

# Fostering a Better Interaction Between Academics and Practitioners to Promote Quality Clinical Legal Education with High Ethical Values

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## **Introduction**

“When academics meet their practitioner friends, they invariably face criticism about their work and in particular about the education enterprise of which they are part. In their turn, practitioners are variously criticised by academics for their anti-intellectualism, pragmatism and economic orientation. Debates between academics and practitioners resemble a kind of ‘turf warfare’: each side stubbornly protects a position”<sup>1</sup>

The above statement is not only inspiring but, indeed, provocative for those interested in pursuing the debate on the status, role and interaction between academics and practitioners as professionals aspiring to maintain and promote legal education generally and more specially quality clinical legal education with high ethical values. It raises a host of questions the first and quite important of which is whether

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<sup>1</sup> Gold, N: “The Role of University Law School in

Professional Formation in Law: 1986 *Journal of Professional Legal Education* Vol. 4 No. 2 (December) p. 15.

Professor N Gold's statement, made over a decade ago, has relevance and application to the legal profession today. This calls for a fresh hard look at the profession: is it true to say that there is in fact today a "turf warfare" between academics and practitioners? If the answer is in the positive, what then is the nature and magnitude of the rift in the relationship causing the negative criticisms of one another and the stubborn protection of positions? Does such a rift in relationship have any impact on quality clinical education and related acquisition of high professional values? and if so, to what extent? What lessons can one draw from Professor Gold's analysis of similar issues and what issues, conclusions and recommendations can one put on the agenda to further the debate in the context of one's own experiences in one's own particular jurisdiction?

The present paper is a response to the call to address the above questions, and it focuses on the above and other related issues emerging so pertinently from Professor Neil Gold's provocative statement. The strong motivation for such reflection is not only the inspiration of the Professor's significant pronouncement but the writer's current experiences and personal participation in a few of the debates between academics and practitioners which focus on the very same issues of concern, some of which are listed above and discussed herein below.

A quick review of the profession from which the writer hails, reveals that all does not appear smooth between academics and legal practitioners. During regular joint meetings of academics (mostly Deans of Law) and practitioners (mostly attorneys and advocates serving on the Executive Committees/ Councils of respective professions) in South Africa, the practitioners are often critical of "the standard of academic education by universities", citing the problems graduates encounter with regard to numeracy and literacy skills; problems of lack of emphasis by universities on the importance of teaching accountancy as a subject for all law students; and problems encountered with teaching of a host of practical courses, to mention but a few<sup>2</sup>. The generality of these concerns extend far beyond the borders of South Africa. In the United States, for example, one academician recently remarked that "Responding to the criticisms of prominent members of the bench and bar about the failure of law schools to prepare law students for the practice of law, American Bar Association Accreditation Standards now require law schools to offer a course providing 'live client' or 'real life' experiences and every accredited law school now offers such a course"<sup>3</sup>. Other jurisdictions have their own share of experience of similar concerns.

In the case of South Africa, the response of some academics was that it was the task of universities to provide general education to all graduates and that vocational training had to follow, calling for the active involvement of the profession i.e. the practitioners only at the vocational training stage. Implicit in such argument was the suggestion that the practitioners have no business telling the universities (academics "providing general education") which courses to teach that are relevant to legal practice; practitioners should only actively involve themselves with professional education after graduation at the university. Rightly or wrongly, this lack of trust between academics and practitioners does exist and its impact on cooperation and close interaction between the two sectors of the profession needs to be addressed.

2 For details of these criticisms refer to the minutes of the Regional Liaison Committee meetings (held on 5 and 17 March and 20 April 1999) and those of the National Liaison Committee Meeting held on 4 June 1999 respectively and subsequently. For other aspects of criticisms against academics ("intellectuals" as they are often called) read: T W Setlhwane, "Are Black

Intellectuals as Mediocre as Mbeki says?" *The Sowetan* of 31 August 2000 p. 18. Read also an article entitled "Silent Black Intellectuals" by Prof. Jonathan D Jansen in the *City Press* of 8 December 2002 p.25.

3 JC Dubin: "Faculty Diversity as a Culture Legal Education Imperative" (2000) 51 *Hastings Law Journal* 445-446.

The present discussion, therefore, will attempt to highlight the most critical issues and to advance arguments aimed at stimulating and contributing to the debate on the need by all sectors of the legal profession to strive to maintain and promote quality legal education, and instill the highest standards of ethical values as part of their professional responsibility. Where problems are established that hinder attainment of those objectives, the same must be identified and eradicated in the overall interest of the stated values. It is in this context that the issue of fostering better interaction between academics and practitioners (our main theme) is discussed focusing mainly on:

1. Setting the context for maintaining and promoting quality clinical legal education with high ethical values by the profession;
2. Why fostering closer interaction between sectors of the profession is a critical factor
3. The failure to interact/cooperate: its nature, cause and impact.
4. Working towards fostering closer interaction: a South African perspective of the legal profession
5. Emerging lessons with new agenda for further debate

It is hoped that by sharing views on the above issues, the legal profession generally, and legal clinicians in particular, will be provoked to review their current programmes of linkages and build the necessary capacity for closer cooperation and interaction to promote legal education with higher ethical values as expected of the profession.

## **I. Setting The Context**

The context of the present debate necessitates an evaluation of the professional responsibility which requires a need to maintain and promote quality clinical legal education which also instills high ethical values to its recipients. On issues of maintaining quality in legal education, whether generally or with particular reference to clinical legal education, we have argued elsewhere that the pursuit of quality is a motherhood quest to which everybody subscribes, and went further to suggest strategies for better quality legal education in South Africa<sup>4</sup>.

In a more recent debate on the importance of quality clinical education, a young researcher has emphasized that lawyers must possess the full range of fundamental lawyering skills for them to be able to develop, analyse, collate, synthesise, identify and evaluate strategies for solving legal problems<sup>5</sup>. He has further argued that for students to acquire and master those skills, it is essential for them to have: a basic knowledge of the legal rules and their various authoritative sources; an understanding and appreciation of the relationship between law and the socio-economic environment in which it operates; and abilities to handle facts and apply the laws to them<sup>6</sup>. Members of the legal profession have not only to ensure that these important elements of clinical legal education are maintained and promoted but also that proper mechanisms are kept in place or even developed further to achieve the fundamental objectives of clinical education.

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4 Iya, PF: "Maintaining Quality in Legal Education with Diminishing Resources.." (11) Stellenbosch Law Review 2000 No.2 pp. 244-255.

5 QA Letsika: *The Future of Clinical Legal Education in*

Lesotho. A Dissertation submitted in Partial Fulfilment of the Requirements for the LL.M Degree of the University of Natal (Durban) p. (iii)

6 Ibid.

With reference to ethical values, every profession and business has its own standards and values or ideals/principles (also often referred to as “ethos”). These values, by whatever name we call them, constitute the professional/ business ethics of the particular calling. In the case of the legal profession, such ethics are variably referred to as “professional ethics”, “legal ethics”, “judicial ethics”, etc, depending on the focus. They are concerned with the rules of conduct and precepts which lawyers are required to adhere to in the course of practicing their profession as well as extra-professionally whilst they remain in the profession<sup>7</sup>; but also they provide the norms, principles and values in terms of which lawyer’s ethical conduct is judged in order to protect the public against professional misconduct<sup>8</sup>.

By ethics of the legal profession, therefore, is meant the body of rules and practices, which determine the professional conduct of the members of the legal profession. They form its ideals and its character, and they represent the behavioural practices of lawyers from time immemorial. Although some of the old ideals have changed with the innovations taking place in the various socio-economic and political conditions and requirements of each respective jurisdiction, a great deal of the values have survived the passage of time because they have been considered fundamental and inherent in the very conception of the profession<sup>9</sup>. They are, nevertheless, not necessarily universal since not many of them are of universal acceptance, nor can they determine the professional duty in all the varying circumstances of every case. However, certain of the values and principles have yet remained and can, in many countries, be found in the following sources:

- Legislation<sup>10</sup>
- Judicial decisions
- Rules of law societies<sup>11</sup> and canons of bar associations
- International conventions and codes<sup>12</sup>
- Common law
- Traditions and practices

With reference to the rationale for the regulation of the conduct of lawyers, there does not seem to be a very coherent statement of what the objectives of such regulations are, or should be. The views expressed on the same issue are many and varied. However, the following are regarded as the core values for professional ethics namely<sup>13</sup>

- To protect the public against professional misconduct
- To maintain the honour and dignity of the profession

7 Lewis, *EAL: Legal Ethics: A Guide to Professional Conduct for South African Attorneys* 1982 Juta & Co. Ltd p.1

8 *The Law Society of South Africa: Legal Ethics* 1999 PLT Practice Manuals p.9.

9 For further details read Iya, PF “Ethics of the Legal Profession: Problems and Possible Reforms in Uganda”: 1974 Unpublished dissertation submitted in partial fulfillment of the LL.M degree, at Yale University Law School pp. 2–5. Read also Randel and Bax; *The South African Attorneys Handbook* (3rd ed) pp. 1–29 and

*Lewis, Op. cit* pp. 1–6.

10 E.g. *The Attorneys Act No. 53 of 1979 as amended.*

11 E.g. *The Rules of the various Law Societies (in the Cape, Natal, OFS and Transvaal – (in so far as South Africa is concerned)*

12 *The International Code of Professional Ethics promulgated at Oslo on the 25th day of July 1956 and subsequently amended by such international bodies like the International Bar Association etc.*

13 See especially paragraphs 2,3,4,6,9 and 10 of the *International Code of Professional Ethics. Ibid.*

- To promote the highest standard of justice
- To secure a spirit of friendly cooperation by treating professional colleagues with utmost courtesy and fairness;
- To establish honourable and fair dealings with clients irrespective of the nature and calibre of those clients;
- To ensure that members of the profession discharge their responsibilities to the community in general.

In addition, it has also been argued that members of the profession must not only be ethical but should be believed to be so by all who come into contact with them, whether in their professional or private life. The interest in public service and the status as an officer of the court requires that the lawyer not only avoids evil but also the appearance of evil<sup>14</sup>.

The importance of and need for commitment to ethical values of any profession or business is expressed by providing for sanctions against those members who do not behave according to the expected standards. In that regard, one writer has suggested a golden rule in respect of those who fail to commit themselves. It states that a practitioner must avoid all conduct which, if known, could damage his/her reputation as an honourable member of the profession and as a citizen<sup>15</sup>.

He has also argued that this rule is not a counsel of perfection, for reputations are not damaged by those trivial lapses to which even the best are subjected.

“The point is that absolute obedience to the rule in all instances stands as an ideal to which each practitioner (of the profession) should consciously strive. Where a practitioner’s conduct falls short of the rule, the extent to which it will be reprimanded and dealt with as misconduct will depend upon its gravity or the frequency of its commission by that practitioner and it may well be that a number of trivial lapses revealing a pattern of indifference to the rule will promote disciplinary action, though each, in itself, was neither serious nor frequent”<sup>16</sup>

In the case of the legal profession, a set of duties have, over the years, been established against which to measure a member’s commitment to the values of the profession. These include the duty to the state, to the court, to the client, to colleagues and to the public at large. The acknowledgment and compliance with the professional values and efficient and effective performance of the professional duties are critical in ensuring maintenance and promotion ethical values. This should explain why absolute obedience to the rules of the profession remains the ideal for pursuance of the performance of professional duties and maintenance and promotion of ethical values. Any contrary behaviour showing a lack of commitment to those values must face disciplinary action for professional misconduct or unprofessional conduct<sup>17</sup>.

From the above discussion, it is clear that understanding the conceptual imperatives of quality clinical education with high ethical values is essential to the debate on cooperation in the legal profession.

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14 Iya PF: “Ethics of the Legal Profession: Problem: Problems and Possible Reforms in Uganda” *Op Cit.* p.3.

15 Lewis, EAL; *Legal Ethics Op. Cit* p.8.

16 *Ibid*

17 *The discussion between the two types of misconduct is itself contentious. The simplistic way of understanding it is to note the difference between ethics and etiquette.*

## **2. Why Fostering Closer Cooperation and Interaction is Crucial**

Our view of cooperation encompasses a broader perspective of working together for a shared purpose and it is characterised by managing relationships between organisations and individuals *inter se* severally or between them collectively. Unlike cooperation, interaction is proactive and involves the active management of the interaction within the relationship. Cooperation as a relationship may establish a link but interaction ensures active participation within the link. For that reason, while the need for cooperation in terms of coordination, management of diverse perspectives and general conflict resolution must be given prominence in maintaining and promoting legal education, programmes for the active interaction between and amongst members of profession (in our case the academics and practitioners) must become a priority. Doing so will increase the efficiency of individual professionals having an effect on each other by working closely together to solve problems.

In the case of the legal profession, for example, the ethos of the profession provides for friendly cooperation by treating professional colleagues with utmost courtesy and fairness and ensures that members of the profession discharge their duties to the state, courts, clients, colleagues and the general public. One very significant attribute of the duties is the well-established responsibility (also referred to as “an ancient aspect of professional calling”): namely the responsibility of seniors to educate, train and initiate newcomers into the profession. Government, acting in the name of the people and through the public service of its legal staff, has also the responsibility to ensure through legislation and regulatory authority that the legal profession is staffed by persons of sufficient competence so as to protect their clients’ and society’s interests. Besides the government therefore, lawyers in private practice (the “practitioners”), in the universities (the “academics”) and in the judiciary (the judges and magistrates) are all duty bound by professional ethics to ensure that members of the profession are equipped with sufficient competence for their role in society. What this requires is that members of the profession should be informed and knowledgeable about a wide range of matters, for law deals with all facts of life and law trained persons should have the appropriate skills to perform their demanding jobs with ability. The development of legal education for competent practice for all lawyers, therefore, depends upon the goodwill, cooperation and better interaction of all segments of the profession and government<sup>18</sup>. By achieving that objective, both the profession and government will ensure the protection of society from incompetent lawyers and by so doing will also ensure the maintenance and promotion of the professional values outlined above.

The question emerging from the above discussion is: why then limit the attainment of those ethical values? What challenges prevent the maintenance and promotion of those ethical values? Can we agree with Professor Gold that the mistrust, earlier alluded to amongst practitioners and academics, has created serious problems which not only challenge the professional responsibility of cooperation and closer interaction in the education enterprise but also challenge the wider values and ethos of collegiality in the profession? The subsequent paragraphs will address some of the above issues by first establishing the nature and causes of the problems, if any, between academics and practitioners after which the impact of the problems on ethical values will also be assessed.

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<sup>18</sup> Cold, N: “*Pursuing Excellence in Law: Comments on Professional Legal Education in Zimbabwe*” *Unpublished paper submitted to the Government of Zimbabwe on 11 December 1986.*

### **3. Problems Between Academics and Practitioners: Nature, Causes And Impact**

It has already been noted that where conduct falls short of the established standards, the extent to which it will be reprehended and dealt with as misconduct will depend upon its gravity or the frequency of its commission<sup>19</sup>. What this signifies is that before acknowledging whether the problems between academics and practitioners reflected in their criticism of one another provide such serious challenges to ethical values to merit reprehension, one needs to first establish not only the nature but the peculiar characteristics of the problems. Time and space can permit the discussion of a few of them.

#### **3.1 Nature and Characteristics of Failure to Interact**

##### *3.1.1 Conceptual problems with the terms “academics” and “practitioners”*

A simplistic approach to the term “academic” reveals that this is a college or university teacher/lecturer or a person who is a member of an academy i.e. a society of people interested in the advancement of arts, sciences or literature for the sake of knowledge. With the increase in the numbers and size of colleges and universities, there has developed a self contained professional community called “academics” or “academicians” who are separate and distinct from the practicing profession<sup>20</sup>. The roles of such “a profession” is characterized and described as theoretical, conceptual, political and abstract in their orientation as opposed to practitioners and the general profession who are said to be practical, functional, apolitical and concrete<sup>21</sup>.

What is often not considered is that even within the general concept of “academics” there are all sorts of sectoral problems of polarisations. Clinicians i.e. those academics who teach practical training are at “war” with traditional law teachers, the latter considering the education provided by the former as “second-rate<sup>22</sup>.” Proceduralists are often at odds with their substantive law colleagues and there are those who divide over skills on the one hand and knowledge on the other. The concept of “academic” is, therefore, blurred by a blanket of internal polarisation and mistrust.

Many pieces of legislation refer to “legal practitioners” as persons duly admitted to practice as advocates/barristers or attorneys/solicitors<sup>23</sup>. This certainly is a very narrow view of “practitioner” in the legal profession. A preferred view encompassing a broad perspective of the term ascribes to it a concept involving all legally trained persons involved in the occupation of the practice of law<sup>24</sup>. They consist of judges and magistrates, traditionally referred to as “the Bench”; lawyers in private practice, namely; the “Bar” made up of barristers/advocates and the “Side-Bar” consisting of solicitors/attorneys; law teachers in universities and other institutions; legal officers in companies

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19 See footnote 16 above.

20 *The Concise Oxford Dictionary: The New Edition for the 1990s.*

21 Gold, N: “Role of University Law Schools in Professional Formation in Law” *Op. Cit.* p.15.

22 For details read Iya, PF: “Addressing the Challenges of Research into Clinical Legal Education within the Context of the New South Africa” 1995 South African

*Law Journal Vol. 112 part II especially the topic involving academics in clinical legal education pp. 272–274.*

23 See, for example, Section 1 of the Legal Practitioners Act No. 15 of 1964 as amended by Act No. 13 of 1988 of Swaziland.

24 Iya, PF: *Skills Development for Competent Practice of Law 1996 PhD thesis p.15*

and corporations; and legal officers employed by governments in their various ministries and related organisations. In this respect all law trained persons are “practitioners” as broadly conceived although they may be involved in different occupations at a particular point in time<sup>25</sup>. However, for purposes of this discussion we use the terms “academic” and “practitioner” in their simplistic concept of university law teachers/lecturers for the former and attorneys/solicitors and advocates/barristers for the latter, i.e. according to their common usage in South Africa and elsewhere within the British tradition.

The emerging problem is as much a problem of misconception of terms as is the polarisation resulting from those misconceived terms and roles in the different occupations of the profession. The divisive dichotomies cause the profession a great deal of harm and create a sort of schizophrenia or even multiphrenia about the profession and law study being split into uncoordinated compartments instead of the profession being considered as a whole and legal education a continuum. What is worse is the resulting negative attitude of superiority and inferiority that have developed and have gone to undermine the profession and its education of lawyers.

### *3.1.2 Problems over the Control of Legal Education*

The legal profession is rampant with tension formalised by the struggle for responsibility and control over legal education influenced by the notion of the dichotomy of “academic” and “practical” study and application of the law. Much as the division may have existed for centuries, it has caused a serious problem by influencing the general direction of legal education along those two demarcations, thus swaying the essential objectives of legal education between those two poles. The recent reforms in the field of legal education in South Africa appear to worsen the problems.

One landmark reform, for example, recommended that the basic qualification for practice should be a degree in law followed by a year’s vocational training in skills<sup>26</sup>. The result of the recommendation revolutionised legal education by introducing what is today referred to as “the three stages of legal education” which in substance established the following: the first stage of legal education i.e. the academic study which emphasizes theory and develops in the student the academic and intellectual knowledge required in the practice of law (practice being given a broad perspective); the second stage i.e. the vocational study of law after the law degree and consisting of practical training focusing on acquisition of skills and values for the practice of law; and the third stage i.e. continuing legal education whose aim is not only to ensure the growth of the young practitioner into a fully mature lawyer, but also to assist all practitioners to keep abreast with the current theoretical knowledge and practical skills to meet the new demands of the practice.

The above division is significant as a problem in not only entrenching further the dichotomy of “academic” and “practical”, but also in introducing problems of allocation of responsibilities and control over legal education. For all intents and purposes, universities insist, and their law schools zealously protect, their “academic” role in stage one and the “practitioners” would not let go (to

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25 *Ibid.* It is interesting to note that the new legal Practice Bill, 2000 of SA does not give any definition of a “Legal Practitioner” although it defines rather obscurely “a legal practice” to mean a structure or arrangement in terms of which two or more legal practitioners practice

in partnership with one another or practice as a corporation of the nature described in Section 23(1)(a) of this Act.

26 The 1971 Ormrod Report on Legal Education in England.



universities) their responsibility and control of stages two and three. This tension which, as a matter of fact, is currently being experienced in South Africa, is also in existence in many jurisdictions struggling to reform their systems of legal education<sup>27</sup>.

### ***3.1.3 Problem with Content and Delivery of Legal Education***

Associated with the problem of separating the elements of legal education into self contained blocks, usually insulated from one another, very little effort is made by law schools to bring in the rich learning from other disciplines. Rather, because it is “the academic stage”, substantive law learning of scholarly content must be crammed into a short time. The appreciated caliber of lecturers are those with postgraduate qualifications from overseas universities, preferably Oxford, Cambridge, Harvard, Yale, Stanford etc, most of whom have little or no experience of private practice. The result is the problem with such academics underestimating the importance of the knowledge of what happens in practice. More importantly, the resulting attitudes are held responsible for the absence, or lack of emphasis on skills development and multi-disciplinarity in law schools. When suggestions of practical training are put forward to such academics, they quickly react by asserting that such a programme of training is not for universities as they are “necessarily illiberal, amoral, narrow, reactionary, anti-intellectual, impractical or unnecessary”<sup>28</sup> The attitudes of these kinds of academics spill over towards resisting the implementation of legal skills development programmes (practical training courses) in their law schools; they dislike the idea of allocating additional time for such programmes when forcefully introduced; and they even resist employment of full-time clinicians for practical training<sup>29</sup>; and when such lecturers are hired, they keep them away from the tenure track, or block their promotions by applying traditional classroom and scholarship criteria<sup>30</sup>.

### ***3.1.4 Problems with Research***

It is not the intention here to question the enthusiasm of academics to participate fully in research pursuits, especially those directed towards improvement of legal education. The particular research problem that has, however, been identified relates to research on clinical issues. What has transpired in this regard is that academics, with their enthusiasm for research, avoid educational issues of clinical or practical nature for the obvious reason of their being ill-equipped. In fact they push it aside as merely the concern, if at all, of practitioners. Ironically, the clinicians with their largely practitioner background, totally discard research of any scholarly nature, arguing vehemently that that is the concern of academics.

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27 The writer was a party to meetings of Law Deans and sectors of the profession held on 9th and 10th October 2000 organised by the Association of Law Teachers of Southern Africa and Law Society of South Africa respectively to discuss the new Legal Practice Bill which is attempting to resolve the contentious issues on the nature and control of vocational training.

28 Twining, WL: “Legal Skills and Legal Education” in:

*The Law Teacher: A Journal of the Association of Law Teachers* (1988) Vol 22 No. 1 pp.9–10

29 Clinicians in law schools are lecturers hired to impart practical skills/training to students of law.

30 For additional arguments of the negative nature read Iya, PF *Skills Development for Competent Practice of Law Op. Cit* pp. 243–245.

The problem, therefore, is that most law teachers, including clinicians, forget that clinical education has considerable potential for contributing to legal scholarship and in its own right can be a component of that process. Indeed, the presence of clinical education in the law school does enhance the quality and diversity of teaching and research in the orthodox faculty<sup>31</sup>.

### 3.2 Causes of the Problems

The above are but a few of the easily identifiable problems that characterise the relationship between academics and practitioners. A significant thread of concern that runs through all these problems is the resulting lack or diminishing cooperation, making close interaction between academics and practitioners even more difficult. The deeper the division, the further away are the poles. Any attempt, therefore, to bring closer the polarised divisions in the interest of better interaction requires a fresh look not only of the identifiable problems but their causes as well. Below are a few real or perceived causes:

#### 3.2.1 Historical Legacies

As a consequence of colonisation of Africa especially by the British, there followed an importation of British laws and legal systems on the social norms and cultures already existing among the indigenous African societies. Traditional methods of dispute settlement were gradually disregarded in favour of western models of administration of justice. The procedures of courts and of the many tribunals established by the British (in direct conflict with indigenous ones) came to be based upon the western adversary system in which the parties have, or are believed to have, the opportunity and responsibility for developing or presenting the relevant facts and legal contentions. The ensuing adversary system, which was inherited with the rest of the British legal system, imported the notion that the legal profession is essential if justice is to be properly administered. Equally essential to the adversary system was the division in the profession, characterised by the division in occupation of lawyers shared largely between the two poles of barristers/advocates and solicitors/attorneys – hence the development of the notion of a “divided” as opposed to “fused” profession, each with its peculiar ethical values and professional duties.

The establishment of universities and assigning to them (especially as from mid-19th century) the responsibilities of legal education worsened the division in the profession by introducing a new class of professionals – the academics. Colonialism, therefore, ensured that not only were the “divided” professionals imported and imposed, but even the academics in the few ivory towers were recognised and promoted to suit the colonial masters. The inevitable consequence has been that even after independence the policies, expectations and traditions regarding lawyers have continued to be based on the British models. In fact, it is submitted here that due to the historical factors outlined above, lawyers in those African countries colonised by the British are, even today, required by law, international conventions and tradition to adhere to the professional objectives and other related characteristics derived from the British trained lawyers during the colonial era<sup>32</sup>.

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31 Dutille, FN: “The Problem of Teaching Lawyer Competency” in Dutille FN (Ed): *Legal Education and Lawyer Competency – Curriculum for Change* (1981) West Publications p.4.

32 We have given detailed arguments on the issues of historical perspectives in our paper “Ethics of the legal Profession: Problems and Possible Reforms in Uganda” *Op. Cit.* pp. 3–4.

### *3.2.2 Attitude of Commercialism*

A controversial cause, responsible largely for polarisation in the profession, is the attitude of commercialism in the practice of law. To many lawyers the profession is just like any other business where the primary motive is the accumulation of wealth, as opposed to the primary objective of rendering services. To such lawyers the general standard of professional success and the daily measure of service rendered are all gauged in terms of money. This type of attitude can be a serious source of concern as it contributes to the polarisation between public interest lawyers (among which fall academics) and private interest lawyers. A feature of the division is the rejection of public jobs in favour of private practice resulting in shortage of academics and other public interest lawyers and the perception that public lawyers are “second rate” when it comes to protecting and promoting the interest of clients by private practitioners. In this regard the danger of deviating from the ethos of the profession in favour of commercialism can not be ruled out.

### *3.2.3 Insufficient Knowledge of Ethics of the Profession*

Most lawyers, especially those recently trained, know quite little, if anything, about ethics because most law schools do not consider it their responsibility to teach such a course. Even where it may be taught, the course is treated as an “elective” course and at best allocated very limited hours. Even the attendance of schools of legal practice, where the course is compulsory, is limited to just a few new graduates. This lack of or insufficient knowledge can be the cause of a real problem because in the absence of any proper guidance, the solution of ethical issues is left to the sense of fairness of each individual lawyer (academic or practitioner) and the inevitable result is that self-interest based on economic gains often becomes the chief determining factor.

It is conceded that people are not necessarily made moral by lectures on ethics. However, it should be noted that lapses from expected standards are often due to ignorance and that a diffusion of knowledge of ethical rules applicable to a particular profession will certainly contribute negatively to the maintenance and promotion of high standards of efficiency and integrity<sup>33</sup>.

### *3.2.4 Failure to Discipline for Misconduct*

It is common for the general public to complain about the conduct of lawyers but in most cases such complaints remain unprosecuted<sup>34</sup>. The damage thereby caused to the image of the profession needs no over-emphasis.

## **3.3 Analysis of the Impact**

We would like to contend here that for efficient and competent performance of professional duties, a major goal must encompass a moral sense of responsibility and integrity based on strong ethical values. In the case of the legal profession, the essential quality of any person who seeks to practice as a member of the profession is integrity which requires every lawyer to discharge his/her duties to the state, client, the court, the colleagues and members of the public with honesty,

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<sup>33</sup> *Ibid.* pp. 5 –6.

<sup>34</sup> For additional information read: Benson, R: “Catching

Crooked Lawyers” in the *Mail and Guardian* of January 5 to 11, 2001 p. 17.

candour, honour and dignity. While acknowledging these qualities as essential objectives in guiding the conduct of lawyers (or any profession for that matter), one cannot lose sight of the many unfortunate factors that combine and have currently accumulated to reduce, and in some cases completely eradicate, the attainment of such noble objectives. We have discussed a few of those factors and have come to conclude that lack of general cooperation and specific instances of poor interaction among professionals, (and for purposes of this paper, between academics and practitioners), impact negatively on the attainment of those noble objectives. Proper maintenance and promotion of ethical values can not take place under those conditions. What is left, therefore, is to establish the nature and magnitude of such adverse effects.

To the extent that most of the problems herein identified centre around the problem of cooperation and poor interaction among sectors of the same profession, they exemplify typical situations of unethical conduct by members of the same profession. They illustrate evidence of malpractice to the extent that such conduct could have adverse effects on academic/practitioner relationships. For sure they damage the image and function of the profession in society and with that follows the adverse effect on the general administration of justice.

The damage is even greater in the area of legal education. Instead of focusing on providing the best form of education in preparation for competent practice, one finds academics and practitioners focussing narrowly on their occupational self interests which “each side stubbornly protects” with neither side appearing to want to attend to the real concern of the other. This in turn impacts negatively on an effective educational programme which, in its fullest sense, will prepare future graduates for a large number of professional roles, each of which will demand a core of knowledge, skills and values for basic proficiency and general competence.<sup>35</sup>

## **4. Towards Fostering Closer Interaction in the Legal Profession**

### **4.1 Acknowledgment of existing Programmes of Cooperation**

It would be unfair to assume or state that there is total lack of cooperation between academics and practitioners on grounds of their existing polarisation. In the case of lawyers in South Africa, for instance, evidence of such cooperation is abundant as confirmed by the national Director of Practical Legal Training in the ten schools of legal practice in the country. He has acknowledged that:<sup>36</sup>

- (i) There is some constructive co-operation between the university sector and private practitioners and the profession in general appreciates the work that is done by the universities in preparing law students for the profession, although more emphasis could be placed on the development of the relevant skills;
- (ii) Structured liaison systems exist in terms of which three regional meetings and one national meeting are held annually between the branches of the profession and tertiary legal education institutions;

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<sup>35</sup> Gold, N: “The Role of the University Law Schools in Professional Formation in Law” *Op. Cit* p. 15.

<sup>36</sup> These are arguments extracted from a letter written by the National Director of Schools in Legal Practice to the author of this Paper.

- (iii) The profession, through the Attorney's Fidelity Fund is, to quite a large extent, involved in the funding of law faculties. Grants are made with regard to expenditure generally to assist universities with capacity building. Bursaries are made available to law students and special grants are made with regard to affirmative action programmes. The Fund further gives a substantial subvention to Legal Aid Clinics to pay salaries of directors;
- (iv) Various universities have offered premises to vocational training and some universities are making available venues for short courses for private practitioners while others have made available venue for full-time training schools of six months. In these cases, universities further provide administrative staff and other support;
- (v) Several members of the attorney's profession are serving on faculty boards. The Law Society of South Africa (LSSA) directors of the Schools for Legal Practice are all serving on one or more faculty boards in the country;
- (vi) The full-time School for Legal Practice is governed locally by a Board of Control and Universities in the region and the attorneys' profession have equal representation on the board. Both sectors therefore contribute to the development of the programme, selection and awarding of certificates;
- (vii) In two cases where the School is not situated on a university campus, the programme is accredited by law faculties. For example, the East London School is accredited by the Fort Hare University;
- (viii) Individual members of faculties are often appointed as instructors at the Schools for Legal Practice, Practical Legal Training courses or Continuing Legal Education (CLE) seminars;
- (ix) The CLE division of the Law Society of South Africa has established post-graduate diplomas in conjunction with certain universities; and
- (x) The attorneys profession acknowledges the expertise that is available at universities. Committees of the profession from time to time approach members of university staff to advise on specific aspects.

Despite the above efforts, we have already stated a detected absence of smooth interaction among South Africa's academics and practitioners. The relationship has not been all that blossoming.

#### **4.2 Towards Fostering Closer Interaction: A Systematic and Holistic Approach**

In our view, the route for a closer interaction between academics and practitioners is by formation of partnerships whether at university, faculty, student or individual levels. We are strengthened in this regard by many writers with whom we agree that:<sup>37</sup>

- (i) The main mechanism for closer interaction in terms of networking, sharing of resources and dialogue is the establishment of partnerships. Partnerships create the necessary space for the actors in different institutions to come together and get things done and develop skills in collaborative ways for the common good. Partners are given the opportunity to engage in collective inquiry, not simply as a technique of using existing skills to solve

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<sup>37</sup> Mneney, E: "Mechanism for Implementation of Networking Sharing Resources and Dialogue" in: *Transforming South African Universities* (Iya, PF Ed) 2000 Africa Institute of South Africa pp. 122–129. See also Morgan, P: *Capacity Development and Public and Private Partnership* (1998) UNDP publication.

existing problems; the goal or ultimate outcome of such inquiry should be systematic impact. By focusing on a series of actions directed at the development of skills and knowledge, participants will also be able to develop the attitude and mindset needed to bring about the desired result.

- (ii) The main objectives of such partnerships should be to develop and nurture an informed and active group of institutions and individuals severally or singly that can provide mutual support and information to enable them to promote ethical values. They should create the appropriate fora where different perspectives can be presented, debated and synthesized. Such partnerships should also make it possible to optimize the use of scarce resources and talents resulting in a level and quality of service which neither group or individual could achieve alone;

4.2.1 Since partnerships are complex in their own way, the following steps need to be followed before a partnership is established:–

- a) Institutional analysis; The objective of an analysis is to assess the specific capacities which exist; their strengths and weaknesses; and how institutional capacity requirements can be met. This could then be followed by an analysis of how the knowledge and skills of the staff in different institutions can be used collectively;
- b) Formulation of a clear collective vision and target. The end vision should be kept in mind all the time;
- c) Formulation of principles to guide the partners in achievement of targets;
- d) Formulation of key processes and systems: such systems should be flexible enough to allow variations where necessary without the need to comply with complex procedures;
- e) Selection of areas for initial collaboration: it may not be practical to start a partnership with too many issues to be addressed. It is important for partners to select priority areas on the basis of explicit agreed criteria;
- f) Creation of incentives: since the objective of a partnership is not only to develop but also to nurture sustainably an active group of people, incentives may be used to acquire the services of committed coordinators, facilitators and administrators necessary for the survival of the partnership;
- g) Formal legal instruments: the above variables under 4.2.1 should be formalised legal instruments such as cooperation agreements or at least Memoranda of Understanding.

4.2.2 While partnerships provide the space for collaboration, specific mechanisms for networking, sharing of resources and dialogue have to be agreed upon by the partners. The mechanisms include:

- a) Organizations of periodic conferences, seminars and workshops. These provide ideal opportunities for advocacy and dialogue. Depending on the

expected output, the number of participants and other specific details may vary. However, in all cases the presentations made, the involvement of participants and the outcome of such activities should focus on the collective vision;

- b) Information dissemination through newsletters and websites.  
Websites can be used as teaching aides. Students and staff from partner institutions can access lecture notes and other information through websites. The possibility of downloading texts and graphics from computers in partner institutions make this a useful mechanism for sharing resources;
- c) Publication of joint educational journals: a journal is an ideal avenue for reflective and critical analysis of issues. It is also an important source of knowledge and information;
- d) Management of an information exchange system: it should be a system for continual accrual of up to date information. The information base should be designed in a way which allows the accumulation of detailed information. Such a base should require a continuous effort keep it current, relevant, appropriately structured and accessible to all partners. The latest developments in information technologies can be used to create such a base. Networks which allow users to access files and other applications on other computers are possible;
- e) Collaborative research projects and outreach programs involving the pooling of skills and resources;
- f) Developing teaching materials;
- g) Joint short courses and postgraduate programs;
- h) Collaboration with institutions outside the partnerships

## **5. Emerging Lessons with new Agenda for Further Debate**

### **5.1 Emerging Lessons**

In discussing the need to promote quality clinical legal education with higher ethical values in the legal profession, apart from establishing the existence of problems of interaction between academics and practitioners, this paper has focused more particularly on the need for closer interaction between the two sectors of the profession. The strategy of engaging a systematic and holistic approach and mechanisms of achieving them through specific processes has been identified as the core of all suggestions submitted for the profession. This is where the lesson for the various sectors of the legal profession begins. According to a recent survey, there is, the world over (whether in the Americas, Europe, or Asia), a network of clinicians which fulfil a vital role in stimulating the development of quality legal education both in the academic and practical sectors<sup>38</sup>. In this regard we can learn from other disciplines which have argued that

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<sup>38</sup> Rossouw, D. "Ben-Africa Joins Networks Across the Globe" "Ben-Africa's Newsletter Vol. 2 Issue No. 2 of June 2000 p.1.

“By bringing persons who work in this field in regular contact with one another they are able to learn from and stimulate one another. Interaction like this facilitates the process of each region of the globe finding its own unique voice. Each new voice that emerges in this global conversation represents not only a source of creativity, but it also challenges the rest of the globe to rethink the way in which they have conceptualised (business) ethics till now<sup>39</sup>.”

In our view, as legal educators rise to the challenge of rethinking the way in which they have to position themselves in the global arena of legal education network and analyse issues of fostering closer interaction amongst the role players, (especially the academics and practitioners), they should not lose sight of the experiences of other professions. Our suggestion of a systematic and holistic approach in fostering closer interaction for the sectors of the legal profession could therefore, be the strategy to follow. The rest of the mechanisms discussed as additional techniques could also be considered as part of the emerging lessons to be learnt, provided that at the end of it all the voice of legal clinicians can ‘become articulate and audible within this global community of persons devoted to the quest for meaningful clinical legal education’<sup>40</sup> – a remark with which we could not agree more.

Another important lesson relates to the degree of commitment required in the pursuit of the systematic and holistic approaches suggested above. It is one thing to acknowledge the need to foster closer interaction but it yet another to commit oneself to ensuring effective implementation of the strategies set to attain that mission. New initiatives have to be constantly designed and reviewed to drive members to identify themselves fully with the values and challenges presented by the new demands of social transformation.

## **5.2 The new Agenda for Further Debate**

At this stage of our discussion, it has become clear that Professor Gold’s remarks, referred to in the introduction to this paper, have indeed proved provocative, considering the trends of arguments so far advanced. Critical to these arguments are issues of conceptualizing the points raised by Professor Gold and establishing the nature, causes, scope, impact and solutions to problems of lack of cooperation between different sectors of the legal profession – the academics and practitioners in the present discussion. While acknowledging some common lessons emerging from these general discussions, the direction for future debate should be identified so as to systematize and facilitate the process of the emerging debate. For that reason the following items are being suggested to constitute a working agenda for further debate on maintaining and promoting quality clinical legal education with high ethical values in the context of whatever jurisdiction the debator may find him/herself.

## **5.3 Quality Assurance in Clinical Legal Education**

If every sector of the legal profession collectively accepts responsibility for ensuring continuous improvement of the quality of legal education generally, and clinical legal education in particular, then the vision and mission of providing that quality should be given the priority it deserves. The new agenda being proposed here is, therefore, one which brings to the fore a more focused debate

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<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*



on the development of a quality management and assurance framework which guides the planning as well as the processes of implementing, evaluating, reviewing and improving clinical legal education. The issue at stake in this kind of debate is that the task of ensuring quality legal education is a shared responsibility. Neither should it be left to the state nor to educational institutions (for academics), but rather, its success ultimately depends on the commitment of every sector of the legal profession working together with all role-players of legal education. The strategy of achieving this vision needs further debate in the context of the problems of cooperation/interaction, the concern of the present discussion.

### ***5.3.1 Team Building to Achieve Shared Vision***

Given the assumption that quality management and assurance in clinical legal education is a shared vision and responsibility, the emerging issues is one of team building to achieve that vision. The critical issue here for further debate should, therefore, centre on team building in the context of new demands at times of great change. The opportunities facing us today also demand new ways of interacting with others. We need to learn and unlearn more things more quickly than we have. We need to build new bridges and learn to succeed through the joint efforts. Therefore, the strategy for team building to achieved share vision is being put forward as a critical item on an agenda to debate issues of fostering closer interaction among the various sectors of the legal profession.

### ***5.3.2 Professing professionalism***

Commitment to ethical values and principles will always be at the core of every profession. As already observed in our earlier discussion, criticism about the conduct of the members of the legal profession continues to influence their approach towards cooperation in promoting quality clinical legal education. Any future debates on the concerns for this kind of cooperation and closer interaction should add to the agenda items issues of professional responsibility in the context of the new educational and changing socio-economic landscape influencing the promotion of quality clinical legal education with high ethical values.

## **6. Conclusion**

It has not been the purpose of this paper to exhaust the subject of rampant criticism influencing the maintenance and promotion of quality clinical legal education with high ethical values. Rather, it has been its purpose to establish, examine and raise pertinent questions and issues about the relationship between academics and practitioners especially in the legal profession. Efforts have been made in the present debate to address and answer some of the questions, as much as offer tentative solutions to others. The paper has equally attempted to stimulate further inquiry by suggesting a few unexplored fields, like creation of viable, sustainable and development-oriented partnerships, and linkages through team building and professing professionalism. The issues raised may not be agreed upon in all the points by many. However, they serve as a framework in which to investigate further the challenges facing the maintenance and promotion of quality clinical legal education with high ethical values in general and more particularly those facing the better interaction between academics and practitioners; critical sectors in the legal profession.