in fundraising with our community partners to support an evaluator for the research program. In addition, the Partnership has applied for and received external funding that has supported a variety of research projects.

## B. Legal and Ethical Requirements for Research

Research involving human beings from simple surveys to complex biomedical clinical trials must comply with applicable ethical and legal standards. Legal academics who are new to empirical research may be unfamiliar with these requirements. Those who are

familiar with them often complain about the burden imposed on them and the time wasted in complying with the laws.<sup>71</sup> Accordingly, it is important to understand how the requirements came into being and why they remain essential ethical requirements.

*History.* The legal and ethical standards that have come to apply to human subjects research have their history in scandal. The story normally begins with the Nuremberg trial of the Nazi doctors. The doctors conducted a variety of experiments on inmates in the concentration camps during World War II. The experiments can be separated into two categories: (1) research intended to help the Nazi war effort, including experiments on hypothermia and tropical diseases such as malaria, and (2) research intended to support the “Final Solution,” which focused on more efficient ways to render inmates infertile or to kill. In both categories, inmates were physically harmed, often severely, and many died.<sup>72</sup> The Nuremberg Code, issued as part of the judgment against these doctors is the first widely recognized research ethics code.<sup>73</sup> The horrors of the Nazi experiments

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<sup>71</sup> See, e.g., Human Subjects Research Protections: Enhancing Protections for Research Subjects and Reducing Burden, Delay, and Ambiguity for Investigators, 76 Fed. Reg. 44512, 44,512–15 (proposed July 26, 2011) (to be codified at 21 C.F.R pts. 50, 56). The background section of this advance notice of proposed rule-making to amend the Common Rule details some of the criticisms researchers have articulated about the U.S. research oversight regulations. *Id.*

<sup>72</sup> For a detailed description of the experiments conducted in the concentration camps, see THE NAZI DOCTORS AND THE NUREMBERG CODE: HUMAN RIGHTS IN HUMAN EXPERIMENTATION (George J. Annas & Michael A. Grodin, eds., 1995).

<sup>73</sup> See, e.g., Evelyn Shuster, *Fifty Years Later: The Significance of the Nuremberg Code*, 337 NEW ENG. J. MED. 1436, 1436 (1997); Michel Thieren & Alexandre Mauron, *Nuremberg Code Turns 60*, 85 BULL. WORLD HEALTH ORG. 573, 573 (2007), <http://www.who.int/bulletin/volumes/85/8/07-045443>; *Nuremberg Code*, U.S. HOLOCAUST MEMORIAL MUSEUM, [49](https://www.ushmm.org/information/exhibitions/online-</a></p></div><div data-bbox=)

similarly influenced the World Medical Association to issue the Declaration of Helsinki.<sup>74</sup>

The Declaration, which has been updated multiple times since it was first issued in 1964, echoes many of the principles embodied in the Nuremberg Code.

Despite its involvement in putting the Nazi doctors on trial, the United States did not adopt its own ethical and legal standards to govern human subjects research until after public revelations about the Tuskegee Syphilis study.<sup>75</sup> The study involved 400 poor, black men in rural Alabama with syphilis. The men, who were followed for 40 years, not only were not treated for syphilis, even after effective treatment became available, but were actively prevented from receiving treatment. Some of the men's wives and girlfriends and their children contracted syphilis as a result of this decision. It is not clear that the men were told they had syphilis or even knew that they were in a research study.

The National Commission for the Protection of Human Subjects, created in the wake of

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exhibitions/special-focus/doctors-trial/nuremberg-code (last visited Aug. 31, 2016) [hereinafter *Nuremberg Code*].

<sup>74</sup> WORLD MED. ASS'N, DECLARATION OF HELSINKI: RECOMMENDATIONS GUIDING PHYSICIANS IN BIOMEDICAL RESEARCH INVOLVING HUMAN SUBJECTS 1-2, <http://www.wma.net/en/60about/70history/01declarationHelsinki/index.html.pdf> (last visited Aug. 31, 2016). The Declaration is well regard around the world and has been incorporated into the laws and guidelines of many countries. For a full discussion, see DELON HUMAN & SEV S. FLUSS, THE WORLD MEDICAL ASSOCIATION'S DECLARATION OF HELSINKI: HISTORICAL AND CONTEMPORARY PERSPECTIVES (2001), [http://www.wma.net/en/20activities/10ethics/10helsinki/draft\\_historical\\_contemporary\\_perspectives.pdf](http://www.wma.net/en/20activities/10ethics/10helsinki/draft_historical_contemporary_perspectives.pdf). For the text of the current declaration, see *Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects*, WORLD MED. ASS'N, <http://www.wma.net/en/30publications/10policies/b3/index.html> (last visited Aug. 31, 2016) [hereinafter *Declaration of Helsinki*].

<sup>75</sup> U.S. Public Health Service Syphilis Study at Tuskegee, CTR. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/tuskegee/timeline.htm> (last visited Aug. 31, 2016).

the scandal, developed ethical principles for governing human subjects research in *The Belmont Report*.<sup>76</sup> Those principles are incorporated into the legal requirement set forth in the federal regulations governing human subjects research known as the Common Rule.<sup>77</sup> The scandals involving human subjects research have not ended with the adoption of legal and ethical standards. The last decades have surfaced a host of additional research scandals, both old and new. For example, historian Susan Reverby unearthed documents that revealed that, following World War II, the United States engaged in research on sexual transmitted infections (STIs) among prisoners, soldiers, native populations, and children in Guatemala. In these studies, the researchers actively infected the research subjects with STIs.<sup>78</sup> There are also a range of social-behavioral studies that gave rise to

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<sup>76</sup> Protection of Human Subjects; Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, 44 Fed. Reg. 23,192 (April 18, 1979); Nat'l Comm'n for the Prot. of Human Subjects of Biomedical & Behavioral Research, *The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research*, U.S. DEP'T HEALTH & HUM. SERVICES (April 18, 1979), <http://www.hhs.gov/ohrp/regulations-and-policy/belmont-report> [hereinafter *The Belmont Report*].

<sup>77</sup> Office for Human Research Prot., *Federal Policy for the Protection of Human Subjects*, U.S. DEP'T HEALTH & HUM. SERVICES, <http://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html> (last visited Aug 31, 2016). In 2011, the federal government issued an advance notice of proposed rule-making to amend the Common Rule for the first time since 1981. See Human Subjects Research Protections: Enhancing Protections for Research Subjects and Reducing Burden, Delay, and Ambiguity for Investigators, 76 Fed. Reg. at 44,512–15. A notice of proposed rule-making was issued in 2015, but has been widely criticized. See Office for Human Research Prot., *NPRM for Revisions to the Common Rule*, U.S. DEP'T HEALTH & HUM. SERVICES, <http://www.hhs.gov/ohrp/regulations-and-policy/regulations/nprm-home> (last visited Aug 31, 2016) [hereinafter Office for Human Research Prot., *NPRM for Revisions*]. As of this writing, no changes have been made to the Common Rule.

<sup>78</sup> Susan M. Reverby, "Normal Exposure" and Inoculation Syphilis: A PHS 'Tuskegee' Doctor in Guatemala, 1946–1948, 23 J. POL'Y HIST. 6, 6-28 (2011). A common misconception about the Tuskegee Syphilis study is that the researchers infected the men with syphilis. While untrue in that study, the Guatemala studies demonstrated that the suspicion that the US Public Health Service would do so was not unwarranted. *Id.* For the Presidential Commission for the Study of Bioethical Issue's report about the

significant ethical concerns. In the Milgram obedience studies, research subjects assigned as “teachers” were instructed by researchers to administer escalating electric shocks to the “learner” for incorrect answer. Many subjects administered the highest level, despite yells of pain from the learner in the next room. Unbeknownst to the subjects, the “learners” were confederates of the researchers and no shocks were actually administered.<sup>79</sup> In the Stanford Prison Study, young college men were assigned to the roles of guards or prisoners in a simulated prison in the basement of the Stanford psychology department. The study had to be stopped after a few days, when the “guards” became increasingly abusive to the “prisoners,” causing mental distress among them.<sup>80</sup>

*Common principles.* Although the legal and ethical standards vary in detail around the world,<sup>81</sup> there is general agreement about some basic aspects.

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Guatemala studies, available in English and Spanish, see PRESIDENTIAL COMM’N FOR THE STUDY OF BIOETHICAL ISSUES, “ETHICALLY IMPOSSIBLE” STD RESEARCH IN GUATEMALA FROM 1946 TO 1948 (2011), <http://bioethics.gov/node/654>. The discovery of the Guatemala studies prompted a governmental review of U.S.-supported human subjects research. For the Commission’s report, see PRESIDENTIAL COMM’N FOR THE STUDY OF BIOETHICAL ISSUES, MORAL SCIENCE: PROTECTING PARTICIPANTS IN HUMAN SUBJECTS RESEARCH (2011), <http://bioethics.gov/node/558>.

<sup>79</sup> See Saul McLeod, *The Milgram Experiment*, SIMPLY PSYCHOLOGY (2007), <http://www.simplypsychology.org/milgram.html>.

<sup>80</sup> See Romesh Ratnesar, *The Menace Within*, STAN. MAG. (2011), [https://alumni.stanford.edu/get/page/magazine/article/?article\\_id=40741](https://alumni.stanford.edu/get/page/magazine/article/?article_id=40741); Philip G. Zimbardo, STAN. PRISON EXPERIMENT, <http://www.prisonexp.org/> (last visited Aug. 31, 2016) (hosted by Philip Zimbardo, the psychology professor who conducted the experiment).

<sup>81</sup> The U.S. Office for Human Research Protections (OHRP), which is part of the Department of Health and Human Resources, has collected international resources on human subjects research. For more information or to access these materials, see Office for Human Research Prot., *International*, U.S.

First, there is general agreement that research must follow three basic ethical principles: (1) that participants are treated with respect, including seeking informed consent from individual participants (respect for persons); (2) that benefits will be maximized and risks minimized (beneficence); and (3) there will be equitable selection of participants (justice).<sup>82</sup>

Second, there is general agreement that there should be independent review of a research project before research commences. In the United States, the reviewing body is called an Institutional Review Board (IRB) because they generally are housed at the university, hospital, or other research body that is conducting the research. In other countries, these may be called research ethics committees (REC).

The general requirements may be eased if the research presents very little risk to the participants. These circumstances will be specified in the law or ethical code. For example, in the United States, research involving interview and survey methods are generally considered to present minimal risk to participants and may be exempt from the research regulations.<sup>83</sup> However, these regulations represent a legal floor, and an IRB may

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DEPT HEALTH & HUM. SERVICES, <http://www.hhs.gov/ohrp/international/index.html> (last visited Aug. 31, 2016). In addition to collecting links to US laws, ethical codes like the World Medical Association's Declaration of Helsinki, *Declaration of Helsinki, supra* note 76, the OHRP website includes an International Compilation of Human Research Standards, which lists over 1,000 laws, regulations, and guidelines governing human subjects research in 113 countries, as well as international and regional organizations. See Office for Human Research Prot., *supra*.

<sup>82</sup> See 45 C.F.R. § 46.111 (2016); *Nuremberg Code, supra* note 75; *Declaration of Helsinki, supra* note 76; *The Belmont Report, supra* note 78.

<sup>83</sup> 45 C.F.R. 46.101(b)(2) (2016).

determine that greater scrutiny is necessary. For example, an IRB may impose stricter requirements on research on sensitive topics, such as HIV that may be stigmatizing if revealed, even when they use research methods that typically pose little risk. Similarly, IRBs may be concerned about use of student data, which is often protected by law. The flexibility afforded to institutions in applying the regulations also leads to some of the complaints leveled against IRBs.

While it is useful to understand the general principles that govern human subjects research, it is essential to understand that rules that apply specifically to the country or countries in which the research is conducted. The U.S. Office for Human Research Protections' (OHRP) has compiled a list of laws, regulations, and guidelines governing human subjects research in over 100 countries.<sup>84</sup> This is a helpful reference for the relevant laws in a particular country. However, because the laws are often complex and institutions have their own requirements with respect to training and procedures, new researchers should begin their introduction into these rules through their own institution. Information may be housed in a central or departmental research office, research ethics committee office, or legal counsel's offices. In addition, other researchers may be helpful in understanding obligations, as well as provide practical advice about how to navigate the oversight requirements. However, as discussed in the next section, some researchers

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<sup>84</sup> Office for Human Research Prot, *supra* note 83.

may view of the oversight system as an impediment to research, which may skew their perceptions of the process. Accordingly, it is important to keep in mind, despite frustrations, researchers and research ethics committees share the same goal of protecting the rights and well-being of human subjects while advancing important research.

*Working within the human subjects oversight system.* The literature is full of complaints about the human subjects oversight system.<sup>85</sup> Researchers complain about inconsistencies among IRB reviews, long delays in receiving requisite approvals, which contribute to research costs, and a lack of transparency in decision-making. Some of these criticisms are valid. IRBs are made up of human beings, who can make mistakes in interpretation. Increased research activity and scrutiny of research oversight without additional investment has led to delays. But the regulations also allow for flexibility and consideration of local conditions, so some differences in reviews may merely illustrate the regulations in action. Moreover, researchers can also contribute to problems in review. Failing to follow instructions, provide requested information, or respond in a timely fashion can substantial delay the review process.

Researchers need to take the human subjects oversight process as seriously as they take their study design. Conducting research with human beings is a privilege, not a right, and it requires substantial thought. Accordingly, care should be taken to provide the IRB

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<sup>85</sup> The advance notice of proposed rule-making related to the Common Rule summarizes many of the criticisms. See Office for Human Research Prot., *NPRM for Revisions*, *supra* note 79.

with the information that it needs to do its work. Understanding the reasons for the system helps researchers understand why they are providing the information they are, as well as to help them explain to the IRB why they are pursuing the research in the way that they are. It also helps researchers to engage with the IRB when it raises questions or expresses concern about a study. Researchers do not need to capitulate to IRB requests if the research demands otherwise; instead, they should reach out to the committee chair, members, or staff, as permitted by the committee rules, and work together to find a solution that meets the requirements of the research *and* the human subjects obligations. Such negotiation is likely to be most effective when the researcher understands and respects the legal and ethical requirements with which the IRB must comply and discusses how their research fits within those requirements.

#### Part IV Conclusion

As predicted at the inception of the project, the Partnership and the Partnership Clinic have proved to be rich sources of data regarding the effectiveness and impact of interprofessional collaboration and education on students, as well as on the lives of clients and their families, all of whom are low income and most of whom are facing multiple hardships as the result of chronic illness or disease combined with other disparities. By going through the process of identifying the aims of the project, and the questions we wanted to explore, creating and refining survey instruments, and continuing to collect

data year after year, we have created a resource of information that has provided multiple benefits to our own project as well as served to educate and inform others. This data has allowed us to assess the impact of our work, to improve referral systems, the services we provide, and the nature of education offered to students, and ultimately to understand whether our dual aims of educating law students about justice and health equity and holistically addressing the health problems of low income children and their families are being met. We encourage other educators to join us in the journey of discovering the power of research to inform the future.

## **LAW STUDENTS' CLINIC EXPERIENCE: IS IT ALL HYPE IN RELATION TO PERFORMANCE ON BLACK-LETTER LAW EXAMS?**

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### **ABSTRACT**

Does legal clinic experience really have a positive contribution to students' performance on black-letter law examinations? This is the question we set out to answer by reference to data we collected from current law students at the University of East London (UEL). The sample is small and our findings are limited. However, we hope the results inform fellow legal education clinicians of the perceived and real benefits that law clinic students derive from their legal clinic experience and provide a basis for further research on this subject, such as the correlation between clinical legal education and black-letter law. It is important, now more than ever, that universities adapt to ensure that they are fit for purpose in equipping students with the skills they need for the workplace as well as sound theory and in-depth substantive contents of their subjects of study.

### **INTRODUCTION**

This article contributes to the wider discussion of the role of law clinics in legal education. It is based on a small and time-constrained study conducted in June – July 2016. The study looked at law students' attitudes towards extracurricular activities, especially *pro bono* law clinic<sup>1</sup> experience. The study sought to ascertain whether such

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\*At the time of writing this paper, both Patrick Koroma and Nicola Antoniou were senior lecturers at the University of East London and are director and co-director, respectively, of their school's law clinic.

experience enhances or hinders students' performance on black-letter law examinations. We use the term black-letter law here to refer to doctrinal law or legal rules and principles which are often found in statutes and cases, and are taught to students pursuing a law degree or law related course. The term also refers to the "letter of the law", the commonly accepted technical rules of law or law as it is and not what it should be in context.<sup>2</sup>

Legal services provided for the public good or on a *pro bono* basis typically advance citizens' rights and promote access to justice. Often, those who seek such services have nowhere else to turn for help. *Pro bono* university law clinics therefore provide invaluable services to their communities. And as the law clinic experience forms part of students' legal education experience, a powerful case has been made about the role of legal education in promoting access to justice: "...law schools should more actively promote access to justice through research, teaching, and *pro bono* programs. Legal education plays an important role in socializing the next generation of lawyers, judges, scholars, and public policy makers to care about this issue and to carry on where current efforts fall short... As gatekeepers to the profession, legal educators

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<sup>1</sup> Law clinic is used here as a synonym for clinical legal education as well as to refer to the place where students undertake clinical legal education activities. Clinical legal education has been defined as "a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised...It almost inevitably means that the student takes on some aspect of a case and conducts this as it would...be conducted in the real world." Grimes, R. (1996), *The Theory and Practice of Clinical Legal Education*, in Webb, J. and Maugham, C. (eds.) *Teaching Lawyers' Skills*, London: Butterworths (p. 138) cited by Lewis, R. (2000) *Clinical Legal Education Revisited*, *Dokkyo International Review*, Volume 13, pp. 149 -169.

<sup>2</sup> Pope, D. and Hill, D. (2015), *Mooting and Advocacy Skills*, 3<sup>rd</sup> ed., London, Sweet & Maxwell, p.20; see also Kennedy, D. (1994), *Politicizing the classroom*, *Review of Law and Women's Studies*, Vol. 4, 81-88 at pp81-82.

have a unique opportunity and obligation to continue conveying these messages."<sup>3</sup> It should however be noted that "[t]he primary obligation to provide legal services to the poor resides with the government, and to a lesser extent, with the legal profession, not with law schools. Nevertheless, law schools do have some obligation to contribute to the solution of the crisis in access to justice, and it seems obvious that the obligation is best accomplished by law school clinics assisting low-income individuals and communities that are underserved or have particular difficulty obtaining lawyers because of the nature of their legal problems."<sup>4</sup>

From a pedagogical perspective, *pro bono* law clinic experience provides ‘...opportunities for connecting the “aspirations of law students with professional ideals (justice, service, fairness) and the goals of a university-based education”’.<sup>5</sup> Law clinics are in essence a vehicle through which students learn by working in the role of a lawyer to provide legal advice, legal writing or drafting, advocacy or representation to clients in a live or simulation setting. Amongst other reasons, this experience is about the students’ formation of a professional identity as a lawyer”, enabling them to think like a lawyer and reflect on their practice to identify gaps in their knowledge of the law and other areas (e.g. skills, ethics, etc.) to be developed.<sup>6</sup> For others, like the

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<sup>3</sup> Rhode, Deborah L. (2004), *Access to Justice: Again, Still*, *Fordham Law Review*, Vol 73, Issue 3, Article 12, 1013-1029 at p1028 & p1029.

<sup>4</sup> Wizner, S. and Aiken, J. H. (2004), *Teaching and Doing: The role of law school clinics in enhancing access to justice*, *Fordham Law Review*, Vol 73, 997-1011 at p997.

<sup>5</sup> Nicolson, D. (2016), *Problematizing Competence in Clinical Legal Education: What do we mean by competence and how do we assess non-skill competencies?* Special Issue: *Problematizing Assessment in Clinical Legal Education*, *Journal of International Clinical Legal Education*, Vol. 23, No. 1, p2.

<sup>6</sup> Thomson, D. I. C. (2015), *Defining Experiential Legal Education*, *Journal of Experiential Learning*: Vol. 1: Issue 1, Article 3, pp7, 9, & 20. See also Kerrigan, K. and Murray, V. (eds.)(2011), *A student guide to*

Former President of the American Bar Association, Robert MacCrate and Chief Justice Warren Burger of the United States Supreme Court<sup>7</sup>, addressing the skills gap should first start with fundamental reform of legal education in law schools in order to produce people-oriented and problem-oriented counsellors and advocates.<sup>8</sup>

Involvement in university-based law clinic experiential learning<sup>9</sup> programmes offers students the opportunity to reflect on their experience and increase their awareness of skills, knowledge and become more engaged.<sup>10</sup> They consider their supervisor's feedback in the process and self-evaluate their learning. They ascribe value to their learning by describing what was learnt, how it was learnt and how it could be learnt better next time. Students' situated learning is evident through their participation in such *pro bono* clinical legal services.<sup>11</sup> Situated learning involves "participation as a way of learning – of both absorbing and being absorbed in – the 'culture of practice'"<sup>12</sup>

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*Clinical Legal Education and Pro Bono*. Hampshire, UK: Palgrave Macmillan who defined clinical legal education at page 13 as "...essentially a method of learning as opposed to a subject or discipline in its own right."

<sup>7</sup> Both writing in the 1950s and 1960-70s respectively.

<sup>8</sup> Phant, Pamela N. (2005), *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, *Yale Human Rights and Development Law Journal*, Vol. 8, 117 – 152 at p128 Fn 58..

<sup>9</sup> We adopt the well-known definition of David Kolb of experiential learning being "...the process whereby knowledge is created through the transformation of experience". Kolb, D.A. (1984), *Experiential learning: Experience as the source of learning and development*. Upper Saddle River, NJ: Prentice-Hall, p 38.

<sup>10</sup> Hall, E. (2015), *Locating clinic and ourselves within it*. *International Journal of Clinical Legal Education*, Vol. 22 No. 2, pp.142-146, p142.

<sup>11</sup> Lave, J. and Wenger, E. (1991), *Situated learning, Legitimate peripheral participation*, New York: Cambridge University Press, p.14.

<sup>12</sup> *Ibid*...p. 95.

It provides an authentic experience and prepares students to apply what they have learned in the real world of working practice.<sup>13</sup>

## **CONTEXTUAL RATIONALE FOR THIS STUDY**

Going through the experience as described above often enables students and supervisors to claim to have seen improvements in law clinic students' skills such as client interviewing, practical legal research or letter writing. In short, both students and supervisors see clinics as a place to acquire, develop and enhance skills for the workplace. However, one area which appears to have been understudied is the impact of law clinic experience on students' performance on black-letter law examination.

An essential component of any clinical legal education project is to have "learning at its heart"<sup>14</sup>. Clinical legal education therefore can be distinguished from clinical experience, as the former will depend on students' learning as opposed to just delivering services. However, it is our view that all clinical experience, whether confined to a legal education project or whether a student undertakes other legal

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<sup>13</sup> Hung, D. (2002), Situated Cognition and Problem-Based Learning: Implications for Learning and Instruction with Technology, *Journal of Interactive Learning Research*, Volume 13 (4), 393-414. See also Contu, A. and Willmott, H. (2003), Re-embedded situatedness: The importance of power relations in learning theory, *Organization Science*, Volume 14, 283-296; Lunce, L. M. (2006), Simulations: Bringing the benefits of situated learning to the traditional classroom, *Journal of Applied Educational Technology*, Volume 3, 37-45; Utlely, B. L. (2006), Effects of situated learning on knowledge gain of instructional strategies by students in a graduate level course, *Teacher Education and Special Education*, Volume 29, 69-82; Kimble, C. Hildreth, P. and Bourdon, I. (2008), *Communities of Practice: Creating Learning Environments for Educators*, (Vol. 2), United States: Information Age Publishing; Gardiner, L. R., Corbitt, G. and Adams, S. J. (2010), Program assessment: Getting to a practical how-to model, *Journal of Education for Business*, Vol. 85, 139-144.

<sup>14</sup> Kerrigan, K. and Murray, V. (eds.) (2011), *A student guide to clinical legal education and pro bono*, Hampshire: Palgrave Macmillan, p.7.

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extracurricular activities, will help with the development of practical skills and confidence within a legal setting. In addition, our central viewpoint is that this hands-on experience should also improve students' results in traditional black-letter law assessments. The premise for this is based on our contention that the skills and experience gained in clinics invariably broaden the students' cognitive ability and awareness of the application of the law in a practical setting, which are essential to doing well in black-letter law examinations.

Black-letter law examinations, to put simply, are assessments of doctrinal or substantive law. The black-letter law examinations often come in timed-constrained settings, where students must answer several questions on the topics of study e.g. contract law, land law, criminal law, etc. Students may have a mixture of problem-type questions and essay-type questions where they are to discuss, analyse or apply the black-letter law.

So if clinical experience within a clinical legal education project focuses on the practical elements of the law, how will this assist students with this type of examination, and to what extent? It is our view that by putting the law into a real world context, taking into account the commercial, ethical and social contexts in which practitioners operate, this can also develop the necessary skills for students to do well in black-letter law exams. This is primarily because some skills sets acquired in clinical work are directly relevant to performance in black-letter law examinations. According to Kerrigan and Murray, these skills sets include knowledge acquisition skills, problem-solving, written skills, research skills, etc. The clinical experience provides

students with the opportunity to learn about the legal systems and its legal concepts, values and rules. In doing so, Kerrigan and Murray argue that the students use the clinic experience as “an ideal vehicle for developing in-depth, contextualised knowledge because [the students] tend to work on a specific area of law on behalf of a client and need to understand the area in great detail in order to be able to advise or otherwise advance the client’s cause.”<sup>15</sup> This experience in turn enriches the students’ knowledge of the law to be able to perform well in black-letter law examinations.

Furthermore, it has been suggested that whilst undertaking either live or simulated clients’ work, students develop problem-solving skills by application of the law to either a real or hypothetical case study. These are the precise skills that are needed for the traditional modes of black-letter law assessments. It may be that some aspects of the clinic work and advice students provide may relate to procedural matters, however, students still need knowledge of the substantive law. Another key skill that is built upon through clinical work is the ability to analyse cases, the law and various resources to determine whether there is merit in a client’s case. Sometimes, through research, wider policy issues will arise, and added complications of how the law applies in context may engage the students. These added contextual complexities could also assist students in developing a critical awareness and ability to analyse the law. These skills are relevant in traditional law assessments as well as in legal practice.

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<sup>15</sup> Kerrigan, K. and Murray, V. (eds.)(2011), *A student guide to Clinical Legal Education and Pro Bono*, Hampshire, UK: Palgrave Macmillan, p13.

Legal drafting and the ability to clearly present complex arguments in simple English language is another skill that is mastered through experience in a law clinic or extracurricular activities. Similarly, in any black-letter law assessment, the examiner will check whether the student has presented their answers in a coherent, well written and structured manner. As a law student, research and the use of legal databases are essential to exploring the black-letter law. Research and computer skills that students develop during their time at a law clinic or through other extracurricular activities will serve as valuable skills to help their preparation for black-letter law examinations as well as exploring the issues in a client's case.<sup>16</sup> So the historic criticism that heralded changes in traditional legal education methodology and that regarded the apprenticeship system<sup>17</sup> of law practice (which can arguably include the clinical legal education experience) as lacking legal theory and inherently inconsistent is debunked and largely unfounded.

Our experience at UEL is that students do obtain pedagogical benefits from volunteering in our law clinic. Like in UEL and elsewhere, there is abundant evidence that the benefits of clinical legal education experience are regarded as largely relating to employability skills and less about enhancing knowledge of and performance in black-letter law assessments. Perhaps this explains why this remains one area which appears to have been understudied *vis-a-vis* the impact of law clinic experience on

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<sup>16</sup> See generally Kerrigan, K. and Murray, V. (eds.)(2011), *A student guide to Clinical Legal Education and Pro Bono*, Hampshire, UK: Palgrave Macmillan, pp13-15

<sup>17</sup> Sonsteng, John O.; Ward, Donna; Bruce, Colleen; and Petersen, Michael (2007), A Legal Education Renaissance: A Practical Approach for the Twenty-first Century, *William Mitchell Law Review*: Vol. 34: Issue 1, Article 7, 303-472 at p319.

students' performance on black-letter law examinations and hence our reasons for undertaking this small-scale study in one institution: UEL. It is not clear therefore whether the benefits of clinical legal education or clinical experience also enhance students' performance on black-letter law examinations. So our study sought to discover whether there is a correlation between students' engagement in law clinic/extracurricular activities and students' performance on black-letter law examinations.

## **METHODOLOGY**

Our research design is exploratory and explanatory in nature. We devised and administered a questionnaire with 10 questions<sup>18</sup> to gauge individual students' experience of undertaking legal work experience and/or extracurricular activities. The questions were also designed to ascertain whether students regarded such experience as helpful to passing their substantive law examinations. We employed a simple random sample approach in this study. Our primary sampling unit was the Royal Docks School of Business and Law and our law students were the secondary sampling units. We chose this sampling approach as it is a basic type of sampling selection and straightforward considering the timeframe available to conduct the study.<sup>19</sup> After

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<sup>18</sup> You will find the questionnaire questions embedded in the charts we provide below.

<sup>19</sup> Bachman, R. D. and Schutt, R. K. (2007) *The Practice of Research in Criminology and Criminal Justice*, 3<sup>rd</sup> ed., Los Angeles, Sage Publications, Inc.; Black, T.R. (2005) *Doing Qualitative Research in the Social Sciences, An Integrated Approach to Research Design, Measurement and Statistics*, London: Sage Publications; De Vaus, D.A. (1996) *Surveys in Social Research*, 4<sup>th</sup> ed., London: UCL Press; Maxfield, M.G. and Babbie, E. (2005) *Research Methods for Criminal Justice and Criminology*, 4<sup>th</sup> ed., United States: Thomson, Wadsworth; Sapsford, R. (2007) *Survey Research*, 2<sup>nd</sup> ed., London: Sage Publications;

securing approval from our school's research ethics committee, we opened an invitation to all law students in Levels 4, 5, and 6 to participate in the study.

Some of the students who participated in this study indicated that they had no prior involvement with the law clinic and/or any other extracurricular activities. All students were polled before they sat their black-letter law examinations. The purpose was to gauge students' perceptions about the benefits of participating or not participating in law clinic activities. Students were asked to voluntarily provide us with the results of their black-letter law examinations.

We intended to use this information to identify any correlation between law clinic experience and good/poor performance in black-letter law examination. We considered such correlation as helpful in postulating some generalisations about law clinic experience. We hasten to state that any generalisations of our findings will and should be understood from our narrow and homogenous sample (i.e. UEL law students in the School of Business and Law). In any case, our findings should be helpful to future researchers who may want to look at another single institution or embark on a comparative study involving multiple institutions. That in fact is an opportunity we are prepared to explore with readers of this article who may be interested in such collaboration across multiple institutions.

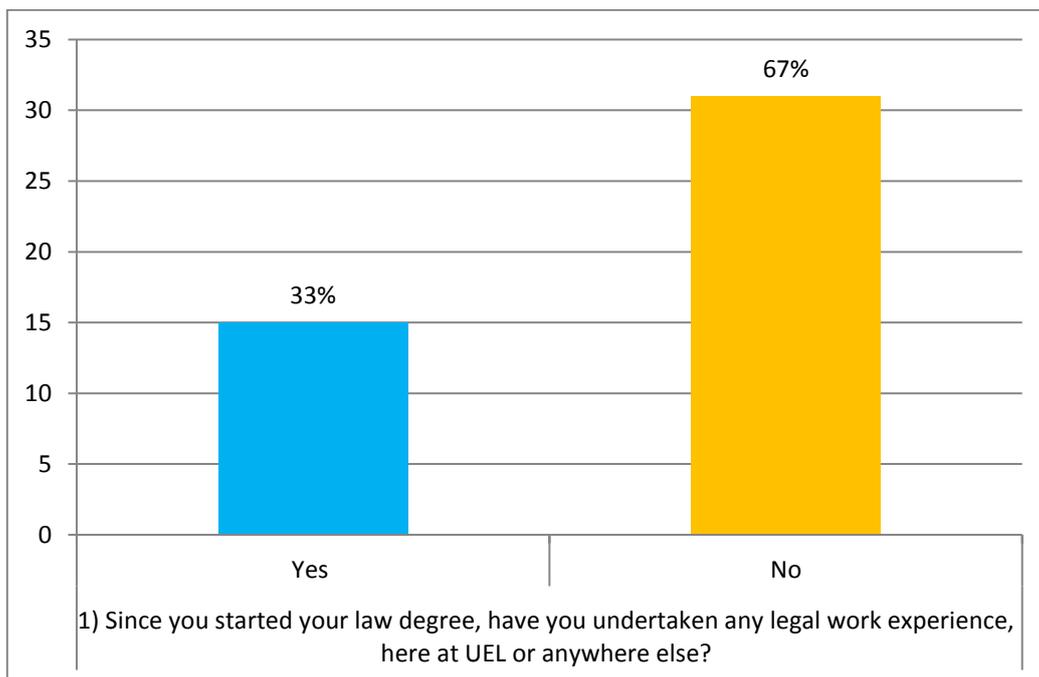
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Sarantakos, S. (1998) *Social Research*, 2<sup>nd</sup> ed., London: Macmillan Press Ltd; Bourque, L.B. and Fielder, E.P. (2003) *How to Conduct Self-Administered and Mail Surveys*, 2<sup>nd</sup> ed., Volume 3, London: Sage Publications.

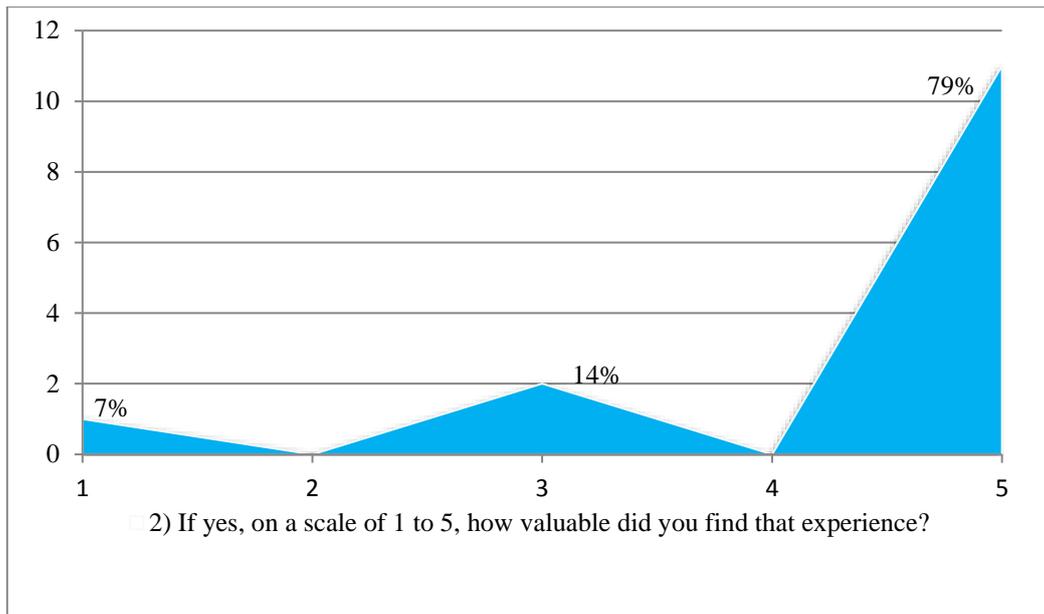
## RESULTS

We had 46 student respondents. Whilst this is a relatively small number, it provides an example of whether legal clinical experience can impact students' performance on substantive law examinations.

Our study showed that 67% of student respondents had undertaken legal work experience (Chart 1), and that the majority of these students (i.e. 79%) found that this was a valuable experience (see Chart 2 with values 1 – 5: 1 represents “not at all valuable” and Value 5: “extremely valuable”).

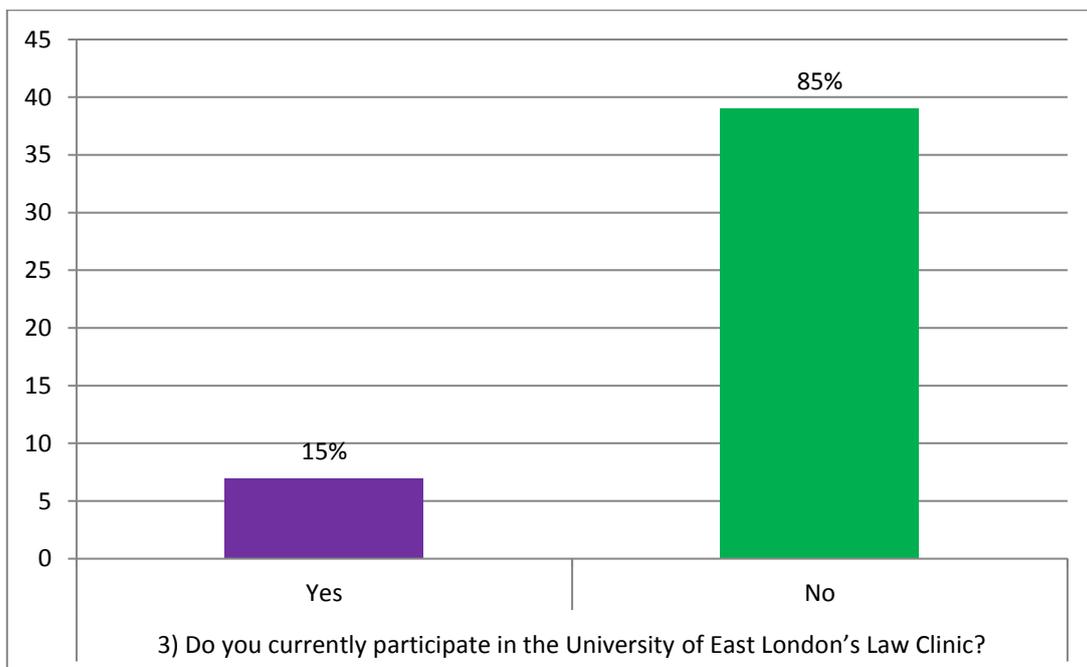


**Chart 1**



**Chart 2**

We discovered that 85% of the student respondents volunteered at our law clinic (Chart 3) and the majority of these students (i.e. 86%) found this experience helpful in their study of substantive law subjects (see Chart 4 with values 1 – 5: 1 represents “not at all helpful” and Value 5: “extremely helpful”).



**Chart 3**

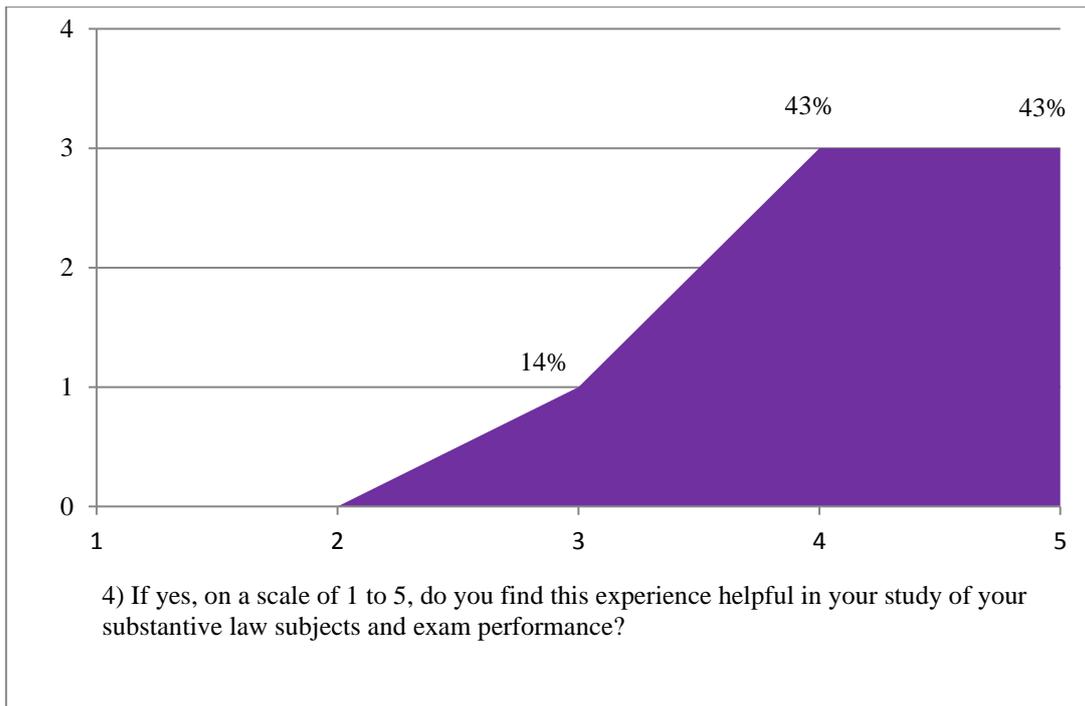


Chart 4

It was surprising to learn that 65% of our students did not participate in any type of extracurricular activities within the University (see Chart 5).

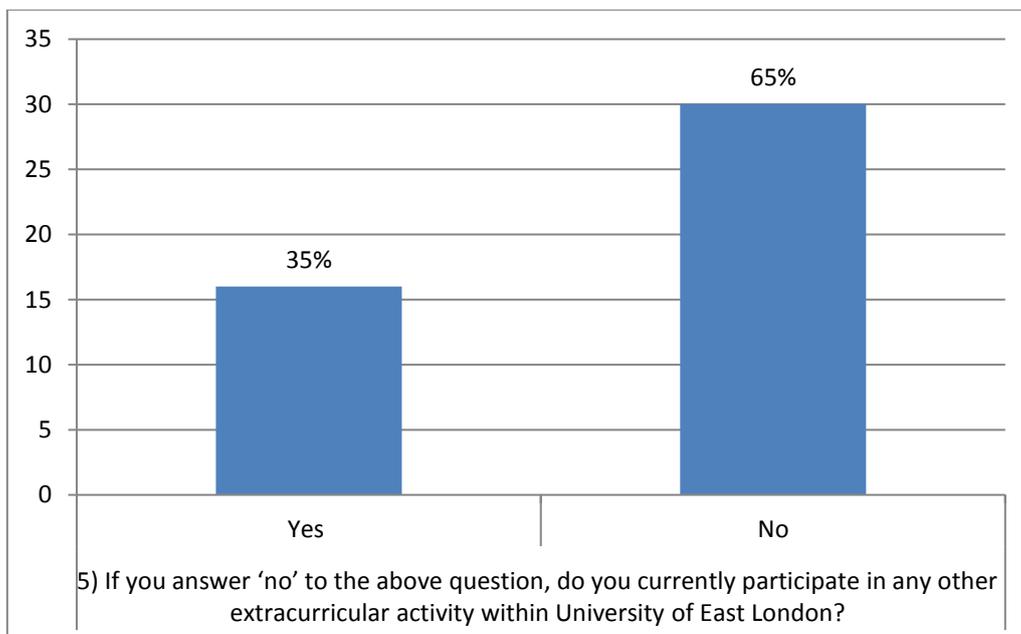
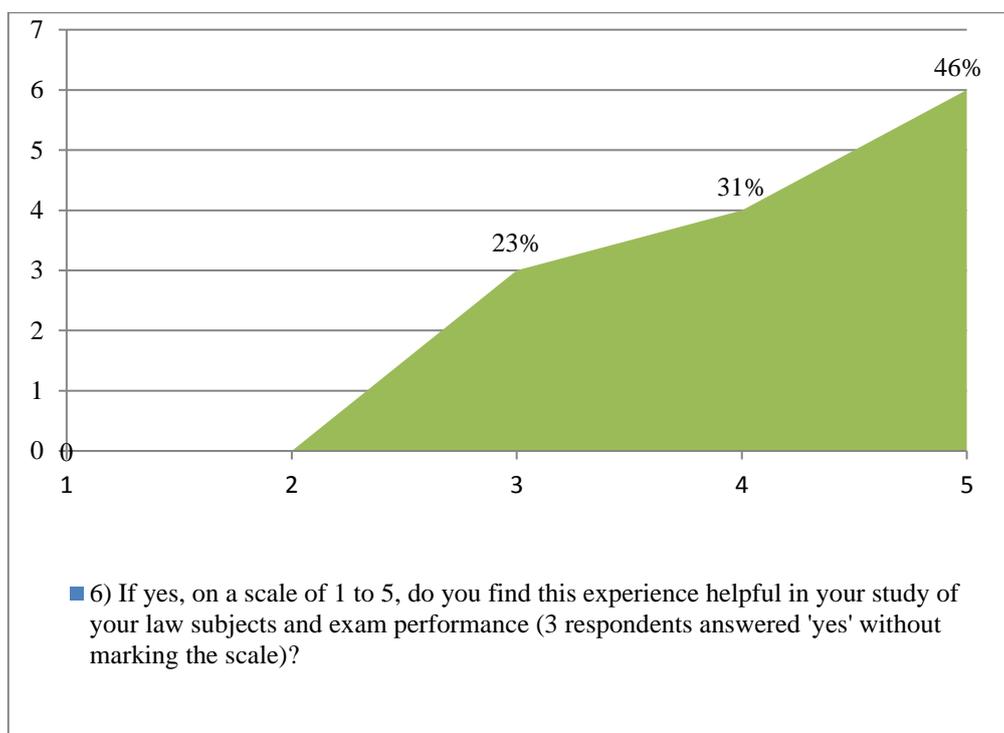


Chart 5

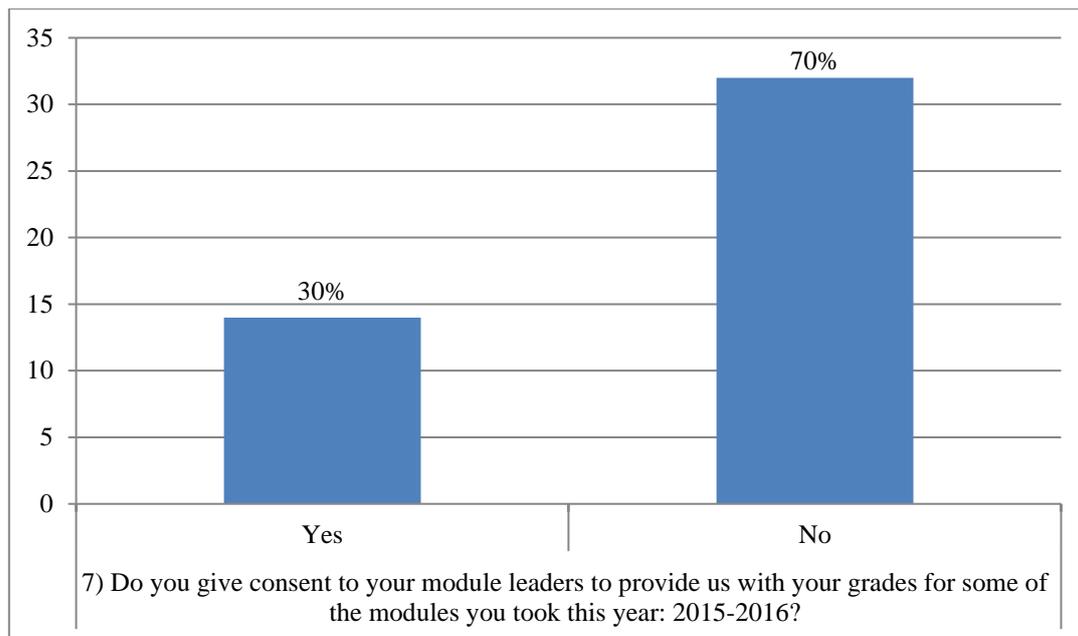
*Practice Report*

Of those students who answered 'yes' to participating in any other extracurricular activities, three students did not provide a mark of how useful they found this experience. Therefore, the results are somewhat limited in this respect. However, of the students who did respond, all indicated that they found this experience helpful, ranging from scale 3 to 5 out of 5 (Chart 6), with 77% finding that the experience was either very or extremely helpful in their studies and exam performance.



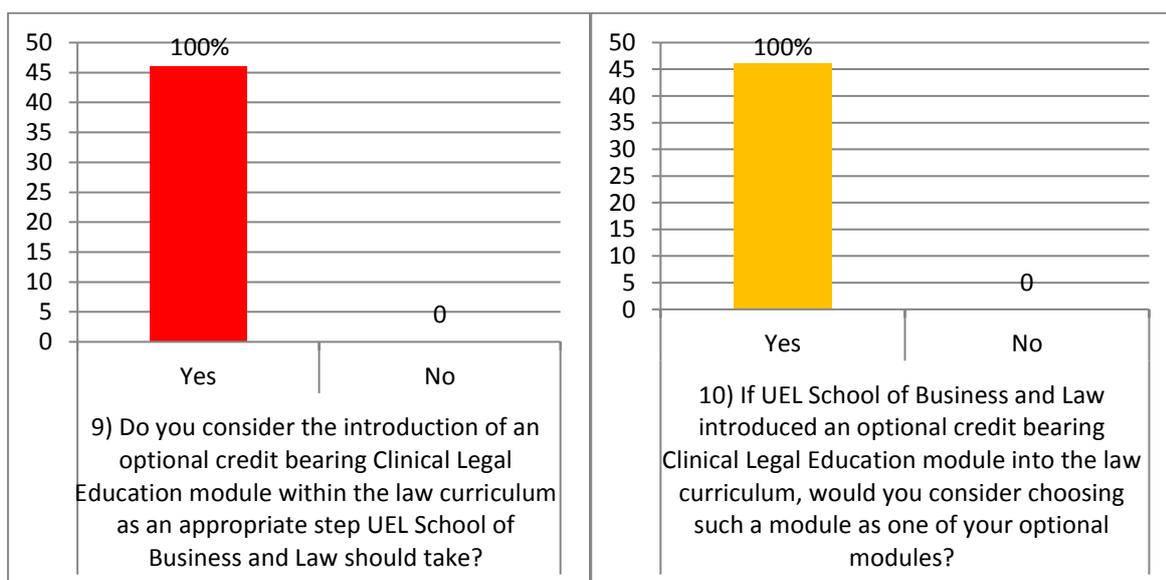
**Chart 6**

Overwhelmingly, the majority of our students did not provide us with consent to contact their module leaders to obtain their module results for this academic year. This meant that we were unable to carry out specific module analysis for our students (Chart 7).



**Chart 7**

All students who participated in the survey agreed that a credit bearing Clinical Legal Education module would be an appropriate step for our University and 100% of students stated that they would choose to do such a module (Charts 8 and 9). This was an emphatic result, which indicated that students did see the potential benefits of integrating practical legal skills within the curriculum.

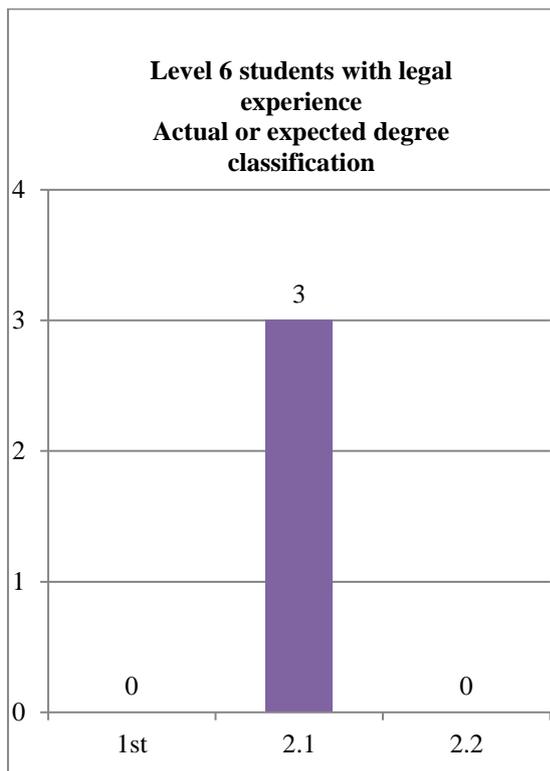


**Chart 8**

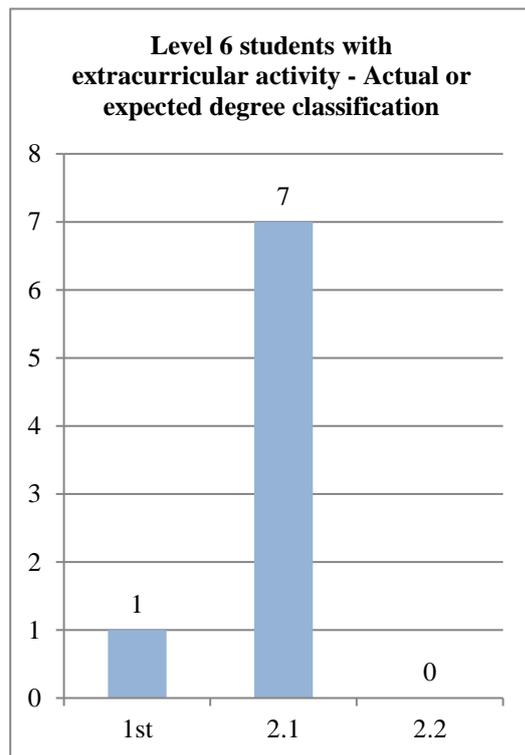
**Chart 9**

*Practice Report*

We paid particular attention to Level 6 (i.e. final year) students and wanted to know what impact, if any, legal work experience and/or extracurricular activities had on their current law subject assessments. The results indicated that there were only three final year students with legal clinic experience (Chart 10 below) and eight other final year students had experience of extracurricular activities (Chart 11). The three students with legal clinic experience indicated that their actual or predicted degree classification was 2:1. Seven of the eight students with experience of extracurricular activities indicated that their actual or predicted degree classification was 2:1 and the remaining one student was predicted to achieve a first class degree.



**Chart 10**



**Chart 11**

There were 22 final year student respondents without any legal clinic or extracurricular activities experience. Of these students, one indicated a predicted first

class degree; 19 were predicted 2:1 degrees; and two were predicted 2:2 degrees.

(Chart 12).

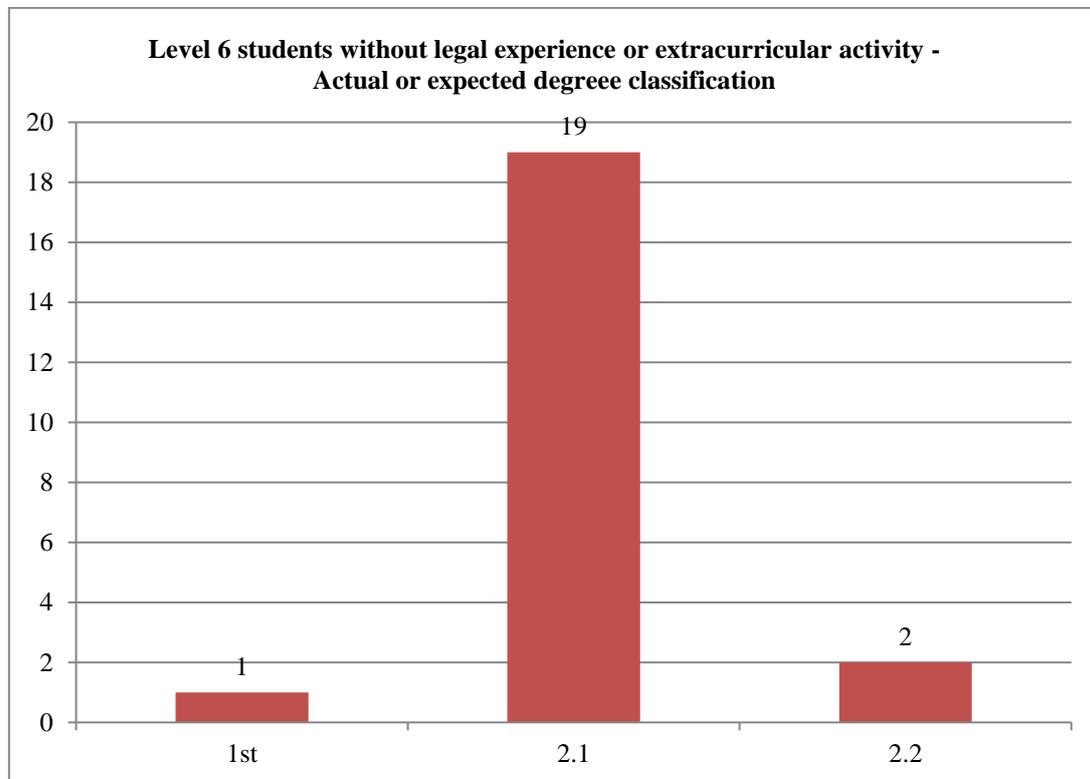


Chart 12

We therefore found that those students who had no experience of legal work and/or extracurricular activities appeared not to have been affected because they were predicted to perform as well as those with experience of legal work and/or extracurricular activities. Although, we note that by way of comparison, there were no actual or predicted 2.2 grades for those students who did engage in legal experience and/or extracurricular activities

Overall, from these results, it appears that having legal experience and/or extracurricular activities does not necessarily enhance grades on black-letter law examinations; however, neither does this extra experience hinder students' grades.

## *Practice Report*

We could only postulate that this unclear finding may be down to the small sample size or responses we received.

We also asked our students whether they would provide us with their reasons for performing well or badly (as the case may be) in their predicted or actual final grades.

The majority of student respondents (i.e. 63%) attributed their good grades to support from their lecturers, followed by their own commitment and motivation. The reasons for poor performance were attributed to personal circumstances.

## **DISCUSSION**

The results above, although may be limited in terms of their reliability and scope, serve as an example that clinical legal experience or extracurricular activities do not necessarily have a positive contribution to the traditional models of black-letter law assessments. The results seemed to indicate that those who did not take part in any extracurricular activities or legal work experience were just as likely to do well in their substantive law assessments. The traditional black-letter law examinations do not necessarily examine students on their practical legal skills, and so the experience gained during clinical legal work may not be best reflected in those types of black-letter law examinations.

This view has been canvassed and debated in the literature on legal education. The concern has been that for a long time, traditional legal education modes of instruction and assessments heavily "...place too much emphasis on theoretical learning and not enough on practical learning.... [so that university graduate] students who could *think*

like a lawyer ... were unprepared to *be* a lawyer. The skills gap is often filled during the period of vocational training and the early years of practice as a trainee solicitor or pupil barrister".<sup>20</sup> The Carnegie Report makes the following criticism of this approach of legal education: "[O]ne of the less happy legacies of the inherited academic ideology has been a history of unfortunate misunderstandings and even conflict between defenders of theoretical legal learning and champions of a legal education that includes introduction to the practice of law."<sup>21</sup>

We share this view and the results from our study confirm our conviction. We may not have seen discernible evidence of the positive contribution of law clinic experience in students' performance on black-letter law examinations because such examinations do not primarily focus on lawyering skills and values but on doctrinal law.<sup>22</sup> The literature on this point is also telling. It is acknowledged that some achievements have been made by legal education providers to equip students with skills and legal knowledge for life after university. However, "...the legal education system does not

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<sup>20</sup> Thomson, D.I.C. (2015) Defining Experiential Legal Education, *Journal of Experiential Learning*: Vol. 1: Issue 1, Article 3, p2.

<sup>21</sup> The Carnegie Report (William M. Sullivan et al., (2007) *Educating Lawyers: Preparation for the Profession of Law* 8 (2007)) and David Segal (2011), *What They Don't Teach Law Students: Lawyering*, N.Y. Times, Nov. 20, at A1 cited by Thomson, D.I.C. (2015) Defining Experiential Legal Education, *Journal of Experiential Learning*: Vol. 1: Issue 1, Article 3, p2 at footnote 6 &7,

<sup>22</sup> One set of lawyering skills and values as listed and endorsed by the MacCrate Report 1992 commissioned by the American Bar Association includes the 10 fundamental lawyering skills: 1) Problem Solving; 2) Legal Analysis and Reasoning; 3) Legal Research; 4) Factual Investigation; 5) Communications (in writing, and orally); 6) Counselling (a client); 7) Negotiation (with opposing counsel); 8) Litigation and Alternative Dispute-Resolution Procedures; 9) Organization and Management of Legal Work; 10) Recognizing and Resolving Ethical Dilemmas. The four Fundamental Values of the Profession: 1) Provision of Competent Representation 2) Striving to Promote Justice, Fairness, and Morality 3) Striving to Improve the Profession 4) Professional Self-Development. See the American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum* (1992), cited in Thomson, D.I.C. (2015) Defining Experiential Legal Education, *Journal of Experiential Learning*: Vol. 1: Issue 1, Article 3, p7.

## *Practice Report*

provide a significant source of training in nine legal practice skill areas: (1) understanding and conducting litigation; (2) drafting legal documents; (3) oral communications; (4) negotiations; (5) fact gathering; (6) counselling; (7) organizing and managing legal work; (8) instilling others' confidence in the students; and (9) providing the ability to obtain and keep clients. Nor does the legal education system provide training in eight important legal practice management skills areas: (1) project and time management; (2) efficiency, planning, resource allocation, and budgeting; (3) interpersonal communications and staff relations; (4) fee arrangements, pricing, and billing; (5) governance, decision-making, and long-range strategic planning; (6) marketing and client development; (7) capitalization and investment; or (8) human resources, hiring, and support staff."<sup>23</sup> We argue that until these skills are routinely taught and assessed as part of the mainstream legal education system, there will remain very limited evidence of a clear impact of the benefits of clinical legal education or extracurricular activities on students' performance on black-letter law assessments.

A student may enquire what can be gained from the legal practical experience, if it does not necessarily improve students' grades in black-letter law assessments. Should we simply view "engagement with practice in purely vocational or technocratic terms", or as Donald Nicolson suggests this is about providing opportunities for

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<sup>23</sup> Sonsteng, John O.; Ward, Donna; Bruce, Colleen; and Petersen, Michael (2007), A Legal Education Renaissance: A Practical Approach for the Twenty-first Century, *William Mitchell Law Review*: Vol. 34: Issue 1, Article 7, 303-472 at p318.

connecting the “aspirations of law students with professional ideals (justice, service, fairness)...”?<sup>24</sup>

Our view is that clinical legal education programmes in the curriculum can supplement (not substitute) traditional law instruction and assessment methods. This is because such programmes integrate theory and practice, by providing numerous opportunities for students to learn and apply lawyering skills, just as they are used in legal practice (or similar professional settings).<sup>25</sup> In addition, clinical legal education programmes equip students for future employment with practical skills that are not purposefully taught or assessed in traditional law degree courses.

As discussed above, our findings indicate that there was no positive or negative contribution law clinic experience had on performance in traditional black-letter law assessments from among the students who participated in this study. However, we hasten to clarify that we do not in any way doubt the practical benefits and employability skills students derive from the law clinic experience. Kevin Kerrigan and Victoria Murray outline a number of professional awareness and legal skills which the law clinic experience offers students: development of broad knowledge of the legal system, its concepts, values, principles and rules; application and problem-solving skills; development of factual and legal research skills; development of intellectual skills such as analysis, synthesis, critical judgement and evaluation;

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<sup>24</sup> Nicolson, D. (2016), *Problematizing Competence in Clinical Legal Education: What do we mean by competence and how do we assess non-skill competencies?* Special Issue: *Problematizing Assessment in Clinical Legal Education*, *Journal of International Clinical Legal Education*, Vol. 23, No. 1, p2.

<sup>25</sup> Thomson, D.I.C. (2015) *Defining Experiential Legal Education*, *Journal of Experiential Learning*: Vol. 1: Issue 1, Article 3, p12.

professional autonomy and the ability to plan and undertake tasks independently; communication and team work; and the ability to use, present and evaluate numeracy, and information technology.<sup>26</sup>

Robert Dinerstein also puts forward nine purposes of clinical legal education: developing modes of planning and analysis for dealing with unstructured situations; providing professional skills instruction; teaching means of learning from experience; instructing students in professional responsibility; exposing students to the demands and methods of acting in role; providing opportunities for collaborative learning; imparting the obligation for service to indigent clients; providing the opportunity for examining the impact of doctrine in real life and providing a laboratory in which students and faculty study particular areas of the law; and critiquing the capacities and limitations of lawyers and the legal system.<sup>27</sup>

We believe the impact of law clinic experience on students' performance on black-letter law assessments has not been studied or scrutinised to a sufficient degree. The relationship and the impact these two areas have on each other remained understudied while other aspects of law clinic experience have been subject to examination.<sup>28</sup> We argue that the very nature of the law clinic experience itself does

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<sup>26</sup> Kerrigan, K. and Murray, V. (eds)(2011), *A student guide to Clinical Legal Education and Pro Bono*, (Hampshire, UK: Palgrave Macmillan), pp13-15.

<sup>27</sup> Dinerstein, R. (1992), Report of the Committee on the Future of the In-House Clinic, *Journal of Legal Education*, Vol. 42, No. 4, pp. 508-574 at 512-517.

<sup>28</sup> For example, see studies like Krieger, S.H. (2008), The effect of clinical education on law student reasoning: an empirical study, *William Mitchell Law Review*, Vol. 35 Number 1, pp 359 – 400; Nicolson, D. (2016), Problematizing Competence in Clinical Legal Education: What do we mean by competence and how do we assess non-skill competencies? Special Issue: Problematizing Assessment in Clinical Legal Education, *Journal of International Clinical Legal Education*, Vol. 23, No. 1.

not emphasise black-letter law as a priority in its delivery or assessments. However, where the clinic experience is at undergraduate level, it should be imperative that this experience, at the very least, should have regard to its impacts on students' ability to learn or performance well on black-letter law examination if they are to be effective advice-givers, excellent legal drafters, etc. Knowledge of, and the ability to do well in substantive law examination, should also be given attention within the clinic setting. This is to avoid claims that the clinic experience is largely practice-heavy but light on doctrinal law and legal reasoning.

The traditional modes of instruction and assessment in undergraduate legal education do not prioritise the assessment of practical legal skills. This in itself does not mean clinical legal education is inferior or less effective in the training of future lawyers; nor does the teaching and writing on social injustice issues is any inferior. In fact this will be regarded as the "prevailing conceptions of legal education and scholarship than the *perceived* dumbed-down nature of teaching skills and writing about clinical legal education."<sup>29</sup> What we do know is that the failure of traditional modes of instruction and assessment in undergraduate legal education to produce work-ready graduates contributed to the emergence and growth of clinical legal education.

Both theoretical legal educationists<sup>30</sup> and legal clinicians<sup>31</sup> could borrow something from John Dewey who really loathes the labels of 'traditional' or 'old' education and

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<sup>29</sup> Nicolson, Donald (2016) "Our roots began in (South) Africa": Modelling law clinics to maximize social justice ends, *International Journal of Clinical Legal Education*, Vol. 23, No. 3, 87-136 at p135.

<sup>30</sup> Some of whom have often been labelled as perusing 'traditional' or 'old' education.

<sup>31</sup> Some of whom have often been regarded as pursuing 'progressive' or 'new' education.

'progressive' or 'new' education.<sup>32</sup> Dewey acknowledges that in traditional methods of instructions like in new methods of instructions, experience is gained. So what is really paramount is the quality of the experience. Dewey writes: "Just as no man lives or dies to himself, so no experience lives and dies to itself. Wholly independent of desire or intent every experience lives on in further experiences. Hence the central problem of an education based upon experience is to select the kind of present experiences that live fruitfully and creatively in subsequent experiences."<sup>33</sup> Students' learning experience should be one that equips and prepares them sufficiently enough for the future and to influence their later experiences. The clinic experience like that from studying black-letter law should both contribute to providing students with a rich experience for future use.

Students at UEL do obtain pedagogical benefits from volunteering in our law clinic as they are able to apply their theoretical knowledge of the law when providing services to clients. There is evidence that our law clinic students also benefit from this experience by acquiring and developing legal practice and employability skills. Although our study does not establish a definite nexus between law clinic experience and good grades in substantive law assessments, it is still an experience which our law clinic students believe has put them in a better stead for the future. This is evident from the views of our law clinic student advisers, Maria Samuel and Sharanjit Pal, as follows:

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<sup>32</sup> Dewey, J. (1938) *Experience and Education*, 23, New York, Kappa Delta Pi Publications, p10.

<sup>33</sup> Dewey, J. (1938) *Experience and Education*, 23, New York, Kappa Delta Pi Publications, pp27-28.

**Maria:** *"I began my volunteering experience in the law clinic in my second year of the LLB. I can safely say that it was one of the best experiences I had whilst studying. I was able to gain an insight into legal practice. As student advisors we were able to write client letters and interview clients which is a surreal experience for anyone who has not been in a legal environment before. The breadth of knowledge of the lecturers and supervising solicitors was invaluable and has also firmly cemented my future career aspirations of studying the LPC. The law clinic helped me realise my potential and greatly improved my research and analytical skills. It also enhanced my employability skills. It has been lovely working with so many talented people".*

**Sharanjit:** *"The law clinic has been a very valuable experience for me. I have been lucky enough to provide advice to individuals who need help in resolving their legal problems. From the outset I was made to feel supported in my work and this gave me confidence. I needed to ensure I was able to work to the best of my ability. Working at the law clinic under the supervision of practising solicitors has been extremely rewarding, and has provided me with the best possible start to pursue my legal profession. My time at the law clinic has provided me with real legal work experience - this is something employers will value highly. I have also been lucky enough to have met Lord Neuberger through the lectures that the law clinic holds, and that was an experience I'll never forget. My plans now are to qualify as a solicitor and the law clinic has given me an excellent introduction to what it will be like to work in a legal environment".*

## CONCLUSION

From the results of our study, it appears that clinical legal experience may not, as an independent variable, contribute to the students' successful performance on black-letter law assessments. For students who participated in clinical legal work, despite

the extra time that they spent undertaking law clinic work experience, they did just as well as those students who did not undertake law clinic work / extracurricular work, and who perhaps dedicated more of their time studying. The added advantage that students derive from the clinical legal experience is that they may find themselves in a stronger position when it comes to acquiring employability skills. Graduate employers want "...real-life evidence and examples that back up what you say. That means: [1] which skills you've used, where you've applied them and how effective they were[;][2] what you've done that demonstrates your interest and enthusiasm for this area of work – internships, experience, volunteering, extra qualifications..."<sup>34</sup> The 2016 Government White Paper on transforming higher education in England also highlights this point that "Employers report a growing mismatch between the skills they need and the skills that graduates offer...." The White Paper also focuses on "the importance of students having access to a wide array of work experience opportunities, employers and [higher education] providers working together on curriculum design, and graduates having the 'soft skills' they need to thrive in the work environment."<sup>35</sup>

We are therefore convinced that clinical legal education approaches and traditional substantive law instructions and assessments are essential in the training of students as future legal professionals or preparing students with employability skills for other

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<sup>34</sup> Sharp, G. (2012) What do employers look for in graduates?, *Which? University*, available at <http://university.which.co.uk/advice/career-prospects/what-do-employers-look-for-in-graduates> (last accessed 01/10/2012).

<sup>35</sup> Department for Business, Innovation and Skills (May 2016), *Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice*, p42.

walks of life. We are supported in this view by reference to the emerging changes in legal education with the introduction of the Teaching Excellence Framework. The need for students to showcase more than just an understanding of the substantive law, will become the responsibility of law schools if law schools or universities are to remain relevant and viable entities. The UK Government expresses a desire “to ensure that our higher education system continues to provide the best possible outcomes [based on] informed choice and competition. We must provide incentives for all institutions to improve and to focus on what matters to students, society and the economy....”<sup>36</sup> The variety of clinical legal education programmes available now will go a long way to meeting these objectives. “The Small Business and Enterprise Act 2015 enables the Government, for the first time, to link higher education and tax data together to chart the transition of graduates from higher education into the workplace better.”<sup>37</sup> It will be imperative on higher education providers to adequately equip their students to enter the workplace with the maximum skills and experience to compete for well paid jobs. We believe clinical legal education programmes will provide significant assistance to universities in this regards.

So what does the future hold for traditional black-letter law examinations? It is our view that there should be a blend of both traditional doctrinal and practical skills modes of assessment. As with emerging changes in the Teaching Excellence

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<sup>36</sup> Department for Business, Innovation and Skills (May 2016), *Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice*, p43.

<sup>37</sup> Department for Business, Innovation and Skills (May 2016), *Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice*, p58.

Framework and the need for students to showcase more than just an understanding of the substantive law, more of the clinical legal education could be embedded in all areas of law.

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# Clinical Legal Education Conference: Quality & Supervision

Friday 11<sup>th</sup> November



## **Clinical Legal Education Conference: Quality & Supervision**

### **What's the Point of Supervision ?**

**Hosted by the School of Law & Social Sciences, London South Bank University and the Northumbria Law School, Northumbria University**

**Date: Friday 11 November 2016**

**Venue: LSBU Keyworth Centre, Keyworth Street, London SE1 6NG**

'Clinical education is first and foremost a method of teaching. Among the principal aspects of that method are these features: students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problem in role; the students are required to interact with others in attempts to identify and solve the problem; and, perhaps most critically, the student performance is subjected to intensive critical review.'

Association of American Law Schools, Section on Clinical Legal Education,  
Report of the Committee on the Future of the In-House Clinic,  
42 J. LEGAL EDUC. 508, 511 (1992)

This conference principally explores the aims of supervision and the role of the supervisor in University Law Clinics.

Jonny Hall, Associate Dean for Learning & Teaching, Northumbria Law School, will give a keynote speech on the qualities and responsibilities.

We have invited student law clinic volunteers from Manchester, Huddersfield, Strathclyde and LSBU to give 10 minute presentations on their personal reasons for working in a law clinic.

In the main panel discussion, chaired by Professor Elaine Hall, Professor of Legal Education Research, Northumbria Law School, representatives from University Law Clinics at Strathclyde, Kent, Northumbria, London South Bank and the Norwegian, student-led Jussbuss will lead a discussion on how much supervision of law clinic student volunteers is required, by who and for what purpose(s). The perspective of clients, students, supervisors and host institutions will be considered.

The final session, led by Andy Unger, Associate Professor and Head of the Law Division, LSBU School of Law & Social Sciences, will discuss the threats and opportunities facing university law clinics in the light of the Solicitors Regulation Authority's training for tomorrow consultation proposals.

The conference is free. Participants can bring sandwiches or use LSBU's cafés and canteen. Food and drinks will be available at the final reception.

## University of Strathclyde Law Clinic – Professor Donald Nicolson

### Brief overview of your Clinic's Aims

The University of Strathclyde Law Clinic (USLC) was launched in 2003 with the following two aims (as laid out in its Constitution):

- (a) to provide access to justice through offering legal advice and providing representation, and engaging in public legal education; and
- (b) to inspire new generations of legal professionals to be committed to resolving problems of access to justice

### Brief overview of your Clinic' model

In essence USLC is premised on a model of student "ownership" both of the services they provide and the running of the clinic itself.

USLC is a generalist clinic which provides both advice and representation on all types of cases except family and criminal law (though mainly in the areas of employment, housing and consumer law), as well as a variety of other "projects". These include public legal education in schools and prisons, "capacity building" for litigants in two property dispute tribunals, advice and support to victims of gender violence, the investigation of miscarriages of justice, a small business unit and a unit investigating the possibility of fresh claims for asylum for destitute asylum seekers. In addition to face to face advice and representation, there is also an online advice service and evening drop in advice sessions run by the Clinic and staffed by solicitors.

Since its launch USLC has assisted almost 3000 clients up to and including the Court of Session and won or saved for them almost £800,000. Last year in cases going beyond advice, it obtained full or partial success for its clients in 85% of cases. In that year we served 484 clients (excluding asylum seekers): 127 through online advice, 199 by solicitors in drop in clinics and 158 by students providing advice and assistance.

There are currently 282 students in the Clinic. The majority join in their first year and thus may remain in the Clinic for up to 5 years. Students are divided into two categories: 1) caseworkers, who are trained to engage in face to face client work (currently 220 in number) and 2) project workers who can only engage in non-client facing legal services.

The Clinic is run by an executive of around 28 students and 4 part-time staff (a Director, 3 supervisors and one full-time administrator).

As regards supervision, we have the equivalent of 1.8 FTE supervisors to oversee both online and face to face cases, as well as each, along with the Director, taking responsibility for two "projects". Ostensibly this translates of a staff-student ratio of 1:156. However, we also have a 0,5 supervisor who is responsible for triaging and supervising all Immigration Unit cases (currently only 5 at a time).

## **Views on the following CLE Quality Assurance & Supervision issues:**

### **Students – Feedback & Learning**

While it was recognised that students would learn about law, justice and ethics and gain legal skills while in the Clinic, student education was not a goal. All students are provided with a 16 hour induction course into the basic skills required in a clinic and provided with opportunities to develop their skills and knowledge through regular additional talks and training sessions. Supervisors also help students learn while supervising their work but this is only an indirect benefit of the goal of ensuring quality legal services

Subsequently however in order to enhance goal (b) of the Constitution and to ensure that students graduate with a commitment to acting ethically, first a course on ethics and justice was introduced, which later developed into a Clinical LLB which allows students to integrate their clinic training and case and other work, and reflection on such training and work, into the standard LLB (see eg Donald Nicolson, *Calling, Character and Clinical Legal Education: A Cradle to Grave Approach to Inculcating a Love for Justice*, 16 *Legal Ethics* 36, 51-55 (2013)).

### **Clients – Quality & Effectiveness of Advice, Casework & Representation**

While we have a very high staff-student ratio, this is augmented by student mentoring, All students work in a pair of one experience and one inexperienced student, while all students are organised in 8 “firms” each with a firm co-ordinator who monitors performance and mentors all in the firm. Students also received 16 hours of compulsory training and regular optional training.

Clients are interviewed by two students who are prohibited from giving advice at the interview, They prepare a statement of facts which the client must sign and consult with the supervisor as to the next steps. All emails, letters, court documents are checked by supervisors and no advice can be given without authorisation, Students negotiate and represent clients in courts without any supervisor involvement (except consultation by phone where possible).

### **Supervisors – Qualifications, Experience & Workload**

Supervisors are qualified albeit not necessarily practising solicitors. All started in the Clinic with only a few years practice experience, Each supervisors around 50 or more cases at any one time depending on whether they are on a 0.8 (one of them) or 0.5 contract (the other two). They also oversee two projects each and are heavily involved in running the clinic as part of a management team which has delegated power from the Executive Committee to run the Clinic on a day to day basis.

### **Institution – Insurance, Complaints, Litigation & Reputational Risks**

We have insurance via Advice UK, a disclaimer of liability and a complaints procedure. In fact we have a detailed Handbook with practice rules, a disciplinary procedure as well as guidance on many common areas of practice

**What are the limits on the number of students who can be involved ?**

Until recently the only limitation was the amount of supervision we can afford but having now expanded to 280 students we are not sure that we would want to take more of the 65 case workers and 35 project workers we take on each year, given (a) the logistics of training so many students and (b) the impression that not many of the remaining 100 or more students who applied have the motivation and qualities suited to serving the community through voluntary legal services,

**What are the limits on the number and types of clients who can be helped ?**

The number of clients is limited by the number of students and staff we have to supervise them though we have expanded numbers considerably by funnelling requests for simple and quick advice into our online service and slightly more complicated issues to our evening drop in sessions, leaving cases requiring representation to be handled by pairs of students in the way described above. We only act for those who cannot afford a lawyer and do not qualify for legal aid. For this latter reason we don't take on criminal cases, but we also exclude family law cases which are too stressful to burden students who can be as young as 17.

**What are the limits on the types of case / service that can be dealt with by pro bono law clinics ?**

I cannot think of any as long as there is appropriate back-up.

**Is any pro bono assistance from Law students better than nothing ?**

This cannot be answered in the abstract but depends on the relative ability of the client and the student. But on a somewhat different issue, I firmly believe that it's better that large numbers of indigent clients gain adequate services than a few get optimum services. This not only increases the level of assistance to the community but increases the number of students exposed to the satisfaction of helping others and provided with a window into social injustice and in this way hopefully increases the number who will continue to serve social justice once they graduate.

**Professional Conduct Issues**

Students are given a 3 hour training in ethics and we adhere to the Law Society of Scotland's Code of Conduct. Issues of conflicts, and immoral means and ends arise regularly and the issue of lawyer paternalism even more so. See eg Donald Nicolson, *Learning in Justice: Ethical Education in an Extra-Curricular Law Clinic*, in THE ETHICS PROJECT IN LEGAL EDUCATION (Michael Robertson, et al, eds., 2010), 171. These issues are deal with at committee and form a large part of discussion in journals and in class in the Clinical LLB.

## Jussbuss – Thomas Meier Stroome, Robert Odegaard, Linn Husa

### **Brief overview of your Clinic's Aims**

Jussbuss was launched in 1971 with the aim to secure and improve socially or financially disadvantaged groups legal situation.

Jussbuss has four objectives:

- Provide legal aid to exposed groups of society
- Advocacy work
- Research
- Provide practical student education

### **Brief overview of your Clinic's Model**

Jussbuss (law bus) was started in 1971 as a result of a research project trying to investigate whether all social layers of society were able to claim their legal rights. It was quickly discovered that there was a massive demand for free legal aid among people without the ability to afford a lawyer.

The creation of Jussbuss met resistance from the Norwegian Bar association, who claimed that it was unsafe to let students provide legal aid - no help at all rather than help from students. Now, 45 years later, Jussbuss is the oldest, biggest student-ran free legal aid clinic in Norway. Even though the University of Oslo pays most of our bills, we are fully independent of it.

The students working for "the bus" take a year off their studies. They work one year full time and then 6 months part time. They get paid a symbolic salary and also get 30 credits/student points for their work.

In Jussbuss there are four groups working with different legal areas – Prison law, Immigration law, Debt and tenancy law, and labour-, social- and welfare-law. The students work in one of these groups for their entire time at the clinic. Additionally, there are several ad hoc groups and outreach groups that all of the students participate in. The environment law group is currently involved in a law suit against the state. The Eastern Europe-group travel to countries in Eastern Europe to share experiences in order to help law faculties open their own free legal aid clinics. We have several groups visiting adult learning centres to hold lectures about Jussbuss and the legal areas relevant for the people visiting these centres. The list goes on.

The goal is to enable the client to help themselves. The goal is not to take over the case of the client entirely. We tell the client our view of his or hers case and tell the client what steps he or she should be taking in order to claim his or hers right. Usually we provide our legal aid orally, over the phone or in person. However, we learned that this wasn't always sufficient in complex cases. In these cases we therefore give the client our assessment in writing, not as a legal document, but because it is easier for the client to understand the case when they have the physical paper with the case in writing.

However, sometimes a client is very vulnerable, for example due to serious illness. These clients aren't able to help themselves. Therefore, we take over the case completely and act as legal counsel with a power of attorney. We assist the client in direct meetings with the counterparty and also in court. Although the help provided will be better, it is also a lot more work. We are selective regarding in what cases we act as counsel.

Through our case work we clearly experience where the law isn't sufficient. This is the foundation of our advocacy work. We try to influence the decision makers through meetings with politicians, by writing articles and statements in the media, attending news television, arranging debates, etc.

Through working at Jussbuss, the students get their own clients with responsibility for real cases, and a practical approach to the law.

### **Views on the following CLE Quality Assurance & Supervision issues:**

#### ***Students – Feedback & Learning***

Students get no introduction course before starting working at Jussbuss, and they have no experience in the legal areas we are working within. They learn by doing. This means that the first couple of months at "the bus" are challenging, with a steep learning curve. However, the students can and will always ask their colleagues at their group if they need help, and are well taken care of. Particularly, assistance to newly hired students is an important part of the work of the part time students.

#### ***Clients – Quality & Effectiveness of Advice, Casework & Representation***

We accept new cases twice a week. The client can telephone, come in person or send their case online. Once you get a case, you spend the following days working with it. You basically work alone, however you are of course allowed to ask colleagues for help whenever you need.

At Jussbuss, we are all students. In order to secure the quality of the legal aid provided, every group has a group meeting every Thursday. Here, the student reads their legal work (subsumption, conclusion, etc) and suggestion on what to do out loud. Then, every person in the group will have their say. The students working part time also take part of the meeting. If the group approves the work of the student - and only then - the student is allowed to call the client to give him or her the legal aid.

We experience that our clients are very happy with the aid they provided. However, in the off case that a client should be unhappy, it will never be the individual student's fault. Because the case has been through the Thursday group meeting, any mishapening will be the fault of the entire group. This makes for a safe and comfortable working environment especially for newly hired students. I must however stress that we have yet to experience a client unhappy due to the aid provided.

We receive 5-6000 inquiries every year, but we only provide aid within the legal areas of our work groups. If the client has questions regarding other legal areas, we refer the client to other foundations/organisations where he or she can get the help they need for free. We try to ensure that the client never leave empty handed.

We get paid for 12 hours a week, but work ca. 42 hours a week. A lot of the work is based on volunteerism.

### ***Supervisors – Qualifications, Experience & Workload***

We work with a flat organizational structure, where everyone has the same voting right. We have a daily manager who is also a student, but she has no more power than a newly hired student.

The daily manager gets elected every 1.5 year. The daily manager commits herself for three semesters. Anyone working for Jussbuss, or former Jussbussers, can apply for the position. Our highest organ, the Plenary (where all the active and part timer students take part), will vote on who's to be elected

The daily manager does not work with clients or cases.

### ***Institution – Insurance, Complaints, Litigation & Reputational Risks***

We're covered by insurance that will cover any financial loss a client has suffered due to a mistake from a case worker.

### ***What are the limits on the number of students who can be involved ?***

Students get hired every semester. The Plenary decide how many, depending on the budget and the workload. Usually we hire 10 new students each semester. Currently we are 24 students working full time and 10 working part time.

### ***What are the limits on the number and types of clients who can be helped ?***

Jussbuss aim to help people who really need it. Therefore, each group has an income limit they decide themselves. The Labour/Social/Welfare-group currently operates with a limit on 400 000 NOK (ca. 40 000), the Tenancy/debt-group has a limit on 350 000/400 000 (ca. 34300/40 000 GBP). Basically, anyone above these limits is considered to be able to afford help otherwise.

However, these numbers are indicative. If a client has an annual income of 450 000, but has a lot of debt, is a single parent, etc., we will take the case even though the client is above the income limit.

If the client has a case and an income that qualifies him or her to the public free legal aid, the client will be sent there. He or she can claim free legal aid from lawyers and will not need Jussbuss.

We also do not take cases that do not fall within the legal areas that we work with.

### ***What are the limits on the types of case / service that can be dealt with by pro bono law clinics ?***

It's hard to answer this. At Jussbuss, we consequently do not take cases for example regarding children. These cases are too complex and are also covered by the public free legal aid system.

***Is any pro bono assistance from Law students better than nothing ?***

Based on our experience, yes. Because we are students, we are very conscious on our work being thorough and of high quality. There's also a value to the client being heard and taken seriously, even with a weak case. The clients are also very positive to student ran legal aid clinics.

Students rarely have any restrictions as to how much they are able to work. We know that most of our work is based on volunteerism and are therefore willing to put down as many hours as it takes in order to get a case done. As our services are free, the client also have no limit.

We actually experience that the client often wants help from us rather than from lawyers, even when they qualify for public free legal aid (free legal aid from lawyers).

***Professional Conduct Issues***

Students get no actual training in professional conduct. However, everyone is aware that they represent Jussbuss and their clients, and not themselves and their own personal opinion.

## **University of Northumbria Student Law Office - Chris Simmonds (Deputy Director), Caroline Hood and Neil Harrison (Tutors).**

### **Brief overview of your Clinic's Aims**

The Student Law Office has been in existence for over 20 years. Last year the SLO had 306 ongoing cases. Since 2008, the SLO has represented over 1000 clients and secured over £1million on their behalf.

All students currently on the MLaw Degree participate in the clinic as the culmination of their integrated theoretical and practical learning. They provide vital legal services to the community while developing a deep understanding of law, justice and professionalism. Put broadly, the key objectives of the SLO are to:

1. Break down barriers between academic study and real world engagement
2. Provide access to justice at a time when that access is increasingly at risk
3. Influence the development of law and policy
4. Enable students to develop as graduates, professionals and people
5. Disseminate best practice on a national and international stage

### **Brief overview of your Clinic's Model**

The clinic forms part of the curriculum, and is assessed. Around 180 undergraduate students on the MLaw programme participate in clinic as a compulsory part of their degree, in their 4<sup>th</sup> year. These students provide the full representation model on which the SLO is based. This is currently a year-long module which, students on the M Law, takes the place of electives on the Legal Practice Course. Most of our students have already studied the core LPC modules, had experience and assessment of interviewing and Practical Legal Research and been through an office training programme which is a simulated version of the office in the year prior.

Clients approach the clinic via e mail or telephone, and if their enquiry is suitable, they will be invited in for an initial interview with students, after which a decision is made with the supervisor on whether the case can be taken on, and the level of service that can be provided.

There are a couple of advice-only projects within this programme, for example;

- Gateshead Advice Plus (GAP) which provides a limited number of advice only sessions in Gateshead, in conjunction with the local CAB
- Shelter project- complex housing queries are referred to the SLO by Shelter, and we provide a letter of advice (around 15 enquiries per year) .

A further 24 students on post grad courses can opt to take a module in clinic, and this is adapted to suit the credits they receive. So for example, for LPC students, they are in the clinic for only one semester, and provide an advice-only service.

The SLO is based in state-of -the-art facilities in the Law School, with 2 dedicated full time admin staff, and around 90 computers for students. The SLO provides a confidential work space for students to carry out their client work. Data storage and e mails are in a 'closed loop', with a dedicated drive, to ensure confidentiality and prevent breaches via e mail. We currently have a paper based file system, although we also store work on a dedicated drive for a limited time.

The office is staffed and open during office hours, and out of term time, closing on Bank Holidays and between Christmas and New Year.

Procedure for taking on clients (full service model) ;

- Clients attend by appointment only, are seen initially by 2 students who then confer with their supervisors and confirm within around 10 days (often sooner) whether the case can be taken on. Students get evidence of client's identity.
- Conflict check is carried out, and client care letter sent, including terms and conditions and scope of our service in their case.
- Case researched by students, checked by supervisor, and client is advised, usually in another interview, and advice letter sent.
- We can represent at court or tribunal, but will always confirm this in writing to client.

We have a Student Manual, outlining our procedures for students, and a Supervisor Manual, to support staff.

We do not means-test clients, and there is no bar to the type of client we might act for- for example, we have acted not only for tenants, but also for landlords.

### **Views on the following CLE Quality Assurance & Supervision issues:**

#### **Students – Feedback & Learning**

In line with the QAA Benchmark for Law, the descriptors against which students are assessed are bunched around (i) Autonomy and (ii) Ability to Learn. In the Benchmark these are the “key feature of gradueness”.

Autonomy will include:

- the ability to identify and apply law with accuracy;
- the ability to plan and progress client cases;
- demonstration of a professional commitment to the client's best interests;
- efficiency in managing the case.

Ability to learn will include:

- the ability to recognise areas of weakness and to make good these weaknesses;
- the ability to build on existing areas of strength;
- the ability to reflect effectively on experiences and to relate those experiences to their wider academic, professional and societal contexts.

Student education is a key goal of the SLO. Students receive high levels of feedback, for example, written feedback on virtually all their written work, and a mid year review where their progress is discussed. They work in close contact with their supervisor, who will often provide a coaching and mentoring role.

The clinic is assessed by means of a portfolio, showing examples of their work,(70%) plus 2 written reflective pieces (15% each) . Supervisors carry out this assessment, and there is a moderation process. Ensuring and defending validity of assessment in the clinic setting has been a topic of much debate.<sup>1</sup>

The clinic accounts for around 37% of the final year mark, so is very important for students in terms of their ultimate degree classification.

### **Clients – Quality & Effectiveness of Advice, Casework & Representation**

Generally, client feedback suggests they are very satisfied with the service they receive. Students in the main law clinic currently complete a year-long module in Year 3 preparing them for the clinic, including a standardised client interview, and completing a letter of advice, on which they are assessed. They have a course of lectures at the start of Year 4 to further prepare them on topics including time management, and also including information on office procedures.

Representation at court can be a big step up for students, but many do rise to this challenge and with support provides an excellent service.

### **Supervisors – Qualifications, Experience & Workload**

All our supervisors are academics who are qualified lawyers holding practising certificates, or experienced caseworkers. There is a range of experience in the team, but all will have dealt with client casework.

Normally they are permanent members of staff, although this year we have had to recruit associate staff. We currently have 22 supervisors teaching in our clinic, for around 180 MLaw students.

Workload- it is recognised that supervising students in the clinic is time consuming, and workload allocation seeks to recognise that ( although it is never enough, and excessive workload has led to a number of supervisors leaving the clinic teaching team because they feel swamped, and are concerned about maintaining the quality of work required to provide a professional service.)

Most staff teaching in the clinic will teach one group of 6 students. We have a small group of 6 'solicitor tutors' (they are also permanent members of academic staff) who are more focussed on the running of the clinic, who will have 2 groups of 5 students (or exceptionally, 3 groups). These 6 staff also receive additional workload for running the office day to day, and also providing summer cover.

One aspect of supervision is the challenge of keeping your own practice skills and knowledge up to date when providing intensive supervision to students, but on a much smaller caseload than in practice.

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<sup>1</sup> Sylvester, C. (2016) 'Through a Glass Darkly: Assessment of Real Client, Compulsory Clinic in an Undergraduate Law Programme', *International Journal of Clinical Legal Education*, 1, 23. <https://www.northumbria.ac.uk/media/6285011/through-a-glass-darkly-assessment-of-a-real-client-compulsory-clinic-in-an-undergraduate-programme-cath-sylvester.pdf>, and other papers in the Special Issue of The International Journal of Clinical Legal Education, Vol 23, No.1 (2016) <http://northumbriajournals.co.uk/index.php/ijcle/issue/view/58> which look at assessment in clinic.

## **Institution – Insurance, Complaints, Litigation & Reputational Risks**

The University underwrites the law clinic, through its insurance cover. We have a detailed complaints procedure and clients are advised of how to access this through the initial client care letter. Generally we receive very few complaints.

We seek to avoid reputational risk by having a high level of supervision, with generally between a 1:6 to 1:12 ratio of supervisor to students.

Maintaining confidentiality is a priority, and as stated above, the SLO provides a confidential work space for students to carry out their client work. Data storage and e mails are in a 'closed loop', with a dedicated drive, and dedicated printing, to ensure confidentiality and prevent breaches. Confidential storage of data has been a topic of discussion, as the University moves to things like Cloud storage, which can present issues when storing client data.

We have no client account, and would not wish to become involved in charging for services, with the additional complexity, risk and responsibility that brings.

### **What are the limits on the number of students who can be involved ?**

This is dictated by the numbers of students coming through our MLaw program, and generally it is around a total of 200 students per year including around 24 from optional post graduate courses (LPC and BPTC) There is also an active Streetlaw in schools programme with 36 students last year taking part.

### **What are the limits on the number and types of clients who can be helped ?**

The limits on the numbers of cases relate to the capacity for supervision, and also the students' capacity for working on cases effectively, alongside their other studies. Therefore 'the educational emphasis and high level of specialist supervision required limits the volume of cases which can be dealt with.'<sup>2</sup> We give a guideline to students of 10-15 hours per week working in the SLO.

Types of client- this relates to the areas that we have available supervision, so currently civil lit, crime, employment, housing, welfare benefits, planning, family, business and commercial.

We are cautious about taking on cases which require urgent attention or have very short deadlines, as there can be an initial delay whilst students progress the case.

### **What are the limits on the types of case / service that can be dealt with by pro bono law clinics ?**

This is really down to the available qualified supervision, and any legal requirements/restrictions such as rights of audience (for example, limits on appearing in the Magistrates Court, although written submissions could be provided to clients to help them)

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<sup>2</sup> Kemp,V, Munk, T, and Gower, S, 'Clinical Legal Education and Experiential Learning ; Looking to the Future'  
<http://hummedia.manchester.ac.uk/schools/law/main/news/Clinical-Legal-Education-Final-Report28.09.2016.pdf>

However, we also find that having the cases available at a time in the year when we can take them on can be a challenge. Because the main part of the clinic is a full service model, and we don't generally do drop in advice, the supply of suitable cases can be uneven. We could use publicity to generate more cases, but are concerned to avoid generating a demand that we then cannot service.

Some areas are more in demand than others. There has been a drop in employment tribunal activity, with the advent of fees, whereas there is always a reasonable supply of welfare benefits and housing cases.

Issues such as case complexity and urgency should also be considered when determining the limits of the service.

We are currently operating under the 'grace period' offered to not-for profits and charities under the Legal Services Act during which time we do not need to become an ABS or authorised body. This legislation has created uncertainty for the future of reserved activities carried out by University law clinics.<sup>3</sup>

### **Is any pro bono assistance from Law students better than nothing ?**

It depends on the quality of the assistance. In many cases, it is better than nothing, but if the assistance offered is of a poor standard, clients could be worse off, as judges may be prepared to be more accommodating in respect of things like adjournments, for example, to litigants with no support, than those who have someone holding themselves out as an advisor.

We should also bear in mind the effect on the students' professional identity and how they perceive the role of the lawyer and any risk to the student as well as clients from providing assistance of a poor standard.

### **Professional Conduct Issues**

Students have in the past passed the LPC professional conduct assessments during their degree (although this is likely to change under course restructuring to meet the new SRA requirements). This topic is also discussed in their weekly meetings, often in the context of their cases, and is also one component of their assessment.

Common areas are confidentiality

Obviously, for the supervisor, professional conduct issues can be a concern, and the supervisors wish to ensure there are no breaches which could affect their own ability to practice.

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<sup>3</sup> Campbell, E, Boothby,C,, 'University law clinics as alternative business structures: more questions than answers?' *The Law Teacher*, 2016, Vol 50, No.1, 132-137 <http://dx.doi.org/10.1080/03069400.2016.1149367>

## London South Bank University Legal Advice Clinic – Alan Russell & Catherine Evans

### Brief overview of your Clinic's Aims

When we opened the LSBU Legal Advice Clinic in September 2011, our principal aims were to:

- Establish a legal advice service which would deliver a tangible benefit to the local community.
- Develop students' practical knowledge of the law in context in order to enhance their confidence, skills and employability.
- Provide a basis for developing a teaching and learning resource for other universities.

This is the context:

- LSBU has an exceptionally diverse cohort of UG law students. A comprehensive recent survey disclosed that: prior to entering university, 25% UG law students lived locally in south east London; 57% were female; 65% over 21; 70% non-white with black African the largest single ethnic group (27%); 52% FT students were in paid employment during term time with 80% working none hours or more; 17% were looking after at least one school age child<sup>4</sup>. As a result our students are less likely to have links to the legal profession and less likely to have family members who can find them work experience.
- The advent of ABS, costs pressures and rapid expansion of information technology all continue to bring changes to the way that legal services are delivered and, consequently, the career opportunities available to law graduates. There is increasing use of para-legals and there are less training contracts and barrister pupillages available. The introduction of £9,000 PA tuition fees has resulted in a student body ever more focused on employment prospects post higher education<sup>5</sup>
- There is an extensive body of research on the significance of the provision of timely social welfare law advice in the UK (housing, family, debt, immigration, employment, education, welfare benefits). Research findings include: the tendency of social welfare law problems to 'clustering'; the importance of early intervention to solve social welfare law problems in order to avoid increased social and economic costs down the line; the links between unresolved social welfare legal problems and physical and mental health and well-being; and the problem of 'referral fatigue' which sees a proportion of people giving up each time they are signposted or referred on by an agency they approach for help with a social welfare law problem<sup>6</sup>.

<sup>4</sup> James C, Koo, J and Rodney M, 'Mismatches between student expectations and reality: a problem for student engagement', paper given at Learning in Law conference 28-29 January 2011

<sup>5</sup> See for example Temple, P. et al, 'Managing the Student Experience in a Shifting Higher Education Landscape', 2014, HEA  
<[https://www.heacademy.ac.uk/sites/default/files/resources/managing\\_the\\_student\\_experience.pdf](https://www.heacademy.ac.uk/sites/default/files/resources/managing_the_student_experience.pdf)> last accessed 31 October 2016

<sup>6</sup> See, for example: Genn, H. (1999) Paths to Justice: What People Do and Think About Going to Law. Oxford: Hart Publishing; Balmer, N. (2013) Summary Findings of Wave 2 of the English and Welsh Civil and Social Justice Panel Survey, Legal Services Commission; Pleasance, P. & Balmer, N. (2014) How People Resolve 'Legal' Problems: Report to the Legal Services Board

- LSBU's campus is located in the heart of the London Borough of Southwark, ranked in the top 8% of most deprived local authorities out of 326 local authorities in England<sup>7</sup>. Demand for social welfare law advice in our locality is consequently enormous, whereas supply is extremely limited
- In April 2013, the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force. This drastically reduced the Legal Help scheme, which had previously funded a network of pre-action social welfare law advice for people on low incomes in England and Wales, delivered by solicitors and other legal advice providers. Welfare benefits and employment advice was taken out of scope altogether; housing, debt, education and family advice was severely restricted.

### **Brief overview of your Clinic's Model**

Our Clinic delivers free, on the spot, face-to-face social welfare law advice to the general public i.e. advice in precisely those areas of law targeted by LASPO.

The Clinic is staffed by UG 2<sup>nd</sup> and 3<sup>rd</sup> year law students and some LLM students. The student legal advisors are supervised by university-employed lawyers with current practising certificates who between them have very many years' experience of practice in social welfare law.

We are open one and a half days a week for drop-in legal advice: Tuesdays 10am-1pm, Wednesdays 10am-1pm and Wednesdays 3-6pm. On Tuesday and Wednesday mornings we have 3 advice teams, each comprising two students and one supervising lawyer. On Wednesday afternoon we have two advice teams, each comprising two students and one supervising lawyer. In addition at each advice session another student works as receptionist, taking drop-in clients' basic details, allocating them to an advice team and managing the queue. Reception duties are rotated.

So there is student to supervisor ratio of 1 to 2 in our clinical model: 1 supervisor to every 2 students.

With three advice teams (Tuesday and Wednesday morning) we aim to see a maximum of 9 clients a session. With two advice teams (Wednesday afternoons) we aim to see a maximum of 6 clients a session. The Clinic is open throughout the academic year.

In the interview room it works like this:

- First, we take instructions: find out what the problem is, gather all the relevant information and identify what the client wants to achieve.
- Next the interview is paused briefly and the client waits while we go to our back office and research the issue, using sources including Advice Guide (a publicly available web resource maintained by Citizen's Advice), Advisernet (a subscription resource also maintained by Citizen's Advice and comprising the most comprehensive social welfare law resource available in the UK) and key practitioner books published by Child Poverty Action Group, Disability Rights UK and Legal Action Group.
- Then we return and feed back to the client the advice we have researched.

<sup>7</sup> 'English indices of deprivation 2015', Department for Communities and Local Government, 30 Sep 2015 <<https://www.gov.uk/government/statistics/english-indices-of-deprivation-2015>> last accessed 31 October 2015

- Finally we write up a succinct advice note once the client has left. If the client requires written confirmation of our advice, they can wait and take a copy of our advice record away with them

We have a maximum of one hour for the whole advice process.

At the drop-in sessions we are able to provide basic information on any legal topic, give generalist advice in all social welfare law matters, signpost and refer to appropriate local legal advice agencies and law firms, or refer to the Clinic's own evening sessions.

At the Clinic's weekly Thursday evening sessions the students shadow pro bono solicitors from four large local private Legal Aid law firms who provide specialist legal advice in family, housing & employment. Clients can only access the evening sessions via the day-time drop-in.

Since opening, we have advised in excess of 3000 clients and trained in excess of 250 law student volunteers

In 2013 we published a 70 page open access drop-in manual via the HEA and LawWorks for use by other universities who may wish to develop similar projects.

### **Views on the following CLE Quality Assurance & Supervision issues:**

#### **Students – Feedback & Learning**

Each student works a minimum of 12 x 3 hour drop-in shifts during their placements. At the start of a student's placement the supervising lawyer models every stage of the four-part advice process. But very quickly the supervisor moves to collaborating with the students in the process; almost immediately requiring them to do the research and write up the note; next inviting them to feed the advice back to the client when they go back into the room; and finally encouraging them to take initial instructions, the part of the process we consider to be the most challenging – going into the interview room without forewarning of the issues, making sense of the client's story and asking all the necessary follow-up questions. By the end of their placement the intention is that a student will have progressed to taking the lead in each of the four stages of the advice-giving process.

Using Schön's terminology of 'high ground' and 'swamp', that describes the distinction between the constructed artificiality of law exam problem questions and the messy reality of the undigested world,<sup>8</sup> our drop-in model plunges our students head-first into the swamp; making them the first point of contact with clients (many of whom are vulnerable and chaotic in the way they present) and having them contend with clients' problems unmediated by the prior assessment of an academic or practitioner supervisor. Students have to deal with people who frequently present with no readily identifiable 'justiciable'<sup>9</sup> problem and they learn to help clients in translating their problems into established legal categories and how to explain legal concepts and processes, which may be completely new to people, precisely and concisely.

The close and continuous supervision at the heart of our model - 1 supervisor to every 2 students, with the supervisor present throughout all 4 stages of the advice process -

<sup>8</sup> Brayne, Duncan and Grimes, *Clinical Legal Education: Active Learning in Your Law School* (Blackstone, 1998) pp35-36.

<sup>9</sup> A problem that might have a legal solution, Genn (n 3)

means supervisors are able to offer instant feedback to students, can encourage and shape peer to peer feedback by the two student advisors in each team, and can work intensively on the students' writing skills as they are writing up the advice record.

### **Clients – Quality & Effectiveness of Advice, Casework & Representation**

We promote widely the fact that all our student advisors are closely and constantly supervised by an experienced practising social welfare lawyer. This attracts clients and it reassures clients. They know that our advisors will be asking the right questions when they take instructions, and they know that the legal advice they get is subject to a close quality check by a highly qualified expert.

It will assist to compare our service to that typically offered by a Citizens Advice Bureau (CAB). If a client visits a CAB in the UK, they will typically get a 10 minute triage appointment with a "gateway assessor" who will see if they can resolve the enquiry by the provision of some basic information, often by giving a client a leaflet or a factsheet, or in some other way taking them through standardised information which is not tailored to them as an individual. If the 10 minute "gateway assessor" appointment cannot resolve the enquiry, then the client will go through to a full generalist advice appointment, typically one hour long; the advisor is now dealing with the client as an individual, tailoring advice to their particular circumstances.

As a result of the experience and qualifications of our supervisors, our student advisors are commonly able to deliver legal advice that goes beyond that provided at a full generalist appointment at the CAB. It means we are in fact often able to give specialist rather than generalist level advice at drop-in, particularly in relation to housing, homelessness and employment. This reflects the particular specialisms of our current supervisors, all of whom, it should be emphasised, are also experienced in delivering generalist level social welfare law advice in other subject areas.

The great majority, approximately 70%, of our drop-in queries are resolved at that initial stage; in the sense that the client is now able to take action and has no immediate need for further legal advice (though they may return to the Clinic or another service at a later stage, when there has been a further development). Another substantial portion, approximately 15%, being referred to our own evening sessions i.e. the overwhelming majority being handled internally in our daytime or evening sessions.

Our client feedback is overwhelmingly positive. Since September 2014, we have been surveying each client assisted and more than 95% say the advice they received helped them understand their rights; more than 95% say they have confidence in the advice given; more than 95% rate our service overall as excellent or good (more than 75% rate it as excellent); more than 95% would use the service again; and more than 95% would recommend the service to others.

Our view is that these high resolution and client satisfaction rates relate directly to the very high level of supervision built in to our model, and the depth and breadth of our supervisor's experience.

(At the same time we planning longitudinal research on the longer terms impact of initial drop-in advice down the line, by conducting follow up surveys and in depth interviews some months after the initial advice delivered at our the day time drop-in sessions. The questions we want to investigate include: Was our advice followed? How worried and anxious do people feel about the problem now? Has the problem been finally resolved?)

### **Supervisors – Qualifications, Experience & Workload**

As stated above, all our in-house employed supervisors at our day-time drop-ins are qualified, practising lawyers with extensive social welfare law experience: 5 solicitors with extensive experience working in Law Centres and private Legal Aid practice and a barrister with extensive social welfare law experience.

The writer considers an experienced CAB advisor/manager would also be an appropriate person to supervise at our day-time drop-ins.

The writer also considers it vital that supervisors also teach in the classroom on the LLB/LLM that our students are drawn from. All but one of our supervisors do so. This allows supervisors to help students reflect on and make the links between theory and substantive law encountered in the classroom and real world problems encountered the Clinic. It also assist the supervisors in reflecting on their own practice as both lawyers and teachers.

In terms of workload, the writer considers it essential that supervision in the Clinic is given equal weight to traditional classroom teaching and dissertation supervision etc. in workload allocations. This is the case for supervisors working in the LSBU Clinic.

### **Institution – Insurance, Complaints, Litigation & Reputational Risks**

The fact that all our supervisors are qualified lawyers, and the breadth and depth of their experience, has assisted in persuading the University and it's insures to include professional indemnity insurance cover for the Clinic in the University's existing policies.

The writer considers that our supervisors' qualifications and experience, together with the closeness with which they supervise our students, has also been instrumental in minimizing complaints - we have had just one unfounded complaint in five years and more than 3000 clients - and is key to minimising reputational and litigation risks to the institution from the Clinic's work.

### **What are the limits on the number of students who can be involved ?**

We recruit approximately 40 students to work in the Clinic each year on extended placement; each student works at least 12 x 3 hour sessions. The writer considers that any significant reduction in the extent of the placement would significantly dilute the experience for the student.

We could recruit more students: we could open the Clinic for more sessions during the week; we could have more advice teams working at each session. The demand for our service is there; we regularly have to turn away clients. The problem is, of course, resources. Our model of supervision is an expensive one and there are no economies of scale; if we want to expand the Clinic service we have to involve more supervisors.

There is the also the issue of whether all students have the capability to deliver legal advice and conduct legal casework. The merit in our model is that the intensive level of supervision means that we can accommodate students with a wide range of capabilities

### **What are the limits on the number and types of clients who can be helped ?**

The limit on numbers in our model is determined by the number of supervisors we can resource (and office time and space we can occupy – we share our premises with a recently established LSBU Business Advice Clinic).

Our Clinic is focussed on social welfare law because of the unquenchable demand for social welfare law advice in our locality, and the experience and expertise of our supervisors. There is no operational reason why a university-based Clinic could not offer legal advice to businesses and entrepreneurs.

### **What are the limits on the types of case / service that can be dealt with by pro bono law clinics ?**

Our Clinic is limited to advice work. We do not conduct casework. We do not represent in litigation. We do not engage in reserved activities, With appropriate levels of close supervision and student training there is no operational reason why Clinics cannot conduct casework and litigation, including advocacy in employment and social security tribunals, as some do.

Paraphrasing (accurately it is hoped), the current exemption for NFPs and charities under the Legal Services Act 2007 means clinics can currently carry out reserved activity (including exercising rights of audience and conducting litigation before courts) without setting up as an authorised body (a solicitors firm) or a licensed body (an ABS) so long as they have a solicitor, barrister or legal executive capable of supervising such reserved activity. It is unclear how long this exemption will remain in place and whether, sooner or later, university clinics will have to be licensed as an ABS if they wish to carry out reserved activities

### **Is any pro bono assistance from Law students better than nothing ?**

Absolutely not. Legal advice has to be accurate; casework, litigation and tribunal advocacy has to be conducted competently. If in the LSBU Clinic we allowed our students to give inaccurate, unsupervised legal advice it is self-evident that this could prejudice those seeking our assistance and would have the potential to place them in a worse position than had they not sought our help.

### **Professional Conduct Issues**

Solicitors' professional conduct issues arise time and time again at our drop-ins: the duty of confidentiality; the duty to act in clients' best interests; including only acting when you have the knowledge and skills to do so (i.e. knowing when to stop); conflict of interests.

The lack of prior filtering inherent in our drop-in model creates a valuable opportunity for students regularly to engage directly with and to reflect upon these professional conduct issues. But it also poses a threat - that these issues will be overlooked. The close and constant supervision of our students by practising lawyers, all but one solicitors, helps to guard against this risk (as well as encouraging the students to identify and consider the conduct issues).

## Kent Law Clinic – Elaine Sherratt – Law Clinic Solicitor

### Kent Law Clinic: Aims, ethos, overview

The Kent Law Clinic has two aims – to provide a legal service to those who need but cannot afford to pay for one, and to enhance the education of students in the Kent Law School.

A large number of students, academics, and solicitors and barristers in practice in Kent have maintained the determination for many years to work together in providing a free legal service. It is a voluntary and collective endeavour that rests on a shared view that in a modern, civilised society every person should be able to obtain access to legal assistance in order to defend and improve his or her quality of life. The commitment to providing this service lies at the heart of the ethos of the Law Clinic.

The Law Clinic seeks to enrich the legal education of students through enabling them to work on live cases and other projects. The focus, in educational terms, is on improving their knowledge and understanding of law, and on the development of their critical faculties. Participation in a public legal service such as the Clinic exposes students to the impact of law outside the university. This forms part of the educational process through which the Law Clinic aspires to deepen the learning and broaden the minds of our students, and of all those involved in the service.

Students derive great satisfaction from helping people, from applying the law to real live situations and from developing many legal skills such as interviewing, negotiating and advocacy. Some choose this work because it provides an opportunity to develop vocational skills for a legal or other career. Even so, all students are encouraged to remain alert to the wider implications of their contribution to a public legal service and to the full range of academic benefits that they can derive from their work in the Law Clinic.

The Law Clinic gives students the opportunity to practise and study the law at the same time. In working for clients, under supervision, students can improve their knowledge of cases, statutes and doctrines, and of the institutions and the procedures through which the law functions. Moreover, and crucially, students in the Law Clinic also have the time to step back and reflect further on their practical legal work: to analyse and evaluate the laws and procedures which have been encountered in practice; to undertake research on issues which have arisen; to consider the ethical implications of real situations.

Engaging with the law in the process of its application to the live problems of our clients provides another perspective on law and society, and another means of learning about law in addition to those of traditional legal education. The emphasis in clinical legal education at Kent is firmly on education rather than training, and is by no means only for those students who intend to practise law. Valuable vocational skills may be acquired, but this is not the primary aim. The aim is an improved knowledge of law, and an improved ability to reflect critically on law and on the operation of the law in practice.

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In 1970, staff and students in the University of Kent set up a legal advice and general support organisation called *Response*. In a further development the Kent Law Clinic opened in 1973, integrating a legal service into the law curriculum. This closed in 1977, but staff and students working with volunteer lawyers continued to provide free public legal

services through *Canterbury Community Aid*, the *Canterbury Employment Discrimination Clinic* and the *Kent Mental Health and Learning Difficulties Clinic*. These gradually began to re-integrate the public service into the curriculum and in 1992 merged into the Kent Law Clinic in its current form.

### **The service to the public**

Based in the Kent Law School at the University of Kent, the Kent Law Clinic provides free legal services to members of the public who cannot afford to pay for them, and students participate in providing these services under the supervision of six solicitors and one employment law specialist comprising 6.3fte staff. Together with a director they are all on the academic staff of the Kent Law School (permanent academic staff c65fte). The Law Clinic has offices on the Canterbury campus, and provides referral, advice, representation, support and research services.

**Referral:** the public can make phone enquiries from 9.00am to 5.00pm Monday to Friday; student receptionists under supervision refer or signpost callers as appropriate. In the calendar year 2015 the Law Clinic dealt with 1,442 telephone enquiries (employment, family, housing, property, contract, immigration, asylum, welfare benefits and access to land being the largest categories).

**Advice:** where possible an appointment will be made at one of the accessible, outreach Law Clinic Advice Sessions on Monday evenings at three community centres in Canterbury and Whitstable. Solicitors and barristers in practice locally (c 30 volunteers) attend these sessions, to give pro bono advice for two hours to members of the public, usually four per session. This is a one-off advice appointment; the volunteer lawyers do not act further. Students help organise these sessions, and observe, assist and learn from the volunteer lawyers and the clients. In 2015 a total of 372 clients were given specialist legal advice at these Advice Sessions or by Law Clinic solicitors at the office by telephone, email or in person in criminal, police, benefits and housing matters.

**Representation:** in addition to assisting callers by informed referral, or by providing specialist legal advice specific to their problems, the Law Clinic also 'takes on' many cases, that is to say a Law Clinic solicitor formally acts for the client in employment, housing, family, welfare benefits, contract or access to land cases (rights of way and town and village greens). These clients receive the traditional services of a solicitor as required to deal with the case including court and tribunal representation. In 2015 a total of 115 new cases were taken on.

**Support:** the immigration and asylum team also give 'second tier' support to local community and advice organisations in the area concerning individual cases, and also give presentations on the law to such groups at public and other meetings.

**Research:** the Law Clinic's immigration and asylum solicitor and new research assistant also undertake and publish research on legal aid, immigration and asylum law.

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**Snapshot on advice, casework, support and research work in immigration and asylum:** between Sept 2012 and Feb 2014 the immigration and asylum solicitor and research assistant working with students acted in 59 new cases including 5 judicial review cases (all successful and with costs to Access to Justice Foundation), and 5 appeals; they provided 2nd-tier advice to local organisations for a further 61 clients; with students, reviewed the closed files of 20 young Afghan 'failed asylum-seekers'; presented, with students, seven public talks to audiences of 30 to 100 attendees (volunteers, mentors,

young asylum seekers, ex-detainees, sureties, advisers); supervising a student represented an asylum seeker from Afghanistan who was granted asylum on the grounds that he was an atheist. They also published two articles in the Journal of Immigration, Asylum and Nationality Law: '*The end of legal aid in immigration: a barrier to access to justice for migrants and a decline in the rule of law*'; and '*How children became "failed asylum-seekers"*'.

### **Snapshot on gains for clients**

Since 1992 (figures are not available for earlier years) the Law Clinic has helped clients win or defend sums totalling more than £3.5 million.

In the years 2010 - 2015 inclusive the total was £1,438,052.70, comprising sums awarded to them by court or tribunal order (£411,562.64), agreed by formal settlement (£732,223.06), saved by court or tribunal order (£225,282), or saved by formal settlement (£68,986).

Of the overall sum of £1,438,052.70, a total of £917,439.03 is attributable to employment cases, £271,516.64 is attributable to welfare benefits cases, £249,097.03 is attributable to contract, housing and other cases.

### **Learning and teaching in the Law Clinic**

Clinical legal education in universities

- facilitates an effective and critical study of law and society,
- allows the students and staff of law schools to provide a free legal service to the public,
- enables students to gain vocational skills and improve their employment prospects.

In its learning and teaching Kent Law Clinic gives priority to education as an appropriate emphasis in a university context. Education and training may be mutually complementary dimensions of the same activity, or mutually complementary activities of a particular project, but they are also distinct undertakings with distinct purposes. Education, the expansion and dissemination of knowledge and critique, is pursued as a good in itself; training is undertaken in order to equip an individual to carry out a particular activity.

The Law Clinic seeks to foster amongst all those involved in providing its public legal services a culture of enthusiastic and legally-informed engagement with law and society.

The Law Clinic's assessed educational work consists in teaching students in the process of supervising and training them as they work on cases for clients of the Law Clinic, and assessing them for academic credit on three UG modules ('*Clinical Option*', '*Immigration, Asylum and Refugee Law*' and '*The Criminal Justice System*', and one LLM module, '*EU Citizenship and Residence Rights*'). Students on these modules are assessed on their conduct of the practical work and on their written work arising from it. In 2015 the Law Clinic assessed 48 students for academic credit towards their LLB degrees. For most of those students their Law Clinic mark will comprise 1/8<sup>th</sup> of their final degree mark. In 2016-17 c 65 students will be so assessed.

Students on these modules work (under individual supervision) on cases for clients of the Law Clinic, and are assessed on their practical and written work. They will manage a case file, research the law, interview the client, draft correspondence, witness statements, pleadings, applications and submissions, negotiate with opposing parties, and in some cases (about six p.a.) advocate on behalf of Law Clinic clients. In 2013 a total of 12

students appeared, under supervision, in the County Court, the Employment Tribunal (Ashford), the County Court (Canterbury), the Magistrates' Court (Margate), a Public Enquiry ('village and town green' at Westgate) and a Judicial Mediation (Canterbury).

Students are also required to write an 8,000 word submission, comprising reports (3,000 words) on cases they have worked on and a dissertation on a topic arising from their practical work (5,000 words).

Around that assessed work, and supporting, complementing and interacting with it, the Law Clinic solicitors supervise, teach and work with many other students on an extra-curricular basis in many different ways. For example, in 2015 in addition to the 48 students who took assessed modules for academic credit, a further 213 individual students participated on an extra-curricular basis: as receptionists in the Law Clinic office (107 students), attending a Law Clinic Meeting (held weekly) to discuss new cases (123), attending Advice Sessions to observe and assist a volunteer lawyer (50), co-ordinating the Advice Sessions (26), working in the Immigration and Asylum Team assisting clients, visiting groups, attending court, visiting Calais 'Jungle' (16), working in the Criminal Justice Project (researching, drafting, attending court), family research with the Law Clinic family law solicitor (3), working with the Legal Clinic of the Islamic University of Gaza in contributing to a domestic violence conference held in the IUG (36), working with students of the Makeni Law Clinic, Sierra Leone (10) on cases and laws, serving as members of the elected Kent Law Clinic Student Committee whose members also sit on the Kent Law Clinic Management Committee (7). Many of the students undertook two or more of these activities.

### **Views on the following CLE Quality Assurance & Supervision issues:**

#### **Students – Feedback & Learning**

The Law Clinic solicitors supervise the conduct of casework by students, providing training necessary to the specific case, and teaching them in the process – by example, instruction and dialogue. Students usually have individual responsibility for cases, so this will usually be on a one-to-one basis. There are also short induction sessions, and weekly classes which explore particular topics and the cases being undertaken. Only supervisors may advise or act for clients. Students may pass on advice only with the prior approval of a supervisor. Exceptionally, students may advocate for a client but only in the presence of a supervisor. Most students work on a 30 credit (two term, Autumn and Spring) module, and will work on two reasonably substantial cases. Supervisors also discuss and assist with the writing of

case reports and dissertations.

Students are assessed in respect of their conduct of casework (50% of final mark), case reports (3,000 words) (20%) and a dissertation (5,000 words) (30%). Broadly speaking four learning outcomes are assessed, namely demonstration of

1. 'reading and knowledge' of the law relevant to casework: 25%  
*(as demonstrated in conduct of casework, case reports and dissertation)*
2. 'understanding and analysis' of its application to casework problems: 30%  
*(as demonstrated in conduct of casework, case reports and dissertation)*
3. 'quality of argument and critique' 25%  
*(as demonstrated in case reports and dissertation only)*

4. 'acquisition of specific legal and general skills' 20%  
(as demonstrated in conduct of casework only)

The choice of components of the module (casework, reports and dissertation) and their respective weighting give effect to the emphasis on education indicated above. Assessment of the conduct of casework by supervisors is continuous throughout the two terms of the module, and feedback is constant during this process. At the end of the first term each student is given a formal review interview. A formative assessment is given orally, and after discussion a written note is provided. At the end of the module summative assessment is made of the three components, according to the criteria and weighting above.

**Clients – Quality & Effectiveness of Advice, Casework & Representation**

Each solicitor is individually regulated by the Solicitors Regulation Authority. Peer review is undertaken by solicitors of the casework of other solicitors. Regular staff meetings review the quality and effectiveness of the Law Clinic's practice. The director is responsible for the general maintenance of appropriate standards, and reports to the Head of the Kent Law School, and also to the management committee of the Law Clinic. The committee is made up of staff, students and volunteer lawyers, and the latter provide the Chair, Vice Chair, Treasurer and Secretary of the committee. The staff and students provide reports to the committee, which meets termly, and also an annual report for the annual general meeting. Records are kept of the number and nature of enquiries, advice given, cases taken on, and sums of money gained or saved, and are kept under review. The student committee also liaises throughout the year with the staff.

**Supervisors – Qualifications, Experience & Workload**

All of the supervisors are solicitors with practising certificates, apart from a specialist employment law adviser. All of them are highly experienced practitioners (two with c 10yrs PQE, five with 20+yrs). They are also required to obtain a PGCHE qualification. Very roughly (the size, complexity and duration of cases and extra-curricular projects vary widely), on the assessed work each solicitor will be working with about 10 students and acting in about 25 cases per year, and on the extra-curricular work will be working with a further 35 students to varying degrees.

**Institution – Insurance, Complaints, Litigation & Reputational Risks**

Professional indemnity insurance is provided within the overall insurance policy of the University. A complaints procedure provides for complaints to be directed first at the member of staff who has been dealing with the matter, and then to the director, and if still not satisfied to the Chair of the management committee who is a volunteer lawyer and is not employed by, and is otherwise independent of, the University and Law Clinic. Five complaints have been made to the director in the last 24 years, one from a client, one from a witness and three from the party opposing the client of the Law Clinic. No legal action has been taken or threatened against the Law Clinic other than the pursuit of Freedom of Information claims.

**What are the limits on the number of students who can be involved ?**

For the assessed work the number of places available, currently c 65, are always oversubscribed and are thus awarded by ballot.

**What are the limits on the number and types of clients who can be helped ?**

The limits are set first by the decision to employ staff with expertise in the areas above. If a solicitor with expertise is available with regard to their own workload, a student is also available to work on the case, there is legal merit in the case, there is no conflict of interests, and the prospective client cannot afford the services of a lawyer, then the service is provided on a first-come, first served basis.

**What are the limits on the types of case / service that can be dealt with by pro bono law clinics ?**

This will depend upon the *raison d'être* and ethos of the law clinic in question.

**Is any pro bono assistance from Law students better than nothing ?**

'*any*'? Hardly.

**Professional Conduct Issues**

All students working on cases are required to read at the outset the Introduction and Chapters 1 to 5 of the Code of Conduct section in the SRA (Solicitors Regulation Authority) Handbook (Version 17: 12.8.16) at

<http://www.sra.org.uk/solicitors/handbook/code/content.page>

Students are also required to abide by various sets of guidelines issued to students by the Law Clinic about the conduct and management of work for clients.

