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International Journal of Clinical Legal Education

Articles

How do you *feel* about this client? A commentary on the clinical model as a vehicle for teaching ethics to law students – *Kevin Kerrigan*

Clinical Legal Education in the Law University: Goals and Challenges – *Margaret Martin Barry*

Clinical legal education and Indegenous legal education: what's the connection – *Anna Cody and Sue Green*

Clinical Practice

Constructing a Clinical Legal Education Approach for Large Multicultural Classes: Insights from the Nigerian Law School – *Ada Okoye Ordor*

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The primary criterion is: is this a work that thorough description, analysis and critical reflection adds to our understanding of clinical legal education and is of interest to an international audience? Contributions of an interdisciplinary nature that link clinical legal education and the relevant higher education and professional development literature are welcome.

This is a criterion that cuts both ways – very UK-orientated (or US-orientated) pieces might have merit but may be so introverted as to lack the international element – other papers might cover something which is of such interest to an international audience as to be worthy of publication. The best papers will often be rooted in a specific local experience – but will be able to draw that into a larger theoretical context that has wide relevance across jurisdictions.

Refereed status: All articles published in this section of the Journal are refereed by two independent referees with expertise in clinical legal education.

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The Clinical Practice section is intended for more descriptive pieces. It is not peer-refereed. These will generally be shorter articles. They may focus on the general clinical context in a particular country – or describe a particular clinical programme, or a new type of clinical practice or clinical assessment. This section is intended to be less formal than the refereed part of the Journal, enabling clinicians to share experiences. The main criterion for acceptance is that the piece is likely to be of interest to the Journal's readership.

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Contributions should be typed with double spacing throughout on one side of uniform size paper (preferably A4 size) with at least a one inch margin on all sides and pages should be numbered consecutively. Manuscripts may be submitted by post or e-mail. Submissions on disc will be accepted where they are of Word format. In such cases a hard copy should also be submitted. A cover page should be included, detailing the title, the number of words, the author's name and address and a short biographical statement about the author.

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Foreword

Report back from the July 2007 IJCLE conference in Johannesburg:

Report-backs from conferences can be exasperating to read. If you were there, you can sometimes wonder if you were attending the same conference as the author – and if you weren't there, you often regret the omission. Certainly the latter is likely to be true in this case, as there seemed to be agreement among all the delegates that this summer's IJCLE conference in South Africa was hugely successful – and equally valuable.

It was a superbly organised conference – and I can say that because so much of the credit for that organisation lay with our partners in the South African clinical movement, and with the support of AULAI, in making all the conference arrangements in the splendid facilities at Witwatersrand. Running a conference long-distance is always a daunting task – and the 2005 IJCLE conference at Monash set very high standards; but the work put in by all the team in South Africa ensured that the Johannesburg conference was a very special experience. I have to pass on my particular thanks to Shaheeda Mahomed and Danny Wimpy Alex for their enormous hard work and support.

What was it – apart from the organisation – that made the conference so successful? First, it was a conference where there was a good balance between representation of the host country, and input from a huge range of clinical jurisdictions. We not only had a series of papers that illustrated the particular challenges and developments within the South African context – but also a considerable variety of papers from the United States, the UK, China, India, Australia, Uzbekistan and a host of other jurisdictions. There was a huge benefit in being able to move from narrowly focussed papers about particular aspects of clinical teaching, to more wide-ranging questions about shared clinical values and approaches. As ever the conference was characterised by the enormous generosity of the delegates in sharing experiences and providing support for one another's programmes.

I am not surprised at the enormously positive feedback I have received in the months following the conference – and it sets a challengingly high standard for future conferences.

Speaking of which …

The 2008 International Journal of Clinical Legal Education conference

This will take place on Monday 14th and Tuesday 15th July 2008 in at University College, Cork in the Republic of Ireland.

Initial details are up on the Journal website – www.ijcle.com – and the conference organiser, Maureen Cooke, can be contacted at: maureen.cooke@northumbria.ac.uk

The theme of the conference is "Lighting the Fire", drawing on the quotation from W B Yeats that "*Education is not the filling of a pail, but the lighting of a fire.*" Papers are welcome on all aspects of clinical legal education – and a call for papers has gone out.

In this edition

This edition of the Journal brings together four articles, which address different aspects of clinical practice.

In the first of the articles, Kevin Kerrigan, a Reader at Northumbria University in the UK, and founder of the Criminal Appeal clinic within Northumbria's Student Law Office programme, looks at the issue of the teaching of ethics within clinical programmes. Anyone who follows clinical scholarship will be aware of the continuing focus on the role of clinic in inculcating ethical awareness and values in clinical students. Kerrigan's article makes reference to much of that scholarship, but has at its heart a fascinating survey of UK clinicians, asking them to comment on different aspects of the mode and the function of ethical teaching in clinics. Kerrigan places this within the context of fast-changing structures for the vocational stage of English legal education, while identifying different typologies for ethics dialogues that may be being utilised by clinicians.

Margaret Barry's article looks at the way in which clinical practices are developing within the Indian law schools. India represents such a distinctive legal jurisdiction that it is unsurprising that clinical learning has developed in a similarly distinctive fashion. In her article, however, Barry identifies the way in which, although clinic has had high level endorsements, and clearly has an huge potential for helping to meet unmet needs for justice, there has been at best "modest" progress. Valuably Barry draws on the recent assessments of the need for educational reform within the U.S. contained in both the Carnegie Foundation report and in the Best Practices project published by CLEA, and edited by Roy Stuckey. The paper is thus able not only to assess the Indian experience in its own terms, but to bring to bear a wider evaluation of the current achievements and the future challenges.

In a very different context, Anna Cody and Sue Green look at two different aspects of clinical legal education in relation to education for Indigenous students in Australia. Although the particular context is clearly unique to Australia, readers will no doubt recognise many of the issues that arose for the authors. Students who found themselves initially isolated, disorientated, and in danger of dropping out, who then find through clinical learning the really valuable education which they were looking for. It is interesting to see clinic used as part of a deliberate policy of "enrichment" of the curriculum in even the earliest stages of the courses, in order to help support student learning by engaging students with the curriculum. The paper continues by looking at the way in which non-Indigenous students in the later stages of the curriculum can be given an understanding of the reality of the Indigenous experience, and the implications for their own future work as practitioners.

Finally, I am delighted to include in the Clinical Practice section an article from Ada Ordor which looks at the whole experience of the Nigerian law school, and the particular implications for the development of clinical programmes which fit with the needs of the Nigerian teaching system. The article outlines the range of different teaching activities that are brought to bear within the Nigerian law school, but also at the way in which clinical activities could be used to add greater value – and the ways in which this can be achieved.

Philip Plowden

Editor

"How do you *feel* about this client?" – A commentary on the clinical model as a vehicle for teaching ethics to law students

Kevin Kerrigan[1]

Introduction

This article explores why law clinics can be the most creative, exciting and productive way of inculcating knowledge and understanding of ethical issues and why sometimes they are not.[2] I am concerned to understand what methods can be employed to successfully engage students with ethical questions in the context of their clinical case work. I am also concerned to avoid the complacent view that simply by exposing students to real or realistic cases we can ensure deep appreciation of ethical concerns.[3] By ethics here I mean not only understanding of the relevant professional lawyer codes but also a broader and deeper engagement with what it means to be a lawyer and the moral attitudes, decisions and outcomes implicit in legal practice.[4]

It is first essential to acknowledge that there is no universal agreement on the superiority of clinical

1 Kevin Kerrigan, Reader in law, and Student Law Office Supervisor, Northumbria University, Newcastle upon Tyne, United Kingdom. This article is based on a paper delivered at the International Journal of Clinical Legal Education conference in Melbourne, Australia, June 2005. I am grateful for the helpful comments from fellow delegates and in particular the kind assistance of Mary Anne Noone and Judith Dickson of La Trobe University, Melbourne. Errors and omissions remain my responsibility.

2 For discussion of ethics in the context of clinic see Moliterno, "On the future of integration between skills and ethics teaching – clinical legal education in the year 2010", *46 J. Legal Educ. 67 (1996)*; Myers, "Teaching good and teaching well: integrating values with theory and practice", *47 J. Legal Educ. 404 (1997)*

3 My discussion relates mainly to live client models, although part of my argument is that live client clinical work needs to be informed and supplemented by classroom based and simulated activities.

4 In this context see Bennett, "Making moral lawyers: a modest proposal", *36 Cath. U. L. Rev 45 (1986)* which attacks the "mythical separation of law and morality".

methodology for teaching legal ethics. Claims as to the necessity of a clinical approach are numerous and longstanding.[5] However, there is a body of skeptical comment which remains to be convinced[6] or has reservations as to the ability of clinic to deliver what it promises.[7] Robertson[8] has argued that clinics, at least in Australia, offer restricted places for students for limited time periods and have numerous learning outcomes of which ethics learning and experience may only be a small part. He maintains that "high quality learning outcomes in ethics cannot be guaranteed" and are "more likely to be achieved when the learning environment is crafted to ensure that students engage with these with the level of attention they require." These concerns coupled with the rationing of clinic due to its expense means that, "… there are doubts about the extent to which clinics can be relied upon to provide quality learning opportunities in legal education generally, and in the development of ethical competencies in particular."[9] I do not wish to deny the existence of problems with using clinic to teach ethics[10] and I certainly agree with the notion that clinic does

5 Jerome Frank, way back in 1933, was arguing that, "*Professional ethics can be effectively taught only if the students while learning the canons of ethics have available some first-hand observation of the ways in which the ethical problems of the lawyer arise and of the actual habits (and 'mores') of the bar.*" Jerome Frank, "Why Not a Clinical Lawyer-School?", *81 U. PA. L. Rev. 907* at page 922. See also Neil Gold, "Legal Education, Law and Justice, The Clinical Experience", *44 Sask. L. Rev 97*; Andy Boon, "Ethics in Legal Education and Training: Four Reports, Three Jurisdictions and a Prospectus" *(2002) 5 Legal Ethics 34*; and Peter Joy, "The Ethics of Law School Clinic Students as Student Lawyers" *45 South Texas L. Rev. 815* at page 836-7: "*By interacting with clients, lawyers, and others in role as lawyers, clinic students begin the process of truly becoming lawyers. In no other course are law students able to confront their own behaviour and relationships with others. And, unlike other law school subjects, legal ethics or professional responsibility is about a lawyer's relationships with others.*"

6 See Robertson, "Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective" *[2005] Legal Ethics 222* at page 233: "*… the case for clinics as sites for deep, authentic learning experiences in legal ethics would always need to be demonstrated conclusively. Unfortunately, some of the literature that celebrates the contributions of particular clinics to 'deep learning' in ethics provides little in the way of hard evidence to back the claims.*" There is some hard evidence at least regarding the impact of simulated clinical methodology on moral development. Steven Hartwell reported a research project with law students using Kohlberg's Defining Issues Test whereby they were tested at the beginning of a simulation ethics course and again at the end. The intervening period was spent in small group non-directive discussions of realistic ethical dilemmas and reading articles on legal ethics. During the three years of the study the DIT mean score rose respectively 10 points, 14 points and 10 points, all extensive improvements. He found no significant improvement when conducting the same test with other simulated classes such as negotiation and interviewing and counselling. I am not aware of a DIT study using live client clinic students. Hartwell declined to undertake one due to the small size of the clinic classes and his belief that live clinic would not significantly improve students' moral reasoning. See Steven Hartwell, "Promoting Moral Development Through Experiential Teaching" *1 Clinical L. Rev. 505 (1994–1995)*.

7 Moliterno has reported, "*… concerns by classroom professional responsibility teachers that clinicians pay too little attention to the law of professional responsibility and … concern by clinicians that classroom professional responsibility teachers are out of touch with the day-to-day rigors of practice, especially poverty practice.*" James E. Moliterno, "In House Live Client Clinical Programs: Some Ethical Issues", *67 Fordham L. Rev. 2377*. Steven Hartwell, *supra* note 6, has argued that live client experience may be too sporadic to ensure consistently high quality ethical learning: "*Although moral questions certainly do arise spontaneously in clinic work, they do not arise with the same frequency as they arise by design in a professional responsibility course.*" Steven Hartwell, "Promoting Moral Development Through Experiential Teaching" *1 Clinical L. Rev. 505 (1994–1995)*.

8 Supra note 6 at page 233.

9 Ibid.

10 Nevertheless, some of Robertson's concerns are structural or resource-driven and are likely to vary between institutions. My own university, for example, places clinic at the heart of its Exempting Law Degree. Clinic is a compulsory year-long module for all students in years 3 and 4 of the programme. There is also a significant and expanding clinical element in earlier years. Arguments about clinic's lack of capacity to deliver ethics education seem to be more a case for enhanced clinical resources than a critique of the clinical model itself.

not guarantee good ethics education but I find myself firmly in the clinic-is-best camp, or rather clinic-can-be-best camp. The key reason for this is that clinical education uniquely places the learning of ethics in the context of real life practice. It provides students with the opportunity to grapple with the laws, rules, principles and values of the legal profession not as an external observer but as a participant and stakeholder.[11] It follows that I think live client work is an essential component of an effective clinical ethics education. This article seeks to identify ways that ethics education in clinic might retain its essential spontaneous value while being structured, rigorous and consistent.

(Lack of) External imperatives to deliver high quality ethics education

This section explains the dearth of regulatory requirements in this jurisdiction for any meaningful ethics content in the law curriculum. My own law degree is a useful model for illustrative purposes as it jumps to the tune of both undergraduate and postgraduate legal education requirements in England and Wales.[12]

For the undergraduate stage the professional bodies in England and Wales have agreed in consultation with the law schools and scholarly associations a Joint Statement of the outcomes required by any programme which exempts graduates from the academic stage of legal education for practice as a solicitor or barrister.[13] A 'qualifying law degree' (QLD) will expect students to achieve at least the minimum level of performance in the Quality Assurance Agency benchmark standards.[14] There is no explicit requirement for a QLD to contain any ethics component as such. The nearest the Joint Statement comes to such a requirement is:

> "*Students should have acquired:*
>
> i. *Knowledge and understanding of the fundamental doctrines and principles which underpin the law of England and Wales particularly in the Foundations of Legal Knowledge;*
>
> ii. *A basic knowledge of the sources of that law, and how it is made and developed; of the institutions within which that law is administered and the personnel who practice law;*
>
> iii. *The ability to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and to explain the relationship between them in a number of particular areas.*"[15]

11 I agree with Peter Joy when he says, "*Perhaps the greatest advantage of real client clinical legal education courses over traditional courses or simulation courses is the role socialization law students undergo and the exposure to ethical issues in role as lawyers.*" Peter Joy, *supra* note 5.

12 The LLB Exempting Degree integrates the academic stage of legal education (the qualifying law degree) with the vocational stage (the Legal Practice Course for intending solicitors or the Bar Vocational Course for intending barristers).

13 A joint statement issued by the Law Society and the General Council of the Bar on the completion of the initial or academic stage of training by obtaining an undergraduate degree, 2001.

14 Benchmark Standards for Law Degrees in England, Wales and Northern Ireland, QAA. See www.qaa.ac.uk.

15 Joint Statement, op. cit. Schedule 1a, my emphasis.

The QAA National Benchmark Standards for Law to which the Joint Statement alludes is similarly undemanding:

> *"Study in context: Within different kinds of degree programme, there will be different emphases on the context of law. … Study in context includes that a student should be able to demonstrate an understanding, as appropriate, of the relevant social, economic, political, historical, philosophical, ethical, and cultural contexts in which law operates, and to draw relevant comparisons with some other legal systems…"*[16]

Beyond this there is no requirement for courses to address the ethical rules or the moral foundations of the law or lawyering. Many schools do offer jurisprudence or legal ethics modules to students which provide some foundation understanding of the relationship between legal theory, morality and the law. But these are not currently required by the academic or professional bodies.

At the "vocational" stage of legal education the professional bodies are much more prescriptive as to what and how students should be taught and assessed. The Solicitors Regulation Authority[17] issues written standards that dictate the basic curriculum of the Legal Practice Course. The Bar Council has its equivalent in the "Gold book".[18]

The Solicitors Regulation Authority written standards contain a requirement to teach students a "pervasive area" of "Professional Conduct, Client Care and accounts" together with financial services obligations.[19] However, this contains no requirement to go beyond the teaching of the basic rules of professional conduct:

> *"Students are expected to be able to identify and advise the client on matters of Professional Conduct and Ethics arising both in the compulsory and elective subjects. They should be able to identify and deal with issues that will lead to better client care in all aspects of their work."*[20]

There are specific requirements in relation to knowledge or skills areas. For example, a student should "understand the ethics of advocacy and be able to apply them."[21] They should also "be familiar with" rules likely to be encountered during the training period such as the retainer, fees/costs, conflict of interest, confidentiality, bad work and negligence, the solicitor and the court, undertakings and money laundering/proceeds of crime.[22]

No definition or explanation of lawyer ethics is provided in the standards. The vision of professional conduct contemplated is rather narrow, largely rules-oriented and entirely client-centred. It presents very much as a technical "can do" approach which requires no consideration of wider themes such as the ethical facets of legal education and training identified in the ACLEC First Report: "…law's social, economic, political, philosophical, moral and cultural contexts" or "a commitment to the rule of law, to justice, fairness and high ethical standards to acquiring and

16 National Benchmark, op. cit., my emphasis.

17 In January 2007 the Law Society's regulation functions were transferred from the Law Society's Regulation Board to the Solicitors Regulation Authority (SRA), an arms length independent body with responsibility for regulating the profession and professional legal education. See www.sra.org.uk. This article will refer to the SRA but at the time of writing the organisations are in a state of transition.

18 BVC course specification requirements and guidance, General Council of the Bar August 2004.

19 Legal Practice Course Board, Written Standards Version 10, September 2004 pages 15-20.

20 Ibid. page 15, my emphasis.

21 Ibid. page 11.

22 Ibid. page 16.

improving professional skills, to representing clients without fear or favour, to promoting equality of opportunity, and to ensuring that adequate legal services are provided to those who cannot afford to pay for them."[23]

The Bar Council is perhaps more demanding of providers of the Bar Vocational Course. The Gold Book specifies that students "will be expected to demonstrate a sound working knowledge of the Code of Conduct for the Bar of England and Wales" and "Teaching and learning must be designed to enable students to appreciate the core principles which underpin the Code."[24] These principles are said to include the principles of: professional independence; integrity; loyalty to the lay client; non-discrimination on grounds of gender, race, ethnicity or sexual orientation, and "commitments to maintaining the highest professional standards of work, to the proper and efficient administration of justice and to the Rule of Law."[25] This at least requires students to address principles as opposed to just rules and a potentially challenging consideration of the role of barristers in the justice system including their role as a constitutional safeguard.

Nevertheless, as a law teacher in England and Wales of the academic and vocational stage of legal education (particularly the solicitor route), I am given a great deal of freedom as to how and whether to teach legal ethics beyond the basic professional conduct rules. There is a relatively narrow and mechanistic view of the concept of legal ethics which is firmly rooted in compliance with those professional rules. Little depth of analysis or reflection is required. There is certainly no requirement that ethical discussions must arise in the context of real or simulated cases. I can be fairly confident that without too much effort on my (or their) part, my clinical students will be able to jump through the hoops of the Joint Statement and the Written Standards.

No professional values consensus

The dearth of ethical values content in professional education programmes perhaps reflects an inability at all levels to agree a common understanding of the role of the lawyer beyond acting on clients' instructions.[26] This tends to discourage normative discourse and encourage a descriptive approach towards the aim of compliance with the 'rules'.[27]

It appears unlikely that there will be any fundamental alteration of this approach in the near future. The solicitor's profession is currently undergoing a long and at times painful Pre-Qualification Review.[28] There have been numerous consultations since 2001[29] looking at all levels of education and training for solicitors. The review is based on the idea of a move to an outcomes approach for

23 First Report on Legal Education and Training, ACLEC, April 1996.

24 Gold Book op. cit. paragraphs 25-26, my emphasis.

25 Ibid. paragraph 32 my emphasis.

26 Webb suggests there is, "*a marked lack of consensus about what (beyond the level of broadest generality) those values are in theory (let alone in practice). This difficulty is likely to be aggravated in ethical systems such as the English one, where the written ethics are found in what are essentially disciplinary, as opposed to aspirational, codes.*" Julian Webb "Conduct, Ethics and Experience in Vocational Legal Education" in *Ethical Challenges to Legal Education and Conduct*, (Hart Publishing, Oxford 1998).

27 Sir Mark Potter lamented such a mechanistic approach: "*But ethics go far wider than this. Ethics are not simply regulatory: they are aspirational. They inform the moral dimension of a lawyer's role and work; the ideals and expectations which inform or ought to inform, the practice of his profession as well as his own view of himself and his function in society.*" "The ethical challenges facing lawyers in the twenty-first century", *Legal Ethics Vol 4/1 23* at page 24.

28 Formerly known as the Training Framework Review.

29 *Training Framework Review Consultation papers*, July 2001, September 2003, March 2005, Law Society; *A New Framework for Work Based Learning*, February 2007, the Solicitors Regulation Authority.

solicitors so that qualification is based on what aspiring lawyers can do rather that on what courses they have done.

The first consultation asked for responses to a model for ethics that required prospective solicitors to:

- Manifest integrity
- Apply core duties
- Apply detailed rules
- Be client focused, understanding the client's interests have primacy subject to those of justice and the solicitor's duty of independence30

The proposal did not require any broader or deeper appreciation of the solicitor's role or duty towards civil society. The Law Society commissioned an independent review of the review which found little positive to say about the ethical dimension:

> *"It is difficult to see how lawyers can be expected to be responsible/feel accountable when they are taught nothing of the history of their own profession, its challenges and aspirations … some deeper understanding of the professional project of lawyering … It might also more generally be argued that development of an understanding of the ethical basis of law (not just lawyering) is also a necessary prerequisite of vocational training in professional ethics and conduct. This was broadly the position advanced by the ACLEC First Report, but it is barely reflected in the latest version of the Joint Announcement."*[32]

The Law Society's second consultation posited the idea of a verifiable learning log indicating readiness for practice. It responded to concerns like that outlined above by insisting that any pathway to qualification should place "strong emphasis on understanding of the professional responsibilities, ethics and values required of a solicitor, as well as on the principles of good client care."[33] It thus departed from the outcomes based approach by suggesting a course covering professional responsibilities, ethics, values and client care to be undertaken only once the individual had sufficient exposure to practice.

The third consultation returned to an outcomes-based approach in that it no longer suggested a specific ethics course. However, it did propose an assessment following a period of work-based training of the trainee's "understanding of the core values and skills that are common across the profession and of their ability to maintain those values and demonstrate those skills in practice."[34]

The third consultation suggested a range of "Day one outcomes" – the knowledge and attributes that should be expected of a newly qualified solicitor.[35] These included, for the first time, an explicit requirement for appreciation of the principles underpinning the profession:

30 Consultation 2001, paragraph 21.

31 Andrew Boon and Julian Webb Report to the Law Society of England and Wales on *The Consultation & Interim Report on The Training Framework Review* (London, School of Law University of Westminster, 1 February 2002)

32 Ibid. at paragraph 8.10.

33 Consultation 2003, paragraph 87.

34 Consultation 2005, paragraph 73. The Society is currently investigating the possibility of conducting the assessment electronically including by multiple choice test. It remains to be seen how feasible it is to assess understanding of core values and skills via such a mechanism.

35 Ibid. paragraphs 21-25 and Annex 1. There is a separate consultation taking place as to the level of detail required to enable the requirements to be transparent. The consultation document envisages a substantial document that would require regular review (paragraph 23).

> *"Knowledge of … the rules of professional conduct (including the accounts rules) … understanding of … the values and principles on which professional rules are constructed."*[36]

Candidates for the profession would be required to "Demonstrate a practical understanding of the values, behaviours, attitudes and ethical requirements of a solicitor" including appropriate behaviours and integrity in a range of situations showing sensitivity to clients and others with respect to background, culture, disability etc.[37] They would also have the ability to recognise and resolve ethical dilemmas.[38]

At the time of writing the Solicitors Regulation Authority is consulting on the future of work-based learning. The consultation retains the Day one outcomes approach and preserves the ethical content.[39] [40]

One outcome of the shift from a tightly prescribed series of programmes to a greater focus on outcomes is that although qualification as a solicitor might require *increased* ethical awareness, there may be *less* control over the content of law programmes or the student learning experience. This could have significant implications for the way clinical modules are viewed by law schools, by students and by the profession. As clinics become more widespread and formal teaching requirements are relaxed it is possible that clinics will be seen as the focus for early development of ethical awareness in future legal practitioners.[41]

There is clearly scope for greater flexibility than is currently the case on the Legal Practice Course as regards the legal ethics curriculum. The removal of the straightjacket of the professional conduct pervasive area could free up space for a more creative and imaginative approach which involved more extensive clinical components.

The future may also bring increased pressure on clinics to meet some of the day one outcomes identified above. Employers in the legal profession are likely to see clinic as one means of ensuring that new entrants to the profession achieve competence and compliance with professional conduct rules. I would argue that clinical legal education is well suited to the task of addressing the values, principles and ethical dilemmas inherent in the practice of law. Paradoxically, although the profession may relinquish its control over the content of law courses, there may be increased pressure on clinical providers to play a more formal role in the training of future lawyers.[42]

The value of ethics education in a clinical context

The foregoing reveals how little regulatory incentive currently exists for the teaching of legal ethics in the clinical context but suggests that pressure may grow in the future. The remainder of this

36 Ibid. Annex 1, Outcome A, my emphasis.

37 Ibid. Outcome C.

38 Ibid. Outcome D

39 See A New Framework for Work Based Learning, February 2007, the Solicitors Regulation Authority, Annex A.

40 Consultation 2003 paragraph 17. Further, "*It is proposed that in the new framework the Law Society would not prescribe how providers design and deliver courses.*" (paragraph 19)

41 See Moliterno, "On the future of integration between skills and ethics teaching – clinical legal education in the year 2010", op. cit note 2, above. Moliterno, writing in 1995, predicted that by 2010 most ethics education would take place in an experiential setting but that there would be a demise of the role of the live client clinic.

42 At the time of writing Northumbria University is developing plans for a full qualification degree whereby clinic will perform a central role in the training stage of qualification as a solicitor and thus be responsible for a significant part of the future lawyer's ethical education.

article seeks to address the questions of why ethical dialogue is thought to be valuable within a clinical environment and how clinical teachers can maximise the opportunities for enhancing ethical awareness while accepting that it is often not possible to influence the type of client we will attract or the type of case they will present. In other words, what teaching methodology is best able to prompt the hoped-for ethical dialogue?

In exploring these questions I will attempt to sketch how ethics teaching and learning currently occurs in UK clinics. I have drawn upon the practice and views of a number of clinical colleagues from the United Kingdom who answered detailed questionnaires about their own clinical teaching of ethics.[43]

Law clinics in UK higher education

Law clinics in the United Kingdom are a relatively recent phenomenon. The first clinics were established in the 1970s and there has been a recent surge of interest with new clinics being established and existing clinics expanding.[44] Clinics exist in undergraduate and postgraduate programmes, mainly as extra curricular or optional modules. Typically, they do not form a central part of the academic or vocational stage of legal education but are seen as added value activities.[45]

There are a wide variety of clinics including full representation in-house legal schemes,[46] simulation clinics,[47] street law/law in the community initiatives,[48] advice-only clinics,[49] representation services,[50] externship/placement programmes[51] and so on.[52] It follows that the approaches towards the teaching of legal ethics are likely to be fairly diverse.

Law clinics and the delivery of ethics education

This section explains how clinics can deliver ethics learning for students. It commences by considering the minimum one can expect from a live client programme and proceeds to explore how clinical directors and supervisors can add substance and value to the student experience.

43 See note 54 below.

44 For a general description of the history and development of law clinics see Brayne, Duncan and Grimes, Clinical legal education: active learning in your law school, 1998. See also the detailed description of five clinics in Brayne and Grimes, *Mapping best practice in clinical legal education*, United Kingdom Centre for Legal Education funded research project, 2004 www.ukcle.ac.uk/research/clinic.rtf. A recent survey carried out by colleagues at Northumbria University Student Law Office located clinical programmes at the following institutions: BPP, Bournemouth University, Bristol University, College of Law (all branches), De Montfort University, University of Derby, Inns of Court School of Law, Kent University, Manchester University, Northumbria University, Oxford Institute of Legal Practice, Queen's University Belfast, Sheffield Hallam University, Southampton University, University of Strathclyde, Sunderland University and Warwick University. No doubt there are many others out there.

45 Northumbria University's Exempting Degree is an exception in that the clinical modules constitute a major plank of the academic and vocational assessment and replace the three Legal Practice Course electives for all students. Northumbria's freestanding Legal Practice Course and Bar Vocational Course also have clinical electives which formally contribute to the vocational qualification. The College of Law has a clinical elective on its BVC and Graduate Diploma in Law courses and has recently introduced an LPC elective.

46 For example, Northumbria's Student Law Office and Sheffield Hallam's Law Clinic

47 For example, Warwick's Law in Practice module.

48 For example, The College of Law's Streetlaw and Streetlaw Plus schemes.

49 For example, De Montfort's Law Clinic.

50 For example, The College of Law's London Residential Property Tribunal clinic

51 For example, Derby University's clinical placement programme.

52 There are mediation schemes, soup runs, campaign teams, letter writing help, innocence projects and other creative initiatives which have added to the diversity (some might say chaos) of the clinical picture in the UK.

Achieving the basics – teaching students professional conduct rules

With any client that comes in through the door of the Student Law Office[53] I can guarantee my students will conduct an interview, complete some legal research and write letters, including a letter of advice. They will work as a team, develop case and file management skills, become disciplined in time recording, probably do some legal drafting and perhaps perform a negotiation or even advocacy. These valuable experiences will all come their way without any prodding from me. I can put my feet up, check their draft work, send them away to do it again (of course), answer any queries they may have, ask them how it is going and so on.

But what about legal ethics? Here too I find a degree of automatically generated activity. Conflict check? Tick. Status explained? Tick. Complaints procedure? Tick. Costs information? Tick. Retainer explained? Tick. (Standardised) client care letter? Tick.

If I pause there and reflect on the student learning experience I have to recognise there have been some impressive tasks performed and a wide range of skills and knowledge developed. The students have learned by experiencing the day-to-day activities and disciplines of the lawyer. They have explored the legal rules in more detail than they ever do in their substantive legal modules. They have honed their ability to perform the law. They have done all of this in a safe, supporting but challenging environment. Their knowledge of the rules of professional conduct will be fairly detailed and their ability to comply with those rules will be enhanced.

But this tells only part of the story and unlocks only part of the potential of the clinic. I want my students to consider why the rules are as they are, examine how they fit with their own moral attitudes, and develop their own moral reasoning. A full clinical experience will explore these and other issues in depth and at length. In the following section I hope to explain how this might be possible and will illustrate what I say by reference to the questionnaire responses from UK-based clinicians.[54]

Why do we teach ethics in law clinics?

All of the clinicians I surveyed did seek to address the issue of legal ethics in clinical teaching. The reasons tend to reflect a balance between (1) the desire to ensure a professional service and (2) to emphasise the value of legal ethics as a key to understanding the law in context and the role of the lawyer:

53 The Student Law Office is a full casework and representation, law centre style legal service. Each year approximately 150 students are supervised by 15 academics with current practising certificates. The case load is around 700 per year and is conducted largely pro bono but with Community Legal Service specialist quality marks in three areas of work. It is integrated into the third and fourth year of the Exempting Degree and it also offers clinical electives to Legal Practice and Bar Vocational postgraduate students. Its work covers mainly traditional "poor law" areas but it is also developing transactional and commercial case loads.

54 Questionnaires were sent to ten established clinics which provide the majority of clinical legal education in the United Kingdom. Seven detailed responses were received. The list includes university-based and private law schools. The sample is by no means comprehensive but the responding institutions account for a significant proportion of the clinical legal education in the UK. The questions addressed the following areas: Type of clinic and programme; reasons for / advantages and disadvantages of teaching ethics in clinic; prior ethics learning; ethics learning outcomes; teaching methodology; learning resources; and assessment. The questionnaires encouraged a narrative response. Not all responses are presented in the body of the article. Those which are presented appear with coded references, "Clin1" to "Clin7" and are edited but verbatim extracts of the questionnaire responses.

> Clin 5: "to protect our clients, students, supervisors and the reputation of the Law School; as an educational resource, a tool for reflection on the process of lawyering."
>
> Clin 4: "… because of the virtual silence in the curriculum on the issues."
>
> Clin 6: "Important as part of expanding our knowledge of law and society."
>
> Clin 1: "For obvious reasons this is important in ensuring a high level of service and that the clinic and solicitors and students working in it do not breach professional conduct rules. … Students are encouraged to reflect upon their interaction with clients and their feelings about their work for those clients, the impact that that work has upon themselves and their clients … It is important that work in clinic not be seen as simply mechanistic i.e. that lawyers should only be interested in ensuring they act in the best interests of their clients. If work students do in clinic is not reflected upon in this way there is very little chance of students doing so as practitioners."
>
> Clin 2: "It is important because if we don't teach ethics then students lose part of the opportunity to reflect and to develop."

It can readily be seen therefore that clinic is already used to teach *beyond* the bare rules – to explore the role of the law and lawyers and to give students space to think and reflect on the impact this has on clients and society. To me this reflects a unique potential of law clinics to allow students to engage in informed discussion – grounded in experience – about what the law is for but before they have become fully part of the system. Being at the interface of legal practice and legal education can give students the luxury of time and the freedom of academic inquiry to reflect deeply which many will not experience again.

Particular advantages of clinics for teaching legal ethics included:

> Clin 6: "The complexities of actual (and developing) situations challenge students in a manner different from that of lecture/seminar teaching ..."
>
> Clin 4: "Issues are raised contextually and require resolution rather than just discussion in the abstract. Issues thus come across as 'real' to students."
>
> Clin 2: "Immediacy: these are not abstract issues; they have immediate relevance. Breadth: covers ethics in its widest sense, from professional conduct to Aristotle."
>
> Clin 1: "Problems are real. The student is not being asked in the abstract whether they can act for a particular client who they feel is lying to them, it is real and this makes the decision much more difficult and engaging"

The dynamic nature of a real case with actual consequences for clients and others does seem to be central to the urgency and responsibility that students feel when dealing with ethical issues in clinics.[55] It also means that the supervisor cannot completely control the way the case will develop. This tends to break down the barriers between student and teacher in that neither may have the

55 *"Once they encounter a client, the blind faith that there is a 'truth' or a 'law' that can be applied must give way to a more sophisticated understanding. Clients' cases rarely present simple facts that lend themselves to right an wrong answers. It is the complexity and unpredictability of working with real people that makes clinical legal education so rich."* Jane Aitken, "Provocateurs for Justice", *7 Clin L. Rev. 287* at page 292.

answers and they must work as a team to find them.[56] Ethical issues cannot be timetabled into the teaching session in the same way so when they emerge they have a freshness and vibrancy about them.

What is the purpose of ethics teaching in clinics?

Ethical learning outcomes are also likely to be many and varied. They depend on the teacher's own view of the concept of legal ethics and the proper limits of the educative process.[57] Contrast the following two views of the purpose of ethics teaching in clinics:

> Clin 4: "Teaching students about law's injustice and the need for lawyers to be committed to addressing unmet legal need."
>
> Clin 2: "For me the immediate aim is to give students a more sophisticated language for analysis, reflection and thus self development."

The former contribution suggests a particular approach towards an ethical issue. The latter envisages no end product but sees ethics teaching as providing a set of tools for students to use. This difference reflects an important debate about how far teachers ought to go in advocating ethical solutions. The modest proposal that lawyers ought to be committed to access to justice may not be universally supported, although it does appear to have achieved consensus support within the profession, at least in England and Wales.[58] Beyond this it is possible to secure general agreement that lawyers ought to preserve their independence, protect the rule of law and even secure human rights.[59] However, certain ideas (for example, that lawyers should be committed to social justice or equality) will appeal to a smaller constituency of teachers, students and professionals. We can all agree that we should make students think about ethics. There is bound to be less agreement over what we should make them think.[60]

Other respondents focused on the development of analytical and evaluative thinking as a key outcome of clinical ethics teaching:

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56 Eduard Lindeman, writing in the 1920's about the concept of democratic teaching outlined the role of the teacher as follows: *"In this process the teacher finds a new function. He is no longer the oracle who speaks from the platform of authority, but rather a guide, the pointer-out who also participates in the learning in proportion to the vitality and relevance of his facts and experiences."* Eduard C. Lindeman, *The Democratic Man: Selected Writings of Eduard C. Lindeman*, Robert Gessner, 1956.

57 In some jurisdictions, such as the USA, clinic might be used as a vehicle for delivery of compulsory lawyer ethics / professional conduct material.

58 The Attorney General with the support of the profession established a National Pro Bono Coordinating Committee and agreed to promote pro bono in law schools among other objectives: *"We all know the popular perception that lawyers only care for their fees. Pro bono challenges those ill-informed views. In no other profession do practitioners work for free so extensively or so systematically. Their aim is to help people who need lawyers' skills and knowledge but won't get them otherwise. Their efforts embody the principles of fairness and justice that are the cornerstone of the law. The Committee, with its concrete, practical measures to extend the reach and raise the profile of pro bono, is leading the way."* The Attorney General, speech to the Solicitors' Pro Bono Group, 29th March 2003.

59 See *Havana Declaration on the Role of the Lawyer Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, in particular see paragraph 14: *"Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession."*

60 I return to this issue in the final section on typology of ethics dialogue, below.

> Clin 5: "… reflect critically on the nature of lawyer-client relationships and other processes of lawyering"
>
> Clin 7: "… to introduce students to and to develop their critical understanding of law in an applied context."
>
> Clin 1: "A wider appreciation of the lawyer's role, pressures and dilemmas for lawyers and the social, political and economic impact of the law on individuals and groups in society."
>
> Clin 6: "… Ability to identify analyse and evaluate issues relating to legal ethics (includes an awareness of the contemporary preoccupation with ethics in many spheres of social activity, and of the use of higher education to promote this further; and a consideration as to whether these developments might suggest a lack of confidence in ourselves and trust in others.)"

These aims are clearly not unique to clinical education. However, clinic provides a practical platform upon which the broader contextual learning can be developed. I am particularly attracted by the proposition that the teaching of legal ethics should ask why we teach legal ethics and require students to reflect on whether this is a positive or a negative thing. It prompts an interesting question that I do not propose to pursue further in this article: could the teaching of ethics itself be unethical?

How are legal ethics currently taught in clinics?

There is a surprising degree of commonality of approach to the teaching of ethics in the clinics I surveyed. Most respondents said that clinic students had little prior learning about legal ethics in their other studies.[61] Within the clinic there tends to be some formal tuition, particularly at the outset of the clinic programme, although this sometimes continues for the duration of the module. There is almost without exception formal instruction on compliance with the rules of professional conduct and this is backed up by a wide variety of materials such as the Code of Conduct for Solicitors, clinic manuals/handbooks, clinic codes of ethics, supervisor tutor packs, ethics seminar materials and a wide variety of ethics and clinic reference books.

The main vehicle for the airing of ethical issues tends to be the small discussion group variously described as firm meetings, clinic ethics committees, clinic seminars, casework discussions and tutor and peer feedback. Some ethical issues (such as confidentiality) are emphasised on each occasion, although the picture tends to be that ethics issues are discussed as and when issues arise:

> Clin 1: "It is up to the supervisor of each firm meeting to use the students' experiences which raise, or potentially raise, ethical issues to provoke discussion and thought. Students might be challenged about their view of the client and the effect that has on the conduct of their case. They might be asked to justify acting for a particular client. They might be asked whether they have personal or political bias towards or away from the client's case."

This approach has the advantage of flexibility and spontaneity, although it does place a fairly heavy burden on the tutor. S/he needs to identify opportunities for ethical dialogue, create the right

61 Where the clinic is part of a vocational course the students receive the formal tuition described earlier regarding professional conduct and client care.

environment for such discussions to take place, and provoke discussion at an appropriate level without dominating the session or providing all of the answers. I would argue that the individual supervisor requires support at clinic or programme director level to ensure that ethical issues can be discussed. The development of common teaching tools and materials to encourage students to spot and address ethical points is of real importance.

In clinics with a number of supervisors there may be an issue with consistency of approach. Such clinics tend to use some common teaching materials but it is difficult to see how ethical discussions (which in clinics tend to be context-specific) can be reduced to "tutor notes" such as those which tend to be used on most professional law courses. The risk of certain students experiencing less rigorous ethical discussions may also be compounded by the variety of cases within a clinic:

> Clin 1: "Additionally, in the clinic much depends upon the supervisor and the area of law being practised. Students with a supervisor committed to ethics teaching in an area such as miscarriage of justice may get an entirely different appreciation than another student with another supervisor working in personal injury."

Clinic 1 was developing a range of ethical teaching materials that could be adapted for use in any type of case. This involved the use of generic exercises, tasks, reflections, questions and follow-up reading. These activities related to particular ethical concerns (such as the value of confidentiality) and could be utilised irrespective of the issues arising in any given case. With some imagination and willingness to use hypothetical extensions to real life cases it ought to be possible to promote detailed discussion and debate about a very wide range of ethical issues. This approach retains the valuable case-specific dialogue and so ensures students are speaking about their own real cases but it ensures a degree of discipline and consistency of coverage.

Numerous examples of techniques and strategies for engaging students in ethical discussions were offered by respondents including the following:

> 'balloon game' exercise on the rules of ethics; simulated interview and negotiation activities; 'law reform' negotiation in which students negotiate revisions to the rules of professional conduct; 'ethics audits' of case files against the clinic code; resolution of potential conflict of interest by a 'clinic ethics committee'; challenging students to identify and justify their proposed responses to situations; reflections in portfolios; analysis of the standard of work by previous lawyers' in asylum cases and discussion of what can be expected given financial constraints; discussion of how much information to give a client about why exactly they have no case when you know that will upset them (conflict between paternalism and client autonomy); assessing the extent to which a client's case can be put at its height without claiming remedies which in law are not available to them; deciding whether to allow a client to plead a claim when they have already informed the student of a fact which is inconsistent with that claim; discussing duties of disclosure to the court and the state when a client discloses benefit fraud; debating whether students should spend so much time working for a middle class person on a money only case when there are many more people in need around.

These examples indicate a rich seam of ethical issues arising out of relatively routine casework. They also illustrate that valuable ethical dialogue can be provoked via simulation activities. I wish to emphasise the importance of simulation as part of the overall package of clinical education.

Simulation can wrap around the live client experience in a way that ensures that students receive a basic introduction to ethical issues and extend their thinking about such issues from their real cases. It helps to ensure consistency and coverage of the syllabus. It is obviously possible to teach ethics solely via simulated clinic[62] but ideally live client work will form the core trigger for ethical dialogue with simulation used as a supplementary and added value method.

Similarly, there is a place for more formal classroom-based activities including lectures and seminars which introduce or flow from the real ethical issues. This can help to provide the intellectual rigour that would be missing if ethical dialogue was all conducted spontaneously. Clinic 1 brings small groups together in "joint firm meetings" three times per year to discuss wider issues arising from their caseload. This is often an opportunity for ensuring students read core literature and debate ethical dilemmas.

Problems with teaching ethics in clinics

Clinical teaching is not a panacea and we should not assume that ethics teaching in clinics will always have more value than traditional methods. Clinics have the potential to provide a stimulating environment within which ethics discourse will take place but this requires careful organisation and skilful implementation. There are difficulties for clinicians in trying to engage students with legal ethical issues. Some of these difficulties were identified by respondents as follows:

> Clin 2: "Lack of language: students have no knowledge of formal ethical issues, nor do their supervisors. How then do we progress beyond, 'Its not fair'?"
>
> Clin 4: "They do not always see the issues when they arise and they have no background understanding of the ethical debates when they do come to attempt to resolve issues."
>
> Clin 1: "Students can be tempted to see clinic as a means of obtaining skills and experience but not wider learning about the law and the ethics of law. They can become very enthused by the practical work but can lose sight of the wider picture because of this."

These responses reflect a real problem of how to structure and manage ethics teaching within clinics. The typical approach seems to be that students will be encouraged to reflect on their experience within the case discussions. This is consistent with the idea that ethics discussion should be connected to the real life context of the client's cases. However, it is then difficult to ensure that students develop awareness of ethical debates and theories in order to secure a degree of sophistication in the ethical discourse. There are only so many times a tutor can ask, "How do you feel?" before the question loses its ability to engage students' imaginations. They need to be able to take the discussion to higher levels and for this they need to understand basic theoretical concepts. As one respondent put it:

> Clin 1: "The question could be asked as to whether there should be clear syllabus together with some standard sources of text to ensure some common level of understanding and rigour. Against this might be set the concept that the learning should be driven by experience in the cases. In my experience, however, while the

62 See Steven Hartwell's description of his experiential ethics clinic above at note 6.

> clinic deals well with professional conduct issues, it is much more difficult to achieve a comprehensively satisfactory wider ethical appreciation for all students."

If we are to develop a "clear syllabus" the answer might lie in prior legal theory learning. On my own course we introduced a compulsory module in jurisprudence for all third year students. This comes prior to their live clinical experience so we might expect that the following year our students will come with a solid theoretical framework that will help inform their ethical concerns and upon which their clinical discussions can build. However, ethics forms only a small part of the jurisprudence syllabus and I fear that the temporal and psychological dislocation between the theoretical module and the clinical module means that students do not see the link between the two.

The challenge is to retain the immediacy and enthusiasm that real life encounters provoke but to ensure that students develop the building blocks to make their ethical discussions varied and valuable.[63] The building of rigorous ethical study into the clinic routine is a key to successful achievement of sophisticated ethical understanding. Ethics libraries within clinics are also important so that the tutor can require students to see ethical research in the same way that they view their practical legal research – part of what makes them a good lawyer.

A further difficulty identified by a respondent reveals another key challenge to those involved in clinic management.

> Clin 1: "Tutors need to be very sensitive to potential learning opportunities, to spot the potential for a full discussion of an issue rather than skate across the top of it."

Ethics education will not happen simply by students being in close contact with a competent practitioner. Modelling ethical behaviour has value but if it stands alone it is seriously limited; ethics by osmosis does not work. The creative role of the clinical tutor is fundamental to the learning experience. Good teaching of ethics in a clinic will be able to draw out lively discussion of values, roles, assumptions, prejudice, commitments, attitudes, fears etc. from the simplest small claim. Poor ethics teaching will achieve sterile, mechanistic observations from the most outrageous human rights violation.

Many clinic supervisors come into the clinic environment direct from legal practice. They have not generally been used to daily wringing of hands over their professional obligations or their wider impact on society. They probably went through a legal education that was fairly silent on ethical issues. They need to be given training, encouragement, materials and time in order to become good ethics teachers.[64]

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63 Note the Legal Practice and Conduct module at La Trobe University described by Mary Anne Noone and Judith Dickson in "Teaching towards a new professionalism: challenging law students to become ethical lawyers" *Legal Ethics* Vol 4/2 127 whereby clinical case work is combined with a weekly three-hour seminar with the focus on what constitutes ethical legal practice. The real life experience feeds into the classroom discussion to give it a real life application. In this way the risk of dislocation between classroom study and clinical activity is reduced.

64 See "Reflection-in-Action: Designing New Clinical Teacher Training by Using Lessons Learned from New Clinicians", Dunlap, Justine A.; Joy, Peter A. *11 Clinical L. Rev.* 49 (2004-2005)

How to 'do' ethics in the clinic – a typology of ethics dialogue

In this section I describe four possible approaches that could be used for encouraging valuable discussions of ethics within law clinics. I categorise them as follows:

- Passive (rule-based ethics)
- Reflective (role-based ethics)
- Transformative (attitude-based ethics)
- Engineered (outcome-based ethics)

I consciously adopt the first three in my teaching. I generally try to avoid the last but I suspect this creeps in at times. I have focused on case-inspired discussions as opposed to discrete / abstract teaching sessions. The latter can be valuable, particularly in the early or training stages of a live clinical programme, but once the students start to deal with real people it is much better if the discussion arises out of the real case and, if necessary, is taken further by hypothetical extensions.

Model 1 – passive (Rule-based ethics)

Live client clinics provide an excellent opportunity for learning the basic rules of professional conduct and compliance with professional standards. There are a wide range of activities that provide students with an unrivalled learning experience. Rather than the traditional classroom activities students can learn by doing. They should be asked to find out what rules of conduct govern a particular situation (for example, taking instructions from a third party) and propose a course of action that ensures the clinic complies with the rules. They should then implement the agreed action and appropriately record what they have done.

In this way they will develop technical knowledge of what the professional codes require and also the "how to do" skills such as drafting client care letters. This approach can become relatively sophisticated as students need to learn how to identify situations which engage professional conduct rules and develop strategies to avoid breaches of the rules. There is scope for use of hypotheticals to enhance the student learning such as, "what should we do if the client tells us his list of previous convictions is wrong?" This approach does not normally require a significant amount of deliberation or debate,[65] although it can run neatly into other models and provides students with excellent foundation knowledge for more in-depth discussions.

Model 2 – reflective (Role-based ethics)

[T]he work of a lawyer is often portrayed in the law school environment as quintessentially amoral in the sense that the lawyer is expected to exercise objectivity and detachment in dealing with legal matters … One task of ethics is to disabuse students of the misconception that the profession of law, in any of its forms, is devoid of ethical ramifications.[66]

65 For this reason this approach is rarely the exclusive method of teaching ethics in clinics. For analysis of the limitations of the role morality approach see Julian Webb, "Being a Lawyer/Being a Human Being", *Legal Ethics*, Vol 5, 130 at 131 et seq.

66 Duncan Webb, "Ethics as a compulsory element of law degrees", *Legal Ethics* Vol 4, No.2, 109, at 116.

A reflective approach adopts a more analytical attitude towards the rules and towards the role of the lawyer or legal system. For example, once students have a basic grasp of what a conduct rule *is* they can be asked to think about the origin and rationale of the rule. This can and often is conducted on the basis of the students' own thoughts about the proposition under consideration. However, value is added to such discussions when students are required to complete wider reading about the particular rule or about ethical norms. This approach lends itself to student presentations and student-led discussions whereby the group can reflect on the issues that have previously arisen on a case and review the way they were dealt with.

This approach can be particularly valuable when conducted in the context of a live case, especially if a difficult issue has arisen. In one criminal case I conducted the client asked the student whether she believed he was innocent. She immediately responded, "Yes, of course" and only later wondered whether it was a proper part of the lawyer's function to come to a conclusion about the objective merit of her client's case. We later involved the client in a discussion about whether and to what extent it mattered to him what his lawyer believed.

Techniques associated with this model include role reversal whereby students attempt to anticipate how clients might be affected by their interaction with the students, the law clinic, the court system etc. Use of role play can help to make these issues immediate, although often the reality comes from the situation itself. If clients consent to having the interview video recorded then student replay with commentary and peer review can provide an excellent opportunity to reflect on their impact as a legal adviser. Use of hypothetical situations can assist with teasing out the reflective discussions for example, "What if the client won the lottery tomorrow – can and should we stop acting for her because other people are more needy?"

The key to this model is asking students to think critically about the role of the lawyer and the role of the law. It might thus involve students in complex and irresolvable debates such as whether wrongful convictions are inevitable or whether a no-fault compensation scheme would resolve the problems of medical litigation. The issues encountered in these discussions are often popular topics for end of module reflective commentaries / essays.

Model 3 – transformative (Attitude-based ethics)

> *"Perspective transformation is the process of becoming critically aware of how and why our assumptions have come to constrain the way we perceive, understand, and feel about our world; changing these structures of habitual expectation to make possible a more inclusive, discriminating, and integrating perspective; and, finally, making choices or otherwise acting upon these new understandings"*[67]

Transformative learning is a theory extensively developed by Jack Mezirow whereby learners embark on a series of developmental stages including self-examination, critical assessment of assumptions, recognition of similar transformations in others, exploration of new roles or actions, development of a plan of action, building knowledge and skills, trial of the plan, development of competence and self-confidence, and reintegration on the basis of a new role and perspectives.[68] The process is supposed to alter the way the learner looks at themselves and their function.

67 Jack Mezirow, *Transformative Dimensions of Adult Learning*, 1991 page 167.

68 Jack Mezirow, "Transformation Theory of Adult Learning" in *In Defense of the Lifeworld*, Welton ed. page 50.

It should start with a "disorienting dilemma" which acts as the catalyst for the process of rethinking.

This may seem an ambitious (and potentially destructive) project for clinic teaching. We do not necessarily want our students reappraising themselves so far that they decide to become accountants instead![69] Nevertheless, clinical work does provide a useful opportunity for making the student question the bases of prior learning about the law, morality, politics etc.[70] If done in a challenging but supportive environment it can be a constructive and enjoyable process. Moreover, the clinic can provide the opportunity for a number of disorienting dilemmas in that students experience situations that they have never encountered previously and can become overwhelmed by the issues they face.

This approach goes a step beyond model 2 as it critiques not just the role of the lawyer but looks intensely at how the student as a person and professional fits into this role. I have tried to invoke transformational methods within the clinic in relation to fairly modest aspects of students' work. For example if a student-client interview goes disastrously wrong in the eyes of the student this can be the trigger for the encouragement of a wholesale review of the way the student communicates within the law. The feeling of failure after the interview becomes the disorienting dilemma, the video replay is the start of self examination and they can be encouraged to systematically critique not just that interview but their general approach towards communicating with clients and others about the law. Slowly working towards a new approach (perhaps involving peers in role play preparations) prior to the next interview. Obviously it takes a degree of self-awareness to recognise a failure or to perceive a dilemma. Sometimes it may take some prompting from the supervisor and/or fellow students.

There is a danger that this sort of process becomes narcissistic in that the students become preoccupied with their *personal* development and neglect the wider ethical issues arising from their cases. It should thus be used in conjunction with other means of encouraging reflection.

In order to be effective, this method is likely to involve a degree of (sometimes forceful) challenging of students' preconceptions about the role of the lawyer, forcing them to reflect on their own values and think critically about why they think the way they do about the law. It gives rise to a number of potential difficulties and controversies including which preconceptions to challenge, which criticisms to encourage, the impact of the teacher's prejudices and so on. These issues are not unique to the teaching of ethics but may arise acutely in this context. The key to effective teaching of the lawyer's role is to ensure that students understand the law is not an immutable set of rules for good or ill but rather a sophisticated and dynamic compromise between competing interests. Students should grasp that lawyers are in a highly privileged position of being able to participate in the resolution of doubt and conflict within the law and that they do not act as wholly neutral locators of 'the answer' but bring their own 'baggage' to the case.

69 The serious point behind my facetious comment is that transformative learning should not be seen as encouraging sado-masochistic approaches to learning. Bullying and humiliation should have no place in the law clinic. The process of learning about the law is bound to mean that some people decide the legal profession is not for them but transformational dialogue should not disproportionately put people off the law.

70 See Fran Quigley, "Seizing the disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics" *(1995) 2 Clin LR 37*; See also Jane Aiken "Teaching Justice, Fairness and Morality" *(1997) 4(1) Clin LR 3.*

Model 4: engineered (Outcome-based ethics)

The point about this approach is that students are encouraged to think in a particular way about ethical propositions. The aim is not just to get students to think about their ethical response but to adopt a specific response. In this sense, unlike the earlier approaches, the value of the educative process here is teleological. The teacher succeeds to the extent that s/he achieves a given belief (and possibly conduct) on the part of students. For example Wizner believes that a value of legal education lies in encouraging students to nurture their:

> *"capacity for moral indignation at injustice in the world, or to challenge and inspire them as lawyers to use what they have learned to work for social justice."*[71]

As previously outlined, such views, based as they are on a particular socio-economic or political outlook, are not going to find universal support among other people, including other teachers, students and lawyers. It would be easy to dismiss this approach as indicating an arrogance of belief in moral superiority on the part of the educator. The role of ethics education should surely be to provide students with the knowledge and understanding and the reasoning skills to be able to form their own, not the teachers, moral viewpoint.

> *"… While any teacher will have a personal point of view that they should not resile from putting forward, it is also the task of the law teacher to represent the diversity of views that exist. Equipped with this knowledge students are then capable of adopting an ethical point of view of their own, or perhaps of giving reasons for their refusal to adopt a particular point of view. "*[72]

I have general sympathy with the idea that legal education should encourage students to make their own (informed) decisions and that success should be measured by their depth of understanding and their ability to reason, not the views they ultimately form. However, I have begun to wonder whether it is always inappropriate to try to engineer a particular ethical viewpoint.

Although I would not consciously advocate that my students should have a particular commitment to, say, ending poverty I might be less cautious about something I believe to be not only self-evidently true but also indisputable. I believe torture is wrong. Should I encourage (or require) my students to think (or at least express, at least in assessments that I am marking) similar sentiments? Or should I concede to moral relativism and ask students to come to their own conclusions? More than this, should I "represent the diversity of views that exist"?

Does it matter if the moral proposition is a binding professional obligation on lawyers such as the duty not to mislead the court? Should I explore the lawyer's role in the administration of justice but leave it to the students to decide for themselves whether and when they will abide by the rules and when their moral beliefs dictate the rules be broken? As a teacher of future lawyers am I wholly lacking in any responsibility for the sort of lawyers they turn out to be? If they become dishonest rogues is my conscience cleared if they know *why* they are rogues?

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71 Stephen Wizner "Beyond Skills Training" *Clin. L. Rev* 7/2 2001 and see also Jane Harris Aiken "Striving to Teach Justice, Fairness and Morality", *Clin. L. Rev. 4 1997*

72 Duncan Webb, "Ethics as a compulsory element of law degrees", op cit, at 116. This is reflected by one respondent to my survey of clinicians who, when asked whether students should be encouraged to think in a particular way about an ethical proposition replied: "No – I am a firm believer in individual autonomy. I want them to think."

There are no easy answers to these questions but I am ultimately drawn to the notion that there are certain ethical views that I have a personal and professional right to express. Julian Webb urges that ethics education should help future lawyers to avoid disjuncture between role morality and their personal values.[73] If we vest ultimate faith in student autonomy there is a risk that there will be disjuncture between the educational imperative and the *teacher's* personal values. We need to be comfortable with the general goals of our teaching (being a *teacher* and being a human being) and the consequences of that teaching can be seen as part of the picture.

Thus although I feel generally uneasy about dictating a particular ethical approach, it is inevitable that there will be certain issues where (consciously or unconsciously) I will espouse a particular opinion or alternatively not promote discussion about where the "right" answer might lie (because I know where it lies and I want my students to adopt the same approach).

Conclusion

Student evaluations of clinic often contain responses like, "It made me realise why I wanted to study law in the first place". For many clinical teachers the response would be the same in relation to their motivation for teaching law in the first place. Clinic, particularly live client clinic, provides a creative, enthusiastic and democratic environment for the learning of the law. A key reason for this is the way that engagement with the real world as affected by real laws challenges moral codes and refreshes ethical thinking. Failure to take advantage of this in dialogue with students would be an abdication of responsibility as a teacher and show a poverty of imagination. This is why, despite the absence of any external imperatives, the teaching of ethics in law clinics continues to be highly valued, debated and researched. Ethics without clinic is artificial; clinic without ethics is sterile. This mutual interdependence ensures a vibrancy that is rare in modern higher education.

By outlining some views of clinical teachers in the United Kingdom and categorising various approaches towards clinical ethics methodology I hope this article will help to provoke further reflection among clinical scholars about why and how clinical legal education and ethics awareness should continue to develop together.

73 Julian Webb, "Being a Lawyer/Being a Human Being". *Legal Ethics, Vol 5, 130*

Clinical Legal Education in the Law University: Goals and Challenges

Margaret Barry[1]

Introduction

Calls for reform of legal education in India have focused on preparation and relevance. The route to achieving both has consistently been linked to clinical legal education. In 1999, I heard one of the leaders of legal education in India, Dr. Madhava Menon, discuss his goals for clinical legal education in at the first Global Alliance for Justice Education Conference in Trivandrum.[2] I learned at the time that he had been invited to lead a new law school in the country, and he made it clear that clinical legal education would be central to the new law school model that he intended to pursue, a model based on recommendations that grew out of prior assessments of legal education in India.[3] Under this model, law students would be trained to be productive members of a community of lawyers that had refined the skills needed to develop and implement creative

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2 "GAJE is a GLOBAL ALLIANCE of persons committed to achieving JUSTICE through legal EDUCATION. Clinical education of law students is a key component of justice education, but this organization also works to advance other forms of socially relevant legal education, which includes education of practicing lawyers, judges, non-governmental organizations and the lay public." GAJE Introductory Statement, http://www.gaje.org/ (last visited Dec.31, 2007). It held its first conference in 1999 in Trivandrum, State of Kerala, India.

3 "The Bar Council of India gave a fresh look at legal education at an All India Seminar held at Bombay in 1977 . . . On the basis of the recommendations of this Seminar, a dialogue with the universities teaching law was initiated by the Council which eventually, in 1982, resulted in a new 5-year integrated professional programme after 10+2 school education. Two important features of the new pattern of legal education which was to come into force from the year 1987-88 are the introduction of a two-year Pre-law Study consisting of several social science courses, and a six-month intensive compulsory clinical education." N.R. MADHAVA MENON, CLINICAL LEGAL EDUCATION, *Chapter 1, Clinical Legal Education: Concept and Concerns*, 20 (1998). Dr. Menon describes The National Law School of India (NLSIU) as the first school developed under this model. *See id.* at *Chapter 15, Development of Clinical Teaching at the National Law School of India: An Experiment in Imparting Value Oriented Skills Training*, 238-263. The importance of clinical legal education has been touted by the Bar Council of India and various law commissions for decades. *Id.*; Krishnan, *infra* note 18; Bloch & Prasad, *infra* note 5, at 172 (discussing in Part II inclusion of clinical legal education in efforts to reform legal education).

strategies for addressing the pressing demand for social justice in the country.[4] The approach reflected a connection between responsibility for the underserved and goals for clinical legal education in India that dates back to collaboration with academics from the United States in the late 1960's.[5]

A series of high-level committees have made it progressively clear that this connection is central both to improving the quality of legal education in India and to making it relevant to the most pressing problems facing the society.[6] In 1973, the Expert Committee on Legal Aid of the Ministry of Law and Justice recommended introducing clinical legal education with a focus on poverty issues into law schools.[7] In 1977, the Committee on National Juridicare distinguished the legal services approach in the United States that had influenced the earlier recommendations, pointing out that law schools should establish legal aid clinics that prepared students to help achieve the structural changes India needed to distribute the material resources of the country more effectively. This was followed in 1981 by the Committee for Implementing Legal Aid Schemes' call for establishment of legal aid clinics as part of its recommendations.[8]

Despite these high-level endorsements, progress towards establishing clinical programs in Indian law schools has been modest.[9] Several barriers account for this result. Academics, the legal community and the Bar Council never seriously embraced the establishment of clinical programs.[10] Furthermore, the desire to pursue opportunities in the global market made it difficult to keep the focus on legal strategies that would protect the rights and immediate needs of the poor.[11] Many Indian law students and their families, like their counterparts in the United States, want legal careers that are lucrative, and these goals have not been sufficiently connected to the benefits of implementing clinical programs and teaching methods, in either country.[12]

4 Professor Krishnan identifies Madhava Menon not as the creative force for the new law school model so much as the person with the vision and drive to bring it into being. He described Dr. Menon as drawing on a range of influences, including the 1964 Gajendragadkar Committee Report and the work of then Dehli law professor Upendra Baxi, who went on to be one of the most prominent legal scholars in India and who currently is on the faculty of the University of Warwick (UK). Krishnan, *infra* note 18, at 480-484.

5 Frank S. Bloch & M.R.K. Prasad, *Institutionalizing A Social Justice Mission for Clinical Legal Education: Cross-National Currents from India and the United States*, 13 Clinical L. Rev. 165, 168 (2006) (discussing the influence of educational exchanges funded by the Ford Foundation in the late 1960's and early 1970's and the opportunities they provided for American and Indian law teachers to shared developments in the law-and-poverty curriculum, including the emerging clinical methodology.).

6 *Id* at 173-175.

7 *Id* at 174 (The Committee "observed that students' encounters with the problems of poverty and exploitation would change their outlook when they became lawyers, and as a result they would not treat clients simply as facts but as living neighbors.")

8 *Id* at 175.

9 *Id* (discussing the limited response by a few of the law schools).

10 *Id* at 176-78 (listing the lack of practical knowledge and the lack of financial assistance to law schools to meet the expenses of running clinical programs, lack of incentives for faculty such as reduced teaching loads, the fact that the Advocates Act prohibits full-time law teachers from practicing law, the lack of licensing provisions for law students, and the general sense that legal education in India has been neither meaningful or relevant as the reasons why clinical legal education has not taken root). *See also*, Krishnan *infra* note 18.

11 For an interesting discussion on the dynamics of the global market, including India's role, *see* THOMAS L. FRIEDMAN, THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY (2005).

12 Clinics in the United States broach this issue implicitly or explicitly by discussing the importance of the skills learned through clinical courses in developing professional competence. It would be interesting to learn the extent to which such discussions explore the possibilities for pursuing social justice goals in a range of practice settings. As I reflect on such discussions in my teaching, I am

The failure of the committee recommendations to yield significant change led to several initiatives. In 1988 and 2000, two successive Curriculum Development Committees sought to improve the overall quality of legal education and make law school curricula more responsive to the pressing needs of India's poor. Neither had much impact. However, in 1994 the Ahmadi Committee Report included in its recommendations the establishment of premier law schools to improve legal education. The report referenced the new National Law School of India University in Bangalore, which at the time was run by Dr. Menon, and recommended in the establishment of the new law universities based on that model.[13]

Another significant step was taken in 1997 when the Bar Council of India directed all law schools to incorporate four Practical Papers into their curricula. Paper I requires instruction in litigation skills; Paper II requires instruction in drafting skills; Paper III requires instruction in ethical and bar-bench relations; and Paper IV requires public interest lawyering. It was followed in 2002 by the Law Commission of India's report stating that clinical legal education should be compulsory.[14] Response to these requirements has been modest at best. The reason can be seen in the explanation for why previous efforts at instituting new standards failed: means were not part of the package.[15] However, developing a vision for the possibilities of clinical legal education within existing constraints has been the focus of trainings offered in 2007 across the sub-continent.[16]

In light of the possibilities suggested by these trainings, this article considers how the history of high-level assessment, recommendation, and demand might be pursued in the new, elite law universities. Should developing the analytical and practical competencies needed for addressing India's critical issues of poverty and access to justice indeed be a priority for the law universities? If so, how should it be achieved? My perspective is based, inevitably, on my clinical legal education experience in the United States and, to a lesser extent, on my exposure to NALSAR Law University (hereinafter "NALSAR"), which I refer to as an example of a law university response to the intended reform measures. I begin by discussing clinical legal education and why it is a critical aspect of a lawyer's professional training. I draw on assessments made of U.S. law schools that are similar to those that the various committees and commissions have made in India. The assessments conclude that law schools should more effectively connect the substantive education they provide to professional practice, and that this connection should include a firm understanding of and commitment to responding effectively to the needs of underserved members of the community. While the approach in India is driven by the particular needs that affect such a rich, diverse, and challenging country, the premise is the same: the preparation of law professionals must effectively be connected to the social justice imperatives of their communities. As Paulo Freire has

aware that they have not been as focused and in depth as they could be. One approach might be to invite corporate counsel and partners from major law firms to explore with my clinic students the opportunities for identifying and pursuing the common good that they see or are open to in the context of their practices.

13 Bloch & Prasad, *supra* note 5, at 178-79.

14 Law Commission of India, 184th Report (2002) at 95.

15 Block & Prasad, supra note 5 at 180.

16 Five regional trainings were offered in 2007 through the South Asian Forum of Clinical Law Teachers (SAFCLT) and the Menon Institute of Legal Advocacy Training (MILAT). MILAT is the two-year old institute chaired by N.R. Madhava Menon that is devoted to human rights promotion, law and judicial reforms and professional development programs. The goal of the trainings has been to "train about 250 clinical law teachers in the country capable of effectively teaching at least the four practical training papers described by the [Bar Council of India]." MILAT announcement, dated November 23, 2007, copy on file with the author.

said, "We make the road by walking."[17] This article is intended to explore steps towards implementing the goals for legal education that have been expressed over the years and that could yield significant contributions to India's future.

I. Why Clinical Legal Education in India?

Clinics expose students to the impact that the practice of law has on people. No one should pretend that they are prepared to practice without a sense of this impact and a constructive way to think about it. This perspective has significant implications for the way legal education is approached in India. It is law schools that must foster a contextual understanding of what lawyers should do to meet the needs of the country. This means connecting students with communities and involving them in creative solutions that focus on the common good.

The new model for law schools – the law university – grew out of a perceived need to enhance the quality of legal education in India. The universities represent a bold move to reinvent legal education practices. The practices that were found lacking in law schools were overcrowded classrooms, lack of rigor in teaching, lack of attention to socio-economic problems, and a general lack of preparation for professional practice.[18]

As with other law schools in India, students come to the national law universities straight out of 10+2.[19] Arguably, these students are too young and their education too narrow to take full advantage of professional training.[20] In the United States, law is a post-graduate study; university

17 MYLES HORTON & PAULO FREIRE, WE MAKE THE ROAD BY WALKING: CONVERSATIONS ON EDUCATION AND SOCIAL CHANGE (1990).

18 *See* Jayanth K. Krishnan, *Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India*, 46 Am. J. Legal Hist. 447 (2004). Professor Krishnan discusses the multiple assessments of Indian legal education by the Indian government and by American scholars sent by the Ford Foundation. The article chronicles the observations and frustration that the various Ford scholars conveyed, most generally emphasizing the importance of Indian leadership in developing a meaningful solution for societal needs and the legal education reforms designed to address them. In truth, Professor Krishnan's article served to emphasize my own hesitance in plunging forward with suggestions for implementing the clinical legal education aspects that seemed to be so central to the national law school model. Clinical legal education in the United States is a work in progress. The connection to educational goals is not as explicit or as developed as it should be by now. Indeed, India has been more explicit in stating the importance of clinical legal education. Still, India has not taken the steps towards clinical legal education that its institutional objectives would suggest. The door is open, but the path relatively untraveled. In part, this is due to systemic barriers discussed below, but it is also due to the ongoing need to identify the relevance of various possible clinical offerings to the range of professional obligations Indian lawyers will need to meet. As Upendra Baxi points out, Indian lawyers need to focus on the social relevance of law and understand their professional obligation to serve their community meaningfully. *Id* at 483. I also heard Professor Baxi make a similar point at a lecture at NALSAR on August 15, 2005. As many of my law students at NALSAR pointed out, they need to understand how socially relevant practice will translate into a profession in which they can earn a decent living. Opportunities previously unheard of within India's borders have become available through globalization. *Id* at 494. The law university has both the challenge and the obligation to help students integrate and prepare to respond to these challenging demands. *See also* Bloch & Prasad, *supra* note 5, at 167-172 (discussing in Part I a brief overview of the social justice mission in clinical legal education in India).

19 These students are equivalent in age to American high school graduates.

20 The following curriculum for the first two years developed for the National Law University at Bangalore indicates how social science classes are integrated: "First Trimester - Sociology I, Economics I, Legal Methods Materials & Processes, Torts I, English and Legal Language; Second Trimester - Economics II, Political Science I; History I, Contracts I, English & Legal Language

graduates enter law schools to obtain a doctorate in law. However, many other countries follow a pattern similar to India's, for economic if no other reasons.[21] The expense of attending college prior to preparing for professional practice can be prohibitive, particularly when undergraduate study is imposed as a condition precedent. The universities offer a five-year program, the first two years of which include social science and economics courses along with law courses. Economics and an expansive view of access to education have led to overcrowding in the professional institutions. The number of students attending law schools in India does not necessarily represent vocation or an expectation of entering the profession; students also enter law school as a matter of opportunity or indecision.[22] The national law universities narrowed this pool by raising admissions standards and charging students to attend, setting aside scholarships to assure access to some of the qualified students who could not otherwise matriculate.

Reflecting some attention to the Bar Council's Practical Paper requirements,[23] students are required at NALSAR Law University to spend time in practice settings in four of their five years.[24] The placements have the potential to allow students to interact with the legal community and experience the law in context. However, the placements are apparently student-run projects rather than the product of faculty supervision and educational rigor.[25] Students organize the placements,

(Continued); Third Trimester - Sociology II, Contracts II, Constitutional Law I, Torts II, English and Legal Language (Continued); Fourth Trimester - History II, Political Science II, Constitutional Law II, Family Law I; Fifth Trimester - Jurisprudence I, Constitutional Law III, Criminal Law I, Family Law II; Sixth Trimester – Criminal Law II, Administrative Law, Property Law, Political Science III." Krishnan, *supra* note 18, at *Appendix*, 498-499. Several of the students I taught at NALSAR expressed the concern that they had an insufficient foundation for their professional degree and felt that they could not prepare to be effective in the profession with such a narrow educational base. However, this seemed to express a sense that they were missing something that American students had the benefit of more than a specific lack of foundation for their professional training.

21 *See, e.g.*, Frans J. Vanistendael, *Quality Control of Students and Barriers to Access in West-European Legal Education*, 43 S. Tex. L. Rev. 691, 692 (2002) ("With the exception of the U.K. and Ireland, conditions for admission to law schools are totally different from those in the United States. First, there is no buffer of college between high school and the start of law school."); Philip F. Iya, *The Legal System and Legal Education in Southern Africa: Past Influences and Current Challenges*, 51 J. Legal Educ. 355, 360 (2001).

22 Even at NALSAR Law University, a number of law students expressed a detachment with regard to their professional futures that I found surprising. I have encountered a similar perspective while teaching and talking with students at the University of Montenegro School of Law. Many of the students there are not sure that law is a career they want much less have any hope of effectively pursuing.

23 The Bar Council has required all Indian law schools to include the four Practical Papers in their curricula since 1998. Bloch & Prasad, *supra* note 5, at 181, and at 209 (describing the details of the syllabus and mode of evaluation for the four Practical Papers, or core courses, to be implemented in the law universities). .

24 This is consistent with the model instituted by Dr. Menon. Referring to establishment of the first law university, the National Law School at Bangalore, Professor Krishnan noted, "Menon institutionalized into the curriculum a mandatory two-month internship that students would need to complete every year during their holiday period. Krishnan, *supra* note 18 at 489.

25 I worked with 57 students who are in their fifth year at NALSAR. Each of them had externship placements over the years. The placements were organized by the students. A few had extraordinary placements. One had traveled to the Hague to intern at the World Court, and was thrilled by the opportunity he had to do legal research and writing on interesting cases. Another student had interned for an attorney who had worked on interesting cases and included her in the case preparation. The vast majority of students said that their placements were disappointing. They described being placed at desks but given no work or opportunity to observe work, being given tasks completely unrelated to legal practice and having supervisors who had no idea what was expected or what to do with them. One student said, "I got to the office and the judge asked me what I thought I should do. I said I was not sure. He did not

interact with the relevant offices and appear for work. The school is not involved in this exchange in any meaningful way other than to register the fact that each placement occurred.

Beyond these placements, experiential learning is limited at NALSAR to moot court and a few classroom simulations.[26] How did clinical legal education remain largely undeveloped in this new institution given the goals that supported development of the law universities?[27] In part, the necessary emphasis placed on building physical facilities and attracting highly qualified faculties and students provides insight. Establishing new institutions in which traditional teachers organize the curriculum and teach the courses is not a prescription for significant curricular change, even though the framework of fewer students and greater resources suggest some opportunity for improvement. Lack of experience in clinical teaching, the demand on teaching resources that clinics make and the Bar Council's failure to provide institutional support for the clinical legal education espoused contribute to the difficulty realizing desired change. Indeed, the Bar Council sends the message that law teachers are to be disengaged from the practice of law by denying the license to practice it.[28] Thus, the substantive curricular changes articulated by Dr. Menon and urged in the many reports appear to be eluding the new institutions,[29] though, paradoxically, there

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seem to know what I should do either, so I hung around and did not do much." Several others had similar examples. Having students responsible for their externship placements can be empowering and can yield a wide range of opportunities that reflect student interests, but this does not mean that the school should view its role in the process as passive. The placements are an educational requirement, and the school has an interest in assuring that the experiences students have are valuable.

26 When I taught at NALSAR Law University in 2004, the simulation that I spent nine days teaching was part of a clinic course, one that had been evolving that year and that did not appear to be an established part of the curriculum. Prior to my arrival, the students in this course had done a mock criminal trial, but the readings for the course and other preparation for that simulation were not apparent. As far as I could tell, apart from this simulation course, moot court and the placements discussed in the text that follows, there were no other skills or clinical course being taught at the school.

27 Even at the National Law University at Bangalore – the model for institutional reform, *see supra* note 29, clinical opportunities seem limited to observing court or lok adalat proceedings. It has been hard to get a handle on what is happening at the many law programs in India outside of the law universities. V. M. Salgaocar College of Law, *infra* note 30, is one example of what is happening. According to Subhram Rajkhowa of Gauhati University, Assam, India, "the law clinics may be categorized under three heads, those under the National Law schools, those under the central universities and those under the state universities, the third category being the least structured." Subrhram Rajkhowa, Globalizing Clinical Education to Protect the World's Health Environment, University of Maryland School of Law, April 11-13, 2007, http://www.law.umaryland.edu/specialty/environment/WardKershaw07/rajkhowa.pdf (last visited Dec. 31, 2007).

28 For example, in India, law faculty are not allowed to hold a license to practice law. *See, Bar Council of India Rules, Part VI, Chapter 2, Section VII - Restriction on Other Employments*. ("An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practise as an advocate so long as he continues in such employment.") The reason for such limitation may be to assure that law faculty are focused on teaching instead of suborning their teaching obligations to the demands of legal practice. A similar concern is reflected in the accreditation standards for American law schools. *Section of Legal Education and Admissions to the Bar, American Bar Association, Standards for Approval of Law Schools* (2006-7) [hereinafter ABA Standards], Standard 402(b) provides that a full-time faculty member's primary professional employment must be with the law school and anything outside must not "unduly interfere" with law school responsibilities.

29 Dr. Menon views clinical experiences as a central element of legal education, promoting social and professional responsibilities within the legal practice – surpassing the mere academic exercises of legal education. Menon, *supra* note 3, at 4-6. Clinical education is to encompass active participation by the students, under the careful supervision of the faculty, to learn about the practical applications of legal skills and processes in the context of the political, social and economic

is some evidence of progress towards the articulated goals in other law schools.[30] Since interest in clinical legal education in India was nourished by developments in the United States,[31] to what extent is what has been happening in the United States instructive?

II. Legal Education Reform in the United States

Legal education in the United States has been repeatedly criticized for its failure to adequately prepare students for the practice of law.[32] The critique has come in the form of high-level reports,[33] judicial commentary[34] and numerous law review articles that call for more relevant training.[35]

conditions of their country and society. *Id*. at 10-11. Referring to the first of the national law universities, the National Law School at Bangalore, Professor Krishnan concluded, "Menon had realized his dream – to construct an Indian law school that would emphasize pedagogy, analytical rigor, clinical training, and public service." Krishnan, *supra* note 18, at 493. However, it does not appear that even Bangalore has realized the dream with regard to clinical training.

30 V. M. Salgaocar College of Law Legal Aid Society, which began in 1998, is an example of what can be achieved in India, and is an example of India's potential as a leader the international clinical legal education movement. It operates thirty-five permanent free legal aid cells throughout the state of Goa. Each cell consists of a team of two students. The cells are set up and housed in government buildings, schools, and church or temple premises. Students carry out awareness campaigns, provide legal advice and pursue remedies such as meeting with the other party, meeting with government officials and providing legal referral services. The students also perform paralegal aid services, such as visiting jails, registering marriages, births, and deaths, obtaining ration cards, and preparing affidavits. They also prepare and file documents that are required for obtaining benefits under various welfare schemes. Students also work with faculty members to petition relevant authorities who are obliged under law to remedy the injustice. If relief is not provided, the students work with lawyers to file a petition before the High Court. Students can argue these cases under special rules that allow any member of the public to present such cases. Bloch & Prasad, *supra* note 5 at 203-206. The authors also presented a workshop at the GAJE Conference in Cordoba, Argentina in 2006, using examples of two activities Legal Aid Society students and exploring with participants the value including critical assessment of the of the work undertaken by clinical law students and their teachers. Report of the 4th GAJE Conference, at 20, http://www.gaje.org/ (last visited Dec. 31, 2007).

31 See Krishnan, *supra* note 18.

32 This is an issue that law schools in the United States have either struggled with or ignored. In the *Third Wave* article, my co-authors and I discuss experiments and programs at law schools that have sought to address the need for a broader impact within their curricula. See Barry et al., *infra* note 58, at 32-50. We quote former Dean John Sexton of New York University as saying that "we must abandon the "coverage" paradigm – that is, we must abandon the notion that there is a certain, fixed body of doctrine which must be covered, and instead use substantive courses as a platform for teaching the range of skills that students should learn." *Id*. at 49-50. *See also*, Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 Clinical L. Rev. 109 (2001); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES] (For the past several years, the Clinical Legal Education Association has sponsored a project to analyze legal education and develop a comprehensive guide for achieving the optimum approach to teaching law. The result is BEST PRACTICES. The publication is a useful resource for any law school committed to evaluation of its approach to legal education.).

33 *See* Stuckey, *supra*, at 11-37; Robert MacCrate, *Legal Education and Professional Development - An Educational Continuum*, 1992 A.B.A. Sec. Legal Educ. & Admissions to Bar 213 [hereinafter *MacCrate Report*]; WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, & LEE S. SHULMAN, EDUCATING LAWYERS : PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter EDUCATING LAWYERS].

34 See Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 Fordham L. Rev. 227 (1973); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 Mich. L. Rev. 34 (1992)

35 *See, e.g.*, EDUCATING LAWYERS, *supra* note 38; BEST PRACTICES, *supra* note 32; Alan Watson, *Legal Education Reform: Modest Suggestions*, 51 J.

When Professor Langdell championed the casebook method and the use of Socratic dialogue in the early 1900's, his goal was to establish legal education as an academic discipline.[36] That concern still casts a shadow that arguably dissociates legal education from significant aspects of its obligation to develop professional competency.[37] This is not to say that Langdell's method, particularly as it has evolved to include problem solving and critical studies, is not important or relevant. It is recognize that more is needed. The concern that too much is asked of law schools if they are expected to expose students to the law both in theory and practice must not be the end of the analysis. Theory and practice are intertwined in law, as they should be in any profession. This connection is not fully acknowledged by law schools, and the educational programs have suffered as a result.

The Carnegie Foundation report, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007), underscores the need for change in the approach to legal education.[38] The report cites the newly published BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP, a project of the Clinical Legal Education Association that takes an in depth look at all aspects of legal education in the United States and recommends methods for improvement.[39] Both books discuss the importance of clinical programs and the use of clinical methodology across the curriculum to achieve the necessary integration of substantive law and professional skills and values.[40] All accredited law school in the United States have clinical programs. Given the growth of clinical programs in law schools in the United States, one might wonder why the statements continue to be made that link their importance to needed improvement. A fundamental problem with the approach to clinical programs, and this is also true of "skills" courses in most U.S. law schools, is that they are viewed as nonessential and/or unrelated to the substantive law courses offered.[41] The hard work of integrating experiential

Legal Educ. 91 (2001); Carrie Menkel-Meadow, *Taking Problem-Solving Pedagogy Seriously: A Response to the Attorney General*, 49 J. Legal Educ. 14 (1999).

36 Barry et al., *infra* note 58, at 5-6.

37 One skill is valued: legal analysis. One task is in direct conflict with achieving more: coverage of substantive law. The idea that the skills and values addressed in clinical courses are important aspects of legal education is seen as beyond the scope of what can reasonably be achieved in a substantive law course.. This is true despite the weight of criticism referenced above. This is true because, while the bench and bar claim they want change, hiring is based on performance in the very courses that teach the skill emphasized by law schools. Furthermore, entry into the profession is determined by who passes bar examinations, and these examinations essentially ignore professional values and skills other than legal analysis. In sum, the training law schools provide has been roundly criticized, but there is insufficient incentive to change.

38 In their preliminary summary, the authors of EDUCATING LAWYERS make seven specific recommendations: that law schools (1) offer an integrated curriculum; (2) join lawyering, professionalism and legal analysis from the start; (3) make better use of the second and third years of law school; (4) support faculty teaching across the curriculum; (5) design the program so that students and faculty weave together disparate kinds of knowledge and skill; (6) recognize a common purpose in achieving professionalism; and (7) emphasize interdisciplinary learning The report itself emphasizes the need to integrate practical and theoretical learning. *See generally* EDUCATING LAWYERS, *supra* note 38.

39 *See* BEST PRACTICES, *supra* note 32.

40 BEST PRACTICES also emphasizes the importance of outcome assessment as a means of determining the extent to which approaches to achieving quality legal education are effective. It argues that legal education is unique in its failure to reflect on the effect of its teaching choices. BEST PRACTICES, *supra* note 32, at 42. It notes that legal educators in Great Britain have begun to explore outcome assessment methods. *Id.* at 45-46.

41 The emphasis is on teaching a set of required first year courses and other courses that appear on state bar examinations, have traditionally been offered, are favored by members of the faculty, or cover emerging areas of law. The approach is driven by history and evolution, but not necessarily reflection on what is needed to produce thoughtful and

education into the curricula has not happened in this profession, raising serious concerns about the quality of professional preparation.

What do clinical courses offer that these analyses and critiques of legal education find so important? First of all, the emphasis on clinical programs addressing skills and values that substantive law classes do not reach may suggest that clinical programs fully prepare students to enter the profession as competent practitioners. No such argument is intended. Clinical programs do well if they introduce students to the competencies they will need, strategies for building expertise and critical assessment of the lawyer's role. While the traditional American classroom uses casebooks and the Socratic method to expose students to a body of substantive material and develop their ability to analyze the material,[42] the range of competencies that a clinical course seeks to develop is broader. They include interviewing, fact investigation, an extensive application of problem solving skills, attorney-client relations, negotiation and other alternative dispute resolution methods, ethical considerations, pre-trial and trial skills. They are taught using methods that include role-playing, simulations, brainstorming, highly interactive discussions, regular in-depth feedback, and direct client representation.[43] Significantly, they instruct by helping students to build on their experiences.

Second, clinical courses expose students to opportunities to use legal expertise to address issues of social concern, particularly the needs of the poor. Regardless of whether students intend to work in public interest law, they need to be aware of their obligations to contribute to their communities and of the special role they are becoming equipped to play in addressing a range of social problems. While the classroom can raise theoretical issues about social justice, access to legal interventions and reform, understanding the problems in terms of access, application, and sufficiency comes from well-supervised work with poor people. Thus, these issues are best raised through direct service to disadvantaged clients, either through representation or some other opportunity to work closely with them in order to understand the problems and the attorney's special ability to provide effective assistance.

Clinical programs in law schools across the United States have addressed one or both of these goals through experiences that are discussed below. The discussion considers these approaches in relation to what might make sense for the law universities, not as a prescription for what should be the ultimate or ideal approach but rather as a way to begin to think about moving along the path to implementing some of the reforms that have been advocated for so long.

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effective professionals. There is a significant trend away from teaching law courses as though they exist in a theoretical vacuum, unrelated to other substantive law, legal practice and the complexities of the society in which it all finds relevance. However, the priority remains legal analysis and coverage. *See*, Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Courses as a Context for Nurturing Intrinsic Values*, 13 Clinical L. Rev. 839, 847 (2007); Thomas F. Geraghty, *Legal Clinics and the Better Trained Lawyer (Redux): A History of Clinical Education at Northwestern*, 100 Nw. U. L. Rev. 231 (2006); Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 Clinical L. Rev. 807 (2007).

42 Many law teachers are moving away from the Socratic method and/or integrating more problem-solving approaches in their teaching. *See e.g.* Robert J. Rhee, *The Socratic Method and the Mathematical Heuristic of George Polya*, 81 St. John's L. Rev. 881 (2007) (bemoaning the decline in popularity of the Socratic method of teaching and suggesting that it would be more attractive if combined with mathematician George Pólya's approach to problem-solving).

43 *See* BEST PRACTICES, *supra* note 32 at 165-167.

III. Contemplating the Path

The strong support for clinical legal education in India has resulted in an assumption of its benefits, but it is not clear that law universities have considered how it relates to educational priorities. Thus, a necessary step is to assess what aspects of clinical legal education are important and why. Insight can be gained from looking at the committee and commission reports, but how should their calls for socially relevant learning experiences and to use students to address India's mandate to provide legal aid be approached by the universities?[44]

To avoid critiques leveled against American law schools, one important goal would be to figure out how to integrate values and appropriate skills into the substantive law classes. Given India's commitment to access to legal aid and the percentage of the population living in poverty, social science courses that are currently included in the law university curricula provide an excellent opportunity to help students consider innovative interventions and collaborations through which lawyers can make useful contributions.

There is a special danger of sacrificing educational objectives in order to respond in some way to the huge demand for legal services. The idea that law universities should attempt to bridge the chasm between the promise of legal aid to the poor in India and the reality of access is in direct conflict with the educational mission. The goal of the law universities should be to create the space for analysis and creative problem solving, and this cannot effectively happen where the competing goal is coverage of huge caseloads – regardless of how they are structured. The educational benefit of the practice experience is not to simply do but to have the opportunity to learn effective lawyering from the process of doing.[45]

Alternative models of lawyering and dispute resolution are particularly critical for law students in India to explore. Formal courts based on British colonial structures have become bogged down to the point of being essentially dysfunctional. Students need to consider what the profession's obligations are with regard to reforming whether, when and how the courts are used. As alternatives to the courts are reinstituted or created of necessity, students need to learn how to assess the extent to which they are fair and advance the common good.[46]

The following sub-sections consider some experiential learning course structures. My goal is to

44 Article 39A of the 42nd Amendment to the Indian Constitution establishes the right to free legal aid. Block & Prasad, *supra* note 5, at 173. The Expert Committee on Legal Aid of the Ministry of Law and Justice proposed the use of law students as an inexpensive and enthusiastic resource for providing meaningful legal aid to India's vast population. *Id* at 174.

45 Professor Leah Wortham put it this way, "[A] clinic within a law school should not let the education objectives of the clinic be swamped by many clients who need service. If all clinic faculty and student time is absorbed by responding to clients, there will be not time and energy to think about what the clinic is trying to teach students and how to teach that well. Likewise, it will be difficult to find time to reflect critically on why the law and legal system and society generally may not serve poor people well, to consider alternatives to the current system, and to consider alternative models of lawyering." Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How To Do So Effectively*, 12 Clinical L. Rev. 615, 661-62 (2006) (discussing lessons learned from developing clinical legal education programs outside of the United States).

46 For example, lok adalats have been reinstituted as a means of providing access to the courts for the poor, but concerns with this informal approach to justice are not unlike the objections raised with regard to mediation in the United States. For a critique on the lok adalats and the problems to providing access to justice, *see* Marc Galanter & Jayanth K. Krishnan, *"Bread for the Poor": Access to Justice and the Rights of the Needy in India*, 55 Hastings L.J. 789 (2004).

provoke thought about walking the path towards structuring effective clinical programs and to consider their relationship to the rest of the law university curricula. The courses discussed are intended as a base from which to create and innovate. The skills courses should not be considered as alternatives to the clinical experiences but as part of the integrated approach throughout the curriculum to preparing students to address the issues that the clinic courses will pursue.

A. Externships

Externships offer students discreet periods of time to devote to lawyering experiences in practice settings outside of the law school. As offered in law schools in the United States, they can provide excellent opportunities for students to apply the theory they have learned in substantive law classes to the challenges of professional practice. While the classroom can endeavor to integrate the two, the practice setting offers a significant, arguably essential dimension.

The placements that I observed at NALSAR Law University reflect the experiential objectives of externships. They occurred in each of the third, fourth, and fifth years of schooling. The students spend two months, November and December, at each placement. During that same period, the university is closed for vacation. As noted above, the students find their own placements for each practice inter-session. There is no contact with the placements by the school. Furthermore, no classroom component either prepares the students for what to expect of the placement or to reflect on their experience.[47] This is what distinguishes these experiences from most externship courses in the United States. Externship courses are expected to have either a classroom component or other student/teacher interaction that provides an opportunity to reflect on the placement experience.[48] Often, there is direct contact between the faculty member and the placement supervisor. At a minimum, the school communicates expectations regarding the placement experience.[49] A model externship program would take advantage of the generous commitment of

47 *See supra* note 30.

48 A useful text for teaching an externship clinic is J.P. Ogilvy et al., *Learning from Practice: A Professional Development Text for Legal Externs* (West 1998), and a Teacher's Manual for the text is also available. The book emphasizes the importance of helping students to assess, optimize and build upon the placement experience.

49 ABA Standards, *supra* note 28, Standard 305 – Study Outside the Classroom, sets the minimum standards for externship courses at accredited law schools in the United States:

(a) A law school may grant credit toward the J.D. degree for courses or a program that permits or requires student participation in studies or activities away from or outside the law school or in a format that does not involve attendance at regularly scheduled class sessions.

(b) Credit granted shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.

(c) Each student's academic achievement shall be evaluated by a faculty member. For purposes of Standard 305 and its Interpretations, the term "faculty member" means a member of the full-time or part-time faculty. When appropriate a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program.

(d) The studies or activities shall be approved in advance and periodically reviewed following the school's established procedures for approval of the curriculum.

(e) A field placement program shall include:

(1) a clear statement of the goals and methods, and a demonstrated relationship between those goals and methods to the program in operation;

(2) adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students;

(3) a clearly articulated method of evaluating each student's academic performance involving both a faculty member and the field placement supervisor;

time for experiential learning already available in the law university structure and apply requirements for supervision and placement that would help to assure that students are gaining useful exposure and insight. Basic structural considerations might include the following:

1. Students, in coordination with a supervising faculty member, find their own placements. This would engage students in evaluating placement opportunities while having faculty input with regard to learning opportunities. Depending on the need for services and the educational goals, a specific placement or group of placements may be preferable.
2. A faculty member is assigned to the externship program. This assignment would be the most, if not all, of that faculty member's teaching load. I will refer to this position as "faculty supervisor" below.
3. Any placement found by a student is reviewed by the faculty supervisor. The review would involve determining whether the placement is appropriate under the following criteria:
   a. *The placement is primarily involved in the practice of law or law-related activities.* That the placement is in the legal department or office of a larger enterprise, such as a non-governmental organization or business that is not primarily involved in the practice of law, is acceptable.
   b. *The student's activities primarily involve substantive work directly related to the practice of law.* This can include a wide range of work, from litigation to mediation to clerking for judges to transactional practice to legislative and social service advocacy. It could even include journalism, so long as the placement develops skills and insights relevant to professional development as a lawyer.
   c. *The placement supervisor is a lawyer.* While there are many things to learn from non-lawyers, the goal should be development of professional skills and perspective.
   d. *The placement supervisor is willing to provide to the faculty supervisor a general outline of the work the student will do during the placement*. The faculty supervisor would discuss this outline with the placement supervisor as well as educational goals for the student. A written agreement about the placement should follow that discussion.
   e. *There is an opportunity to understand and address issues affecting the socially or economically disadvantaged, or to address environmental and other important social justice issues.* This aspect of the externship experience should be explored in class or meetings with the faculty supervisor.

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(4) a method for selecting, training, evaluating, and communicating with field placement supervisors;

(5) periodic on-site visits or their equivalent by a faculty member if the field placement program awards four or more academic credits (or equivalent) for field work in any academic term or if on-site visits or their equivalent are otherwise necessary and appropriate;

(6) a requirement that students have successfully completed one academic year of study prior to participation in the field adjacent program;

(7) opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection. Where a student can earn four or more academic credits (or equivalent) in the program for fieldwork, the seminar, tutorial, or other means of guided reflection must be provided contemporaneously.

f. *Student housing accommodation is determined to be satisfactory and safety is considered*. This is worth noting in program development since the school has some responsibility for the circumstances that attend students pursuing this aspect of their education, particularly since the students are young and often unaccustomed to being on their own.

4. Each student is required to provide to the faculty supervisor an outline of goals for the placement experience.
5. Prior to leaving for their externships, the faculty supervisor meets with each year of externship students in several classes to discuss what the placement should mean in their professional education. Specifically, the discussions would help students establish goals for their experience, develop tools for reflecting on their experiences, and learn how to seek and receive useful feedback during their externships.[50] The discussion should change for each year, with the goal being to develop the expectations and level of reflection for each progressive year's placement.
6. Prior to embarking on the externship placements, the faculty supervisor also meets with students, individually or in small groups, to discuss the placement supervisor's outline of work in relation to the students' goals for their placements. Students should have a good understanding of goals and expectations prior to leaving for their externship. Strategies for dealing with supervisors who do not provide the substantive experience contemplated are also important to cover in these meetings.
7. Keeping journals during their placements would encourage students to analyze their placement experiences. These journals can be collected by the faculty supervisor and form part of the externship assessment, or they can simply be used for debriefing discussions in class upon the students' return. Journals expose students to the discipline of thinking deeply about their actions and the actions of others around them. Particularly in the externships where rounds and other clinical teaching tools may not be part of the practice experience, they encourage students to take responsibility for analyzing their experiences and learning from them.[51]
8. At the end of the externship experiences, small group sessions are held with students to discuss the externship experience. Students should be prepared to discuss what they did, how it responded to the goals they had set, how their experiences provided opportunities to apply the substantive law they had learned during the preceding semester, poverty issues and potential solutions, and any other relevant reflections.
9. The school keeps a roster of placements that did not work out so that students may avoid them in the future.[52]

50 *See* BEST PRACTICES *supra* note 32 at 176-177 (recommending that students learn how to gain the most educational value from feedback provided through experiential courses by being open and attentive to critique; seeking clarification; focusing on specifics in order to improve future performance; seeking a variety of input; synthesizing the feedback provided; and reviewing the input provided).

51 *See*, J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 Clinical L. Rev. 55 (1996)(discussing the benefits of journals as a tool for encouraging students to critically assess their experiences).

52 Columbus School of Law does this for its externship program. Students are asked to provide feedback about placements and placement supervisors. This feedback, both good and bad, is

The goal, then, is to provide more structure to the placement opportunities and faculty–guided reflection to the placement experiences, while preserving some of the range of placements and the student initiative that was in evidence at NALSAR.

B. Skills Courses.

In July 1992, an assessment of what competencies lawyers need to be effective professionals was done at the behest of the American Bar Association's Council of the Section of Legal Education and Admissions to the Bar. The task force that conducted the study was chaired by prominent lawyer and past ABA president Robert MacCrate, and the report that was issued has commonly been referred to as the *MacCrate Report*.[53] Central to the report was an analysis of the skills and values essential for competent representation. The skills listed by *MacCrate* were: problem solving; legal analysis and reasoning; legal research; factual investigation; communication; counseling; negotiation; litigation and alternative dispute resolution procedures; organization and management of legal work; and recognizing and resolving ethical dilemmas. The values identified were: provision of competent representation; striving to promote justice, fairness and morality; striving to improve the profession; and professional self-development.[54]

These skills and values provide a useful outline of a range of competencies that can be used as a reference point for framing a law school curriculum. In fact, this is exactly what the *MacCrate Report* urged. The *MacCrate Report* had a modest impact on legal education in the United States. It was criticized as being overly broad to the point of being irrelevant to values such as social and economic justice and to the changing roles of the lawyer in a lawyer and client relationship.[55] The report's limitations as well as the differences between India and the United States make uncritical reference to the *MacCrate* analysis risky for several reasons. India is still extracting itself from the ongoing impact of a colonial legal system. It is also combating pervasive poverty exacerbated by religious and caste prejudices. Economic development, energy, environmental and infrastructure challenges call for attention in different ways in each country. Yet, these issues are primarily a matter of degree. Poverty, prejudice, lack of education, lack of legal representation, and cluttered court dockets are common to both countries. This suggests that India may place different emphases in applying the skills and values enumerated by the *MacCrate Report*, as well as consider the extent to which additional or alternative skills and values are more meaningful and explicit.[56]

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kept in binders. My suggestion is that the externship supervisor take an active role in assessing the placement experience through contact with the supervisor and feedback from the student. If the experience has not been a good one for reasons primarily associated with the setting and supervision provided, then future students should be instructed to avoid that placement.

53 *MacCrate Report*, *supra* note 33.

54 *Id*. at 138-221. *See also* Menon, *supra* note 3, at 41-91; ABA Standards, supra note 28, at Standard 302

(b) A law school shall offer substantial opportunities for:

(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence;

(2) student participation in pro bono activities; and

(3) small group work through seminars, directed research, small classes, or collaborative work.

55 *See* Russell G. Pearce, *MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values*, 23 Pace L. Rev. 575 (2003) (criticizing the MacCrate Report as failing to emphasize the teaching of values as high a priority as teaching lawyering skills).

56 *See* Bloch & Prasad, *supra* note 5, at Part III (discussing the need for India to adapt the MacCrate Report to its own needs and proposing a modified set of skills and values.).

Identifying the skills and values that are components of legal education is the first step to determining how they will be taught. Once identified, they need to be integrated into the teaching of traditional subjects in the classroom setting so that understanding of substantive law is connected to its professional application.[57] A torts or personal injury course will teach legal analysis and reasoning, but it must also engage students in problem solving and critique of issues such as caste, class and gender and address issues of justice, fairness, and morality in considering how tort law applies and should apply in serving the community. This aspect of the course need not be in conflict with the need to cover a significant body of substantive law.[58] Balance is essential.[59] Students should be aware in each of their courses of the interrelationship of legal precepts, contextual realities and legal practice so that they can gain a sense of professional connection and lay a foundation for competence.

While teaching professional skills may be reinforced in teaching substantive courses, courses dedicated to developing skills are also necessary. For example,

1. Legal research and writing are fundamental and should be introduced through a structured course or series of courses taught by expert law faculty. Certainly, the move in this direction has been a painful one in the United States.[60] However, its importance is reflected in the accreditation standards for law schools in the United States: schools must require two legal writing courses of all students prior to graduation. Apart from professional responsibility, this is the only specific course requirement in the accreditation standards.[61] The ability to gather, synthesize and use information is essential for lawyers to know regardless of the context in which they will apply those skills. Research and writing may result in pleadings, briefs or argument in court, but may also be used to inform community education projects, alternative dispute resolution approaches, public advocacy, and problem solving in general.

57 EDUCATING LAWYERS, *supra* note 38 at 190-191 (noting that the MacCrate Report considered the skills and values it advocated as additions to the law school curriculum instead of more appropriately viewing them as teaching objectives throughout the curriculum).

58 *See, e.g.*, Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 Clinical L. Rev. 1, 41-44 (2000) (discussing the inclusion of a live-client clinic experience in first year courses in law schools in the United States).

59 Law teachers often feel driven to cover substantive legal information without faith in exchanging some of that coverage to challenge students to understand and engage in constructive critique of the circumstances and practices that bring the issues into being. *See* Sexton *supra* note 32.

60 *See* Joan S. Howland & Nancy J. Lewis, *The Effectiveness of Law School Legal Research Training Programs*, 40 J. Legal Educ. 381, 390 (1990) (attributing students' negative attitudes towards legal research to the low value law schools place on research skills in the curriculum; they "are often taught by nontenure-track faculty, are ungraded, and frequently are not particularly rigorous."). *See also* James B. Levy, *The Cobbler Wears No Shoes: A Lesson for Research Instruction* 51 J. Legal Educ. 39 at n. 15 and 2 (2001) (making the same observation). Consistent with these observations, legal writing instructors receive the least protection of all teaching faculty under the Standards; the extent of the security of position for these teachers falls far short of tenure – schools need offer no more than short-term contracts to their legal writing faculty. *ABA Standards, supra* note 28, at Standard 405(d) and Interpretation 405-9.

61 ABA Standards, *supra* note 28, at Standard 302 states:

(a) A law school shall require that each student receive substantial instruction in:

(1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;

(2) legal analysis and reasoning, legal research, problem solving, and oral communication;

(3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year . . . .

2. Interviewing and Counseling, Negotiation, Trial Practice, and Alternative Dispute Resolution are four additional skills courses that should be considered. They are not exclusive remedies, and some may be irrelevant to areas of needed service in India. However, they are tools lawyers use and law graduates should have a basic understanding of these competencies in order to effectively assess their utility.

This is particularly true of Alternative Dispute Resolution. The growing interest in ADR in the United States is a direct result of frustration with cluttered court dockets, resulting delays and poor service. Congestion in Indian courts is far greater.[62] As a result, a variety of alternative approaches have developed, but the integrity of these alternatives requires greater analysis.[63] It is important for students to learn about, critique, and, where necessary, explore alternatives to various methods used.

Effective teaching of these skills courses requires participation in a series of simulations that challenge students to integrate assigned readings as they develop basic competencies. Thus, it is hard to consider teaching these courses effectively in classes having more than sixteen to twenty students. Student opportunities to participate in sufficiently supervised simulations would be compromised in larger classes. This means dedicating several sections within a given year of students to covering each set of skills, and possibly linking the skills sections to a larger substantive course for greater impact.[64]

3. Moot court competitions are already quite popular at the law universities. These simulated appellate arguments help develop research and writing and persuasive oral argument skills.[65] However, moot court participation should be in addition to legal research and writing courses, and the important oral skills learned cannot be viewed as unrelated to or supplanting the skills needed to creatively address social and economic justice problems.

62 The logjam in Indian courts is renowned. *See* Krishnan, *supra* 18 at 497; Jaynath K. Krishnan, *Social Policy Advocacy and the Role of the Courts in India*, 21 Am. Asian Rev. 93 (2003); and Galanter & Krishnan, *supra* note 46.

63 "Parliament passed the Legal Services Authority Act, 1987, which aims at both providing free legal aid and organizing lok adalats (people's courts) to secure quick justice at low cost." Bloch & Prasad, *supra* note 5, at 173. "Lok adalat settlement is no longer purely a voluntary concept. . . . Cases can be referred by consent of both parties to the disputes, where the Court is satisfied that the matter is appropriate to be taken cognizance of by the lok adalat . . . . Settlements shall be guided by the principles of justice, equity, fair play and other legal principles; if agreement is reached by the consent of the parties and passed on by the conciliators, the award is final and the matter need not be referred back to the concerned court for consent decree; if no compromise is reached through conciliation, the matter shall be returned to the concerned court for disposal in accordance with law . . . . *Id* at 212, n.135. . *See also*, Galanter & Krishnan supra at 804-805.

64 *See* Don Peters, *Mapping, Modeling, and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing, and Counseling*, 48 Fla. L. Rev. 875 (1996) (recommending that faculty members who teach large classes can collaborate with lawyers who can map, model and critique smaller simulation sections of the larger course).

65 This first of the Practical Paper requirements required under Indian law seems to be the most seriously pursued. *See* Bloch & Prasad, *supra* note 5.

C. Clinical Programs.

An in-house clinic (one run by the university for purposes of teaching its students and providing service to the community)[66] or a hybrid clinic (one that collaborates with an existing legal services office to provide representation)[67] is a carefully constructed integration of client service and contextual learning. Students must reference their substantive law and legal skills education and expand on both in the course of providing effective service.

In the United States, in-house and hybrid clinics serve clients who are unable to pay for legal services or who are unable to find representation. Clinics have traditionally sought such clients in order to emphasize for students their professional obligation to assure access to justice. Furthermore, student practice rules generally limit representation to the same body of clients.[68] The purpose of limiting service to indigent clients avoids competition with the private bar and inculcates the same sense of professional obligation.[69]

A clinical course run by the university and taught by its faculty, allows students to participate in legal service that is designed to maximize their learning. When in a student's law school career to provide such clinical experiences has been the subject of experimentation and debate. Some have argued that it should start immediately, to avoid the damage otherwise done in first year law

66 The definition given back in 1992 by a special committee of the Association of American Law Schools has not been improved upon. It is quoted below both for what it has to say about clinical teaching methods and in-house clinics.

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.

If these characteristics define clinical teaching, then the live-client clinic adds to the definition the requirement that at least some of the interaction in role be in real situations rather than in make-believe ones. That is, the interaction with others in role occurs with real clients and participants in the legal system rather than with other students and actors. The nature of the real issues and cases in the live-client clinic provides both concreteness and complexity to the student's learning experience.

The in-house clinic further supplements the definition of clinical education by adding the requirement that the supervision and review of the student's actual case (or matter) . . . be undertaken by clinical teachers rather than by practitioners outside the law school. Although the clinical movement began with practitioners used as supervisors, many clinical teachers came to believe that student supervision by practitioners was problematic for a methodology in which teaching was not incidental to the enterprise but rather its primary function. While a practitioner might be a superb lawyer, she would be unlikely to have the training, experience, or time to devote to the teaching role that a full-time clinical teacher would.

Robert Dinerstein, Report of the Committee on the Future of the In-House Clinic, 42 J. Legal Educ. 508, 511 (1992).

67 *See* Barry et al., *supra* note 58, at 28; Margaret A. (Peggy) Tonon, *Beauty and the Beast – Hybrid Prosecution Externships in a Non-Urban Setting*, 74 Miss. L.J. 1043 (2005).

68 Student practice rules in the United States allow students to appear in court on behalf of their clients under the supervision of faculty members and, in certain instances, other attorneys. *See* Jennifer A. Gundlach, *This is a Courtroom, not a Classroom": So What is the Role of the Clinical Supervisor?* 13 Clinical L. Rev. 279, 287-288 (2006) (discussing the impact of the student practice rule on the development of clinical programs).

69 *See* Robert R. Kuehn, *Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 Wash. U. J.L. & Pol'y 33 (2000). For discussions of the student practice rules in the United States, *see Student Practice as a Method of Legal Education and a Means of Providing Legal Assistance to Indigents: An Empirical Study*, 15 Wm. & Mary L. Rev. 353(1973-1974); Sara B. Lewis, *Rite of Professional Passage: A Case for the Liberalization of Student Practice Rules*, 82 Marq. L. Rev. 205 (1998);Peter A. Joy, *Ethics of Law School Clinic Students as Student-Lawyers*, 45 S. Tex. L. Rev. 815 (2004) (discussing ethical student practice rules in the United States and related ethical issues).

courses that are too removed from the profession.[70] If the law universities are committed to building a strong clinical and skills curriculum, it would seem that the in-house and hybrid clinical experiences may have the greatest impact as part of the students' initial law school experience, with levels of responsibility escalating in each year. Thus, students would begin as part of the clinic enterprise, but with very limited tasks, with their responsibilities progressing such that by their last year they are performing as many of the lawyering tasks as possible. Alternatively, the clinic experience could be approached as a capstone to the progressive range of skills developed as part of the curriculum. If the curriculum requires externship experiences and uses experiential learning methods such as simulation, role-plays and so on early on, then by the last year students would prepared to step into the role of advocate or mediator in the complicated context of real life situations. This is particularly true for students who enter law school from high school, as they do in India. A capstone clinic experience would come after they have had the chance to mature, both in terms of life experience and understanding legal potential. The approaches suggested by need for services, teaching goals, and experimentation should make consideration of when and how to engage students a fluid and innovative process.[71]

Issues of when, what and how to organize the clinic offering require careful assessment of learning objectives and community needs.[72] The 1977 Report on National Juridicare observed that "there are no two opinions about it that there is need to reform the system of legal education in the direction of making it poverty-oriented, multi-disciplinary and related to actual social conditions."[73] The report described its goal as building "a cadre of poverty lawyers competent to run a nation-wide legal services programme."[74] A cadre of public interest lawyers is certainly an attractive goal, and, making clinic available to such a discreet group may be the best way to initiate clinical programming.[75] However, the broader goal of clinic and an integrated curriculum is to

70 *See* Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education into the First Year,* 12 Clinical L. Rev. 441 (2006). *See also* Barry et al., *supra* note 58.

71 *See*, e.g. V. M. Salgaocar College of Law Legal Aid Society *supra* note 30.

72 Making clinical programs available to all students is a challenge. Attempting large scale live client offerings raises the specter of over-extended supervision and poorly conceived client services. One evening at dinner, a few months after returning from my visit at NALSAR Law University, I discussed my concerns about implementing a clinical program at NALSAR with Professor Leah Wortham and Ms. Nimushakavi Visanthi (Ms. Visanthi happened to be visiting at Washington School of Law). Professor Wortham was relating her view that it is far more realistic to contemplate setting up a small program available to a several students per semester or year, and viewing that program as the basis for developing a solid program that is responsive to the unique needs of the particular social setting. This was a liberating view since I had felt had been intently focused on the need to make the live-client clinical experience available to all students at the university, in short order. Professor Wortham developed her views in her *Aiding Clinical Education Abroad* article, *supra* note 45.

73 Menon, *supra* note 3, at 21 (citing *Report on National Juridicare: Equal Justice, Social Justice, Ministry of Law and Justice*, Govt. of India, 1977).

74 *Id*.

75 From my brief conversations with the fifth year students who I taught at NALSAR, with the possible exception of two who were inclined to pursue a criminal defense career, none considered public interest work an option they would pursue. Many felt either inclined or pressured to take corporate jobs because they are viewed as lucrative. A few wanted to enter their families' practices. Still others wanted nothing to do with law, had no idea what area to practice in, or wanted to use their law degrees in another profession. A fair number also wanted to continue their studies, including many of those who envisioned doing corporate law. Not one specified poverty law as an area of interest, although there may have been a few who felt inclined that way and expressed it as dissatisfaction with the profession. The disinterest could be attributed to lack of exposure to poverty law, but it seems overkill to seek to make students poverty lawyers, as opposed to lawyers who, in addition to their legal career goals, understand how to effectively apply their expertise in service to the poor and underserved.

expose students to poverty law issues in the hope that, while a significant number may then be inspired to pursue poverty law practice, others will pursue these issues through or in addition to their ultimate area of practice.[76]

Another basic consideration is whether the clinic should be a hybrid or in-house program. If the clinic is to be in-house, then the law university must assess what type and scope of legal service its clinic will provide. Relevant considerations would be: what community is to be served; what service is needed in the community; what lawyering competencies it is most important for the students to develop; what service is the university particularly interested in providing; and what area of practice the clinical faculty is best qualified to teach or most interested in pursuing.[77] There may be a great need for representation in the community surrounding the university, but the areas of legal expertise required to respond effectively may be beyond the expertise or educational priorities of the university; or the university may want to be identified as a general legal resource for that community and this choice will influence clinic development. Deciding which approach to take should involve the faculty in a discussion of the university's role in introducing students to creative lawyering approaches and fostering a climate of innovative problem solving. Thus, the decision of what type of clinic is best seen as framing the clinic entity and possibly the initial issues and approaches the program will focus on, but would be truest to desired educational and service goals if it is designed with sufficient flexibility to respond to needs identified as a result of community involvement.

The hybrid clinic may provide more breadth with regard to areas of practice and the types of expertise students can reasonably develop. A legal aid office or non-governmental organization (NGO) may handle a wide range of legal matters in ways that members of the law faculty may not have anticipated. Dividing the students among non-faculty supervisors with expertise in a range of issues and approaches allows students to develop a sense of competence while operating in a general practice setting or NGO. Depending upon the relationship with the collaborating office and clinical program goals, clinic faculty may or may not provide direct supervision. Possible models for supervisory collaboration would have the faculty member supervising some assignments that do not involve court appearances, co-supervising all assignments or closely observing the developments in activities supervised by placement attorneys while working closely with them on

76 The skills taught in clinic are intended to be transferable. Skills poverty lawyers use to address the needs of their clients are similar to those used in many legal settings. Interviewing, assessing facts, developing case theories, investigation, legal research, problem solving, client counseling, advocating in a variety of forums, and even community education are skills that lawyers use and that students should have exposure to prior to completing their professional education. This was the approach I took in raising issue of poverty, access to justice, limitations in legal responses, and disparate impact when teaching at NALSAR. Having spent my first class learning about the students and their goals and interests, I knew that it was important to discuss the hypothetical I used and issues I wanted to raise in a way that would resonate for them. I urged them to consider their responsibility to address these issues regardless of the practice they chose to pursue. All lawyers have an obligation to recognize and respond to the needs those who society overlooks or mistreats or the compelling problems that are ignored. In fact, opportunities to explore this obligation exist and should be pursued throughout the law school curriculum. *See* Jane H. Aiken, *Provocateurs for Justice*, 7 Clinical L. Rev. 287 (2001) (discussing the opportunity clinics offer to inspire law students to commit to justice and the need for clinical faculty to provoke a desire to do justice in their students).

77 Professor Wortham observes in the context of promoting the institution of law school clinics, "Given my view of the importance of involving faculty and the usual situation in which many areas of law present legal needs for poor people and under-served interests, I think it is legitimate to focus a clinic in an area of faculty enthusiasm." Wortham, *supra* note 45, at 671.

student supervision.[78] Additionally, the faculty role should involve teaching or co-teaching a classroom component of the course that covers relevant skills and substantive law and that includes rounds that provide students with the opportunity to reflect on their work.

The hybrid clinic model assumes a commitment on the part of the legal aid office or NGO to assist with educational goals of the clinic and closely collaborate with the clinic faculty. Ideally, the relationship benefits all involved in that the degree and quality of the services provided by the outside entity are enhanced by connection with the university, its faculty and students.

Another consideration with regard to whether or not to choose a hybrid or an in-house clinic is the possible need for the university to fully staff the in-house clinic office year round. Coverage for faculty members who may want to write, who will need vacation time or may become ill must be considered, especially since clinic projects may extend beyond the academic semester. Rotating faculty responsibilities might avoid this problem as well as contribute to integrating clinical and substantive law teaching. Coverage considerations are less compelling where the clinic enterprise operates in collaboration with a legal aid office in a hybrid clinic.

Clinic location is another consideration. Should the clinic be viewed as an office to which clients come or a base from which students span into the community? In either event, an office creates a space for student interaction and support. Should it also be an identifiable resource for the community? If so, should it be located on campus or in the target community? Should it be mobile or static? These will depend on a number of factors, including the type of clinic, the location of the law school, space needs and availability. Accessibility to the population served should be a primary consideration, but may well be trumped by budgetary and other considerations.

How to assign students to the planned services is another consideration. Should they be teamed? Teaming students provides an opportunity to develop a skill of increasing importance to legal, as well as other, professional practice: collaboration. Students are often trained to work independently prior to entering law school and during much of their law school careers. One of the goals for integration of clinical methods throughout the law curriculum would be to encourage collaboration in the classroom and on course assignments in order to prepare students to work effectively in professional practice.[79] By extension, within the clinic such collaboration is created through teaming and by creating an environment in which students share ideas with regard to each other's work.

What kind of work to assign is a separate issue. While this issue will inevitably be driven by the kind of service to be provided, assignments should be manageable and provide some opportunity to build expertise. With regard to law clinics in the United States, some have argued that practice limited to a specific area of law allows students to understand the issues related to that type of practice more clearly and provides the opportunity to develop reasonable competence with regard to the subject matter. A contrary view holds that specialization trains students to fit their clients'

78 *See* Barry et al., *supra* note 58, at 28 (discussing approaches to hybrid clinics and the relative economic benefits of this approach).

79 *See* Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Courses as a Context for Nurturing Intrinsic Values*, 13 Clinical L. Rev. 839, 847 (2007); David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 Clinical L. Rev. 199 (1994).

problems into a subject matter box.[80] Such considerations may or may not be as relevant to approaches identified for addressing problems India. Still, the consideration flags the importance of assessing the types of legal assignments the students are given with an eye towards connecting the services provided to the educational goals of the clinical program. Central to any model pursued will be a commitment to optimizing student learning. The goal is to develop lawyers who will be able to effectively address community needs, and not to confuse this goal with using the students as the solution to legal service needs.

One of the tools the lawyer is expected to have is the ability to use litigation as an option for solving client problems. Since students in the United States practice under the supervision of a licensed attorney, usually their clinic professors pursuant to the student practice rules of the relevant state, students are able to take primary responsibility for the full range of representation that may be provided by a lawyer, including the traditional role of litigating before the courts.[81] While, as noted above, a solid clinical experience could be fashioned around a program that does not involve the ability to enter the courts, the option to pursue such a remedy would provide the student the opportunity to experience the benefits and limitations of this aspect of legal practice.

Another consideration is language barriers to effectively serving the poor. Language barriers can pose significant challenges, even as they offer opportunities for learning professional skills. In order to serve the poor in India, language differences will need to be addressed. Many underserved clients speak only the local state language, while the students who come to the law universities often come from several Indian states. The students and faculty share Hindi and English, but these languages are often not shared by the poor.[82] Thus, interpreters are necessary to assist with the complex communication needed for competent representation. Law universities may need to hire interpreters to work with their students in an in-house clinic, or as part of facilitating the interface in a hybrid clinic setting.[83] Learning to work with interpreters is a useful skill for students to develop given the strong possibility that their careers will involve the use of interpreters. One option discussed at NALSAR was requiring first year law students to learn the local language. While this would send students an important message with regard to communication and cultural

80 *See, e.g.*, Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 Clinical L. Rev. 307 (2001) (discussing the pros and cons of specializatin, and arguing that specialization makes it more difficult to serve the myriad needs of clients and it limits students' ability to be creative problem solvers).

81 *See supra* note 68.

82 Telugu is the language spoken in the portion of Andhra Pradesh in which NALSAR is located. For many poorer members of the community, Hindi and English do not supplement their native language. Students at NALSAR are both educated and diverse. They come from many parts of India, and thus many do not know Telugu, although they do know Hindi and English. In order to help underserved local residents, they will need to know Telugu or work through interpreters. There has been some thought that students in their first year at NALSAR should be required to learn Telugu, as a way of acknowledging the host community and as a way of underscoring the need to reach out to the poor. Familiarity with the local language and culture could also complement the social science goals of the first two years of the law university curriculum.

83 *See* Washington College of Law, American University, Ad Hoc Committee on Serving Clients Having Limited English Proficiency, *Bellow Scholar Program Proposal: Developing a Collaborative Model for Delivering Legal Services to Clients with Limited English Proficiency* Attached, with permission, as Appendix A (discussing the committee's considerations with regard to the use of interpreters). *See also* Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 Clinical L. Rev. 347 (2000) (discusses teaching methodologies and language access issues – while the focus is on law in the United States, the article offers guidance for students on when an interpreter is needed).

competency, it may not lead to the depth of communication needed for effective problem solving.

Related to the use of interpreters is this idea of developing cultural competencies.[84] Religious, cultural, caste, class, economic, gender, and experiential differences all suggest an imperative to develop awareness among students of their need to be responsive to the impact of difference on their ability to serve their clients effectively. Assumptions about similarities and differences can inhibit or confuse communication despite the deepest commitment to service.[85] They can also narrow the perspective needed to engage in the creative problem solving that society demands.

There are a number of considerations with regard to faculty who teach clinical courses that have gotten in the way of successful clinical programming in the United States that India will hopefully avoid. Parity with other law faculty has been an ongoing battle in law schools in the United States. The American Bar Association, in its role as law school accrediting agency, has established that a form of parity is necessary, though it has equivocated on the issue.[86] The status of clinical faculty has direct implications for the quality of clinical programming, and for the integration of clinical methodology throughout the curriculum. Faculty teaching clinical courses should be full members of the law faculty. A status that limits input in law school governance, for example, or provides a less secure faculty position or regard, could affect program integrity and efforts to integrate clinical methodology and skills in general throughout the curriculum.[87] Furthermore, a secondary status sends the message to students that clinical and skills courses are not as central to their legal education as substantive law coverage. I have no sense that this is or would be an issue in India. It appears that faculty members involved in clinical courses are not a separate category of teachers, and, in fact, teaching clinic is in addition to robust course loads. However, teaching assignments may become more tailored to the demands of clinical teaching as clinical programming develops within the law universities. With that in mind, it is important to avoid the unfortunate stratification and dissociation amongst teachers that exists in some law schools in the United States as that may inhibit the curricular integration that has been identified as a lacking in American legal education.[88]

Course load is another consideration regarding faculty. As with the externship program discussed above, teaching the in-house or hybrid clinic should occupy most, if not all, of a faculty member's teaching load. In the United States, it has generally been accepted that a full teaching load has clinical faculty responsible for approximately eight students for an in-house clinic, with adjustments made based on the number and complexity of the cases assigned and the credit hours

84 *See* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 Clinical L. Rev. 33 (2001) (discussing methods for developing cultural competence).

85 In our Families and the Law Clinic, my colleague Catherine F. Klein and I use exercises based Professors Susan Bryant and Jean Koh Peters' work and on ideas about storytelling based on our exposure to the work of Jo Tyler to explore these assumptions between teachers and students. We then expand the exploration to issues of difference between students and their clients. See "Cross Cultural Lawyering" (role-play on this approach as presented at City University of New York (CUNY) School of Law by Professors Barry and Klein, on file with the author). *See also*, Bryant, *supra*.

86 ABA Standards, *supra* note 28, at Section 405(c) seek to establish a floor for the treatment of clinical faculty, but fail to require parity by only requiring "reasonably similar tenure" as to other full-time faculty.

87 *See, e.g.*, Wortham, *supra* note 45; Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 Wis. Int'l L.J. 295, 308-9 (2006).

88 *See generally*, EDUCATING LAWYERS, *supra* note 38, and BEST PRACTICES, *supra* note 32.

granted for the course.[89] More students can be supervised in a hybrid program, but numbers depend on the kinds of cases and level involvement by the faculty supervisor.

Part of the resistance to clinical programming in the United States has been the expense. The low student/faculty ratios considered appropriate for high quality clinical programs have led schools in the United States to be creative in hiring fellows or practitioners-in-residence to help teach.[90] As argued with regard to law schools in the United States, finding the resources for quality clinical legal education is a matter of priorities.[91] Committing to clinical legal education will require identifying it as a priority in allocating the limited resources available.

Licensure for law faculty is an issue that might need to be addressed for purposes of establishing an in-house clinic, and, depending upon the level of involvement in any trial work anticipated for the hybrid, for that model as well. Apparently, the prohibition on licensure of law faculty is based on concerns about compromising the quality of legal education if faculty members are allowed to practice.[92] However, practice prior to joining and to a modest extent while on a law faculty would provide an important connection to the traditional center of the profession being taught.[93] Furthermore, the absolute prohibition seems excessive in that concerns about employment priorities should be able to be handled as a matter of law school administration, not licensure. The limitation means that law faculty are institutionally isolated from part of legal practice and thus from part of the profession they seek to teach. It also contradicts the spirit of if not the opportunity for the clinical experience espoused as part of the Indian legal education reform movement. Nonetheless, programmatic goals for clinical legal education can be met without entering a courtroom. This is especially true where, as in many parts of India, dispute resolution

89 *Report of the Committee on the Future of the In-House Clinic*, *supra* note 66 at 552 (reporting that the average student teacher ratio was 1:8, with 84% of schools reporting ratios of 1:10 or better). "The ideal ratio varies with the goals of the clinic, the nonsupervision demands placed on the clinical teacher, the number of credit hours that each student earns, and the types of cases that the clinic handles." *Id*. *See also* BEST PRACTICES, *supra* note 32, at 179 (discussing "Experiential Courses" and observing that, "[t]he demands of experiential teaching are different from non-experiential teaching, and schools should take care to ensure that the student-faculty ratios, caseloads in in-house clinics, and the overall obligations of experiential teachers are conducive to achieving the educational programmatic goals of their courses. One must balance the need to give students meaningful experiences against the risk of overloading students or teachers and interfering with their abilities to achieve the educational goals of their courses.").

90 For example, Georgetown University Law Center hires fellows who, in addition to a modest stipend are able to work towards a specialty in clinical education. American University's Washington School of Law hires practitioners-in-residence who are not on a faculty track and who are expected to leave after two years of teaching.

91 *See* Barry et al., *supra* note 58, at 8-11.

92 *See supra* note 28.

93 In describing the gap between expectations and reality with regard to legal education and practice, the *MacCrate Report* observed that the practicing bar complains that graduates "can't draft a contract, they can't write, they've never seen a summons, the professors have never been inside a court-room," to which the law schools respond "[w]e teach them how to think, we're not trade schools, we're centers of scholarship and learning, practice is best taught by practitioners." The report argues that the "the skills and values of the competent lawyer are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career." MacCrate *supra* note 33, at 3-4. "[T]here is no 'gap'. There is only an arduous road of professional development along which all prospective lawyers should travel." *Id*. at 8. Regardless of the degree to which it is considered wise for law faculty to engage in practice, to not allow practice by those who teach seems inconsistent with professional education. Certainly that is underscored when the clinical teaching methods are considered.

in a range of venues that offer alternatives to the judicial system is the likely extent of adjudicative services that are available.[94]

These frames or baselines for proceeding with clinical programs at the law universities respond to the relative lack of initiative observed compared to the express support for clinical legal education in India. The pace of clinical program development is distressing because educating lawyers has the potential to have an impact on every strata of Indian society, raising awareness and constructive responses to the considerable social imbalances that threaten the country's development. The need for legal literacy and access to meaningful dispute resolution alone is sufficiently acute that the country is well-suited to establish the standard for what legal education can do to provide models for justice system.

IV. Making a Road by Walking

The law universities have changed the landscape of legal education in India. Their size, their relative independence and their resources set them apart. They have the potential, and the mandate, to provide their students with significant experiential learning. They can benefit from the critique of law schools in the United States, particularly the consistent failure to achieve the potential of clinic and skills training, by integrating both into the law school curriculum.

The Bar Council and its commissions have spent considerable energy identifying changes in the approach to legal education. A focus of the recommendations has been the need to establish clinical programming as an important aspect of improving professional preparation and developing a commitment to social justice. With that in mind, the issues raised in this article identify some strategies for moving forward, and will hopefully provide support for the training that many law teachers across India have recently been receiving through the efforts of the South Asian Forum of Clinical Law Teachers and the Menon Institute of Legal Advocacy Training.[95]

Law universities have both an obligation and a unique opportunity to prepare a generation of lawyers to approach the law with a commitment to justice and the skills to move effectively towards achieving it. Their establishment created a way to focus attention on functioning models of legal education reform. The challenge now is to teach in ways that expose students to the standards of service and excellence contemplated. A major aspect of achieving this will be to gradually implement a range of carefully planned clinical programs and connect them effectively to the rest of the curriculum, pausing regularly to evaluate the extent to which a bend in the road is indicated. We all stand to benefit from what progress is made.

94 Galanter and Krishnan *supra* note 46 at 789.

95 *See supra* note 16 discussing the trainings.

Clinical legal education and Indigenous legal education: what's the connection?

Anna Cody[1] and Sue Green[2]

Introduction

In this article[3] we will examine some of the steps that UNSW law school has taken to address Indigenous disadvantage in, and exclusion from, legal education. The article focuses on the role of clinical legal education within Indigenous legal education. Two concrete examples will be discussed: a clinical subject specifically designed for 1st year Indigenous students and a class given by an Indigenous academic for later year law students within the general clinical legal education courses. The first is discussed to demonstrate how clinical legal education can improve the experience of Indigenous students within law schools. The second example highlights the challenges of attempting to "Aboriginalise" the curriculum of law courses.

Kingsford Legal Centre: clinical legal education and a commitment to social justice

Kingsford Legal Centre hosts the clinical legal education course of the University of New South Wales' Law School. Since its beginning UNSW Law Faculty has emphasised social justice within law and studying law in a social, economic and political context. The Centre was established in 1981 specifically for the purpose of grounding the education at the Faculty of Law in social justice. The legal education at UNSW, in contrast to the University of Sydney, was characterised by small group teaching that was critical of the legal system around it, and accessible to the community. Community service as a part of the teaching program was seen as a valuable and essential part of legal education.

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2 Associate Professor of Faculty of Social Sciences and Director Nura Gili.

3 We would like to thank the anonymous reviewer and Meena Sripathy for comments about this article.

Commitment to Indigenous legal education

As a part of this social justice focus, UNSW has long been committed to Indigenous legal education. A pre-law course for Indigenous students commenced as far back as 1995. That year also saw the foundation of the Aboriginal Law Centre, now the Indigenous Law Centre. In late 2002 an Indigenous legal education committee (ILEC)[4] was established. The aim of this committee is to examine and address some of the barriers that Indigenous students face in entering law school and to create programs to address these.[5] An alternative access and preparation scheme has been developed with the aim of recognising the difficulties that Indigenous students have traditionally faced in secondary school. By their participation in this committee, members of the Commitee have been encouraged to look at the courses which they teach and examine how Indigenous issues are dealt with within their curriculum. This will be discussed later in looking at how the Foundations Enrichment 2 course functions, as well as the clinical subjects taught at KLC.

Foundations enrichment 1 and 2

Two further key developments within the UNSW Law Faculty are the inclusion of two subjects specifically for first year Indigenous students: *Foundations Enrichment 1* and *Foundations Enrichment 2*. These courses are aimed at supporting first year students once they have been accepted into studying law.

Research has shown that Indigenous students find the experience of law school alienating and disorientating. In the words of Indigenous students:

> *"the problem is that you are disorientated by the system…there is no two way learning you are just talked at, that disorientates you even worse…*
>
> *I don't know how you can stop people dropping out…the thing they can do is not make it such an alien environment…*
>
> *I feel under siege in the classrooms…*[6]

ILEC suggested specific measures to address these experiences, having regard to current research and guided by Nura Gili, Indigenous Programs Centre. Foundations Enrichment 1 is run in conjunction with staff from the UNSW Learning Centre and offers Indigenous students a weekly small group tutorial. Its primary purpose is to develop students' academic skills, including oral communication, problem solving, comprehension and legal writing skills. It also works to develop their critical and analytical skills.[7] It gives the students a chance to be with each other, in the majority, rather than a minority within a larger classroom setting. Although not formally evaluated as yet, it appears to be functioning effectively as a means of support for Indigenous students. As Penfold and others have found in their studies of what contributes to the success of Indigenous students at law schools, the "opportunity to network with other Indigenous students"[8] is vital. The support provided by Nura Gili is an essential part of the networking and support mechanisms. The course helps students adjust to the academic requirements and social context of studying law.

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4 Both authors are members of this committee.

5 The work of this committee has been described in detail elsewhere in the Indigenous Law Bulletin: Brennan S, Hunter J, Healey D, Johnson D, San Roque M, Wolff L, "Indigenous Legal Education at UNSW: a work in progress" (2004) 6(8) Indigenous Law Bulletin pp26-29

6 Comments of students quoted in Douglas H, "Indigenous Legal Education: Towards Indigenisation" (2004) 6(8) Indigenous Law Bulletin, p2

7 Brennan et al, above n 2, 4.

8 Penfold "Indigenous Students' perceptions of Factors contributing to Successful Law Studies" (1996) 7(2) Legal Education Review

Another issue identified by Indigenous students interviewed in Queensland and reported by Douglas and Banks, is the lack of relevance of the material that students are confronted with on beginning their legal studies. One student commented:

> *"The first subject was contract, it was so incredibly boring and it is the first thing you have to do and there is all this other stuff that you have to get used to and I was thinking I don't really care. You lose it from the beginning if you don't care. If I had a tutor there straight away to explain, it may have been different."*[9]

This is an issue for all students on beginning law,[10] but appears to have a greater impact on Indigenous students. The value of clinical legal education for addressing this apparent lack of relevance of material was recognised by ILEC and led to the development, among other measures, of the clinical course for first year Indigenous students: Foundations Enrichment 2. This course is based at Kingsford Legal Centre and offers Indigenous students a clinical experience in the first year of their law studies. From the evaluations of other clinical subjects offered at the Centre, many students comment on the value of seeing law in practice and the benefit it offers them to analyse the law and legal system in context rather than abstractly through a text book. The exposure to real clients early on in their degree provides a level of 'analysis in practice' which ideally all law students should have access to but which is almost impossible to provide, from a resource perspective, except to limited numbers, in this case 1st year Indigenous students.

Indigenous students are not required to do both these subjects. They choose to enrol in them for academic credit, and do one less elective as a result. At this point students appear to appreciate the availability of extra support rather than resist it. It gives them the opportunity to be only with Indigenous student peers. For all their other courses they are in mainstream classes with all other students.

The course focuses on developing the students' oral and written communication skills through interviewing. They have access to a one to one mentoring relationship with a clinical student who is in the latter stages of their degree. The mentors assist by discussing one of their files with the first year student. While the Indigenous students evaluate the course, the impact of mentoring on clinical students has not been specifically evaluated. Informal comments from these students suggest that they enjoy the opportunity to share their knowledge and experience and talk with Indigenous students. It also provides an opportunity for them to get to know Indigenous people which some of them may not have had the chance to do before this course.

In addition, the students participate in visits to key agencies which introduces them to the legal aid system and how it functions. The purpose of these activities is to demonstrate how their studies may be relevant in the future and expose them to possible future careers options.

The visits include a talk with the registrar and magistrate at a Local Court, where they also sit in court and listen to a case. This is frequently the first time they have actually seen the legal system in action from a disinterested perspective. Many may have some experience of the legal system

9 Douglas H & Banks C, "From a Different Place Altogether: Indigenous Students and Cultural Exclusion at Law School," (2001-2002), 15, Australian Journal of Law and Society, p56

10 Other mechanisms such as the Peer Tutor program has been developed to provide support to first year students at UNSW. See Fitzsimmons, Kozlina, Vines "Optimizing the first year experience in law: the law peer tutor program at the University of New South Wales" (April 2007) Legal Education Review.

through family members or friends coming into contact in some way.[11] They are asked to write a short court report of their experience to encourage reflection and develop their writing skills. They also visit the Public Defenders office, the Legal Aid Commission and the pro bono section of a large law firm. One class is dedicated to visits from community legal centre lawyers and other public interest lawyers who describe their work and encourage the students to think of possible career options outside the traditional law firm. All of these activities encourage a more concrete examination of what is possible with both law and a law degree.

Flexibility in delivery

It should not be surprising that well documented research of higher sickness and mortality rates for Indigenous peoples also impact on students' ability to participate in tertiary education. "[Indigenous] students are more likely to be sick or to have a direct family member who is sick and in need of care or hospitalisation than a non-Indigenous student. University teachers need to keep these considerations in mind when an Indigenous student is frequently absent from class; has not done their readings; is looking for an assignment extension or a deferred exam; or simply has not filled in a required form."[12]

In this context, the timetabling procedures for the Foundation Enrichment courses were designed specifically with flexibility in delivery of the courses for indigenous students in mind.[13] Whereas other subjects are centrally timetabled, for this course students are individually contacted to work out the best time for the class. This consultative process sets a tone of informality and flexibility within the course. It also demonstrates the teacher's interest in each of the students and a desire to accommodate specific students' needs.

For example, in 2005, one of the students had considerable outside work commitments. This work involved him interviewing clients and therefore, taking account of the overlap with course content, he was granted some advance standing to allow him to participate in the course. In 2006, another student who had clashing work commitments and a very full law enrolment was given exemptions from classes by recognising his prior experience. In this way, a more flexible approach is taken for these students to maximise their participation in this course. Also, because of the small size of the group it is easier to maintain personal contact and address any attendance issues immediately.

The evaluations of the Foundations Enrichment 2 course since it has been in operation have been overwhelmingly positive. To the question "how will this course influence your later studies?" student responses have included:

- *The fact that we have had the opportunity to do things that other first year students haven't been able to do*
- *It helps me realise that all of the theory in class will pay off when we deal with real law situations*

11 Falk discusses how many Indigenous people will have had some contact with the criminal legal system and Green has commented on the intrinsic intrusiveness of the legal system into Indigenous people's lives through the welfare system among other areas.

12 Falk P, "Law School and the Indigenous Student Experience", (2004-2005), 6(8) Indigenous Law Bulletin, p8

13 MacAulay discusses the importance of flexibility and creativity for successfully improving access to legal education for Native students in MacAulay H, "Improving Access to Legal Education for Native People in Canada: Dalhousie Law School's I.B.M Program in Context", (1991) 14(1) Dalhousie Law Journal, p 146

- *It will be beneficial in helping to locate and analyse legal issues in scenario based problems throughout my studies*
- *I now know that I'm definitely staying in studying law*[14]
- *It reminded me why I started law in the first place, to give aid, and advice to those who are in need or who have been given a rough run*
- *Probably guide me into working for a legal centre, not private*
- *Gives a better understanding of application of the law to real life scenarios*[15]
- *Greater knowledge of clients, more insight as to what I want to take from law school, a different point of view outside the theory of academics*
- *Good practical experience, gives us greater knowledge*
- *I know it will have enormous influence if I receive a job which I have applied for over the summer break with Law Access. I am more confident speaking to people*
- *We are lucky to have an understanding of the law in a more practical way. Something the other students might never get to see unless they pursue a career in this area*
- *Doing Law Lawyers – will be well prepared! We are also well equipped to gain employment as a law clerk later on, and also have contacts in the legal industry etc*[16]

The course clearly provides gives these students with a grounding and motivator for their legal studies. The student responses demonstrated that they appreciated the opportunity to have access to a practical application of law at this early stage and that this helped them stick with their law studies.

Students were also very enthusiastic about the experience of interviewing clients in advice sessions, and the exposure to clients from different cultural and other backgrounds., Student comments about the experience of interviewing multiple clients on an advice evening session included:

- "*It's awesome, the whole course came together in this session*",
- "*this was the highlight of the course as it was really interesting and a really great experience*",
- "*once again excellent, I was able to interview a client by myself with the assistance of a translator*",
- "*great experience being able to work with different cultures…*"
- "*Loved it! Felt that I really helped and enjoyed the process of finding out about laws – not just regurgitating knowledge*".

Responses in the evaluations demonstrate the value that students gain from the course. They identify that they become recommitted to social justice or helping people through their interviewing experience. They gain a sense of confidence in their ability to interview effectively and well. They see the possibilities for themselves and their communities in them studying law and having a law degree.

14 Evaluations of FE 2 course in 2004

15 Evaluations of FE 2 course in 2005

16 Evaluations of FE 2 course in 2006

Positive evaluations typical of clinical legal education evaluations?

To a large extent, these sorts of responses are typical of clinical student evaluations of any clinical legal course. One could argue that ALL law students should do some clinical legal course early on in their degree. This is unlikely to occur however due to the resource implications for providing clinical legal education. Furthermore where there are limited resources, due to the documented greater likelihood of Indigenous students withdrawing from legal studies, it is important to target those limited resources to ameliorate this problem. Traditionally, law schools have found it harder to attract and retain Indigenous students. It is therefore more important for Indigenous students to have the opportunity to do clinical courses early in their degree program. These evaluations could also suggest the value of providing some clinical experience to other disadvantaged students who may be at risk of withdrawing from their studies. Ideally ALL students would do more clinical work/study early on but from a resource perspective this is unlikely to be realized at UNSW.

At this point, the provision of a clinical course specifically for Indigenous first year students does not appear to have caused any resentment amongst the greater student body. This hasn't been raised directly by any non Indigenous students possibly because they are unaware of the course. The numbers of students enrolling in the course each year are small, between five and seven students. Additionally, KLC offers interviewing experiences to almost all legal ethics students in 1st, 2nd or 3rd year. Overwhelmingly the students in their reflective assignments in this course discuss the value of dealing with real client's problems and how interviewing clients grounds their theoretical study. They also state how this has stimulated them to take clinical courses later in their degrees.

Challenges in teaching the course

From a teaching perspective, one of the challenges thrown up by this course arises from the divergence in level of capacity among the student group. While this is an issue with any course, the differing levels of ability and confidence have more of an impact in a small group. Some students have more experience and confidence interviewing clients than others. This is demonstrated by the ability of the students to put clients at ease and enable them to tell their stories fully, a skill which is key to good instructions in a legal setting. Writing skills is another issue for some students, particularly those who may have had a more difficult time at secondary school. To meet this need, the course was modified to provide greater emphasis on the written redaction of instructions and a court report. We have found that it is necessary to be creative and flexible for the course to be appropriately "useful for all of the students all of the time".[17] For example in one of the classes the students are required to interview a real client for the first time in pairs. In 2006, one of the students was clearly capable and keen to interview the client by himself and was permitted to do so. He was also allocated a potentially more challenging client who had a psychiatric disability and various legal issues in the evening advice session. In this way, the course is responsive and accommodates each individual student.

Judging from the levels of achievement of the Indigenous students as they progress in their legal studies and their own evaluations of the courses, the Foundations Enrichment 1 and 2 courses and other measures taken by the UNSW Law faculty are working to help students continue successfully with their legal studies. The alienation felt by Indigenous law students expressed in

17 MacAulay, above n 12, 151.

earlier research is to some degree being ameliorated through the courses developed at UNSW. This is through the course content, including the fostering of mentoring relationships with later year non Indigenous students. The Foundations Enrichment 2 course was developed to improve the experience of Indigenous students at law school, particularly in their first year. By providing a clinical legal experience early on in their degrees, Indigenous students are better able to participate in their law degrees. While there is always room to evaluate and improve, the courses are an effective means of ensuring that Indigenous law students enjoy their legal studies and are able to participate fully in a relevant, enjoyable course of legal studies that is inclusive of Indigenous views of the world. Support beyond first year is generally provided through the Nura Gili Centre rather than through law-specific courses. Many of the students accept cadetships with government and law firms which provides them with ongoing practical exposure. Need for additional support is an issue which remains to be discussed further within ILEC.

The other need identified by ILEC and after the symposium on Indigenous legal education in 2004[18] was the need to review and change the curriculum of all courses to reflect Indigenous experiences and views of law. This is an attempt to "Aboriginalise" the curriculum in all courses. It is not enough to provide a supportive learning environment for Indigenous students, we must also think about the broader curriculum and how this alienates Indigenous students and deals with Indigenous issues.[19] This involves critically evaluating how we structure law courses as well as their content. This has the potential to be challenging for all students and Faculty. It is yet to be done throughout all courses within law. With this in mind, in 2005, KLC decided on various measures to incorporate Indigenous issues within the clinical courses. These courses are taken by almost entirely non-Indigenous students. In the next part of this article we describe the class on working with Indigenous clients and communities, which was developed as a part of the attempt to review and improve the class content.

Clinical legal education course for later year non-Indigenous law students

Teaching the later year non-Indigenous clinical students about Indigenous issues is perhaps more of a challenge than teaching the Foundations courses. Many students have clear ideas about what it is to be Indigenous and the place of Indigenous people and issues within Australia. The students would have had exposure to issues that have come up in the last decade such as the Stolen generation and the impact that Aboriginal children being removed has had on current generations of Aboriginal people; the treaty debate, representation of Indigenous people in custody and deaths in custody of Indigenous people; and domestic violence and sexual assault in Indigenous communities.

As well as teaching law students, KLC is a community legal centre providing legal services to its local community which includes the Randwick and Botany council areas. This catchment area includes the Indigenous community at La Perouse. The Centre advises and represents Indigenous

18 Kingsford Legal Centre and the Indigenous Legal Education Committee organised a symposium on Indigenous legal education in November 2004 at UNSW to discuss issues within the region relating to Indigenous legal education.

19 See Falk footnote above, also Watson, I, "Reflections on Teaching Law: Whose Law Yours or Mine?" (2005) 6(8) Indigenous Law Bulletin, p12, and Kelly L, "Personal Reflection on being an Indigenous Law Academic", (2004-2005), 6(8) Indigenous Law Bulletin, p3

people (approximately 2% of the clients at KLC are Indigenous) and is currently establishing an outreach service to better serve the Indigenous community. KLC is actively committed to improving and adapting the service it offers to better serve its Indigenous community.[20] It has actively sought funding for an Aboriginal cadetship program within community legal centres. At the end of 2006 the Combined Group of NSW community legal centres was successful in obtaining funds from the Public Purpose Fund NSW to establish an Aboriginal legal access program.

Following the November 2004 symposium, KLC realised the importance of students learning about working with Indigenous clients and communities from an Indigenous perspective. The majority of the students who enrol in courses at KLC are from relatively middle-class, though increasingly culturally diverse, backgrounds. Many are committed to social justice but would not have had much to do with Indigenous people before starting their course at KLC. The seminar program contains a mixture of classes given by staff at KLC and other guest lecturers. It includes classes on the provision of legal aid and community legal services, plain English drafting, discrimination law, working to settlement in conciliations, how to deal with challenging clients, employment law, law reform and human rights amongst others. They include substantive areas of law as well as more skills based classes.

The seminars are the only time in which all 30 of the enrolled clinical students are together. Historically the classes are structured to be participative with many small group exercises and discussions. Students are given a class program and readings in their induction in Week 1 of their course. As a part of the measures KLC has adopted to improve the service for Indigenous clients and students, KLC acknowledges the traditional owners of the land KLC is on at the beginning of the first class of each semester. Clinical supervisors in their individual supervision regularly discuss issues with students, including how their view and solicitors' views of clients may be influenced by cultural and racial stereotypes and how this may influence their work. In the class program there is a class which addresses the topic of working with Indigenous communities and clients. The readings in preparation for this class focus on the skills needed when interviewing Indigenous clients.

In the next section of this article we describe two experiences of giving this class and a reflection on how to best address these issues.

The class in 2005/06

When the class was presented in summer 2005/06, the clinical teacher gave a brief introduction of Sue Green, Director of Nura Gili, Aboriginal Resource Centre at UNSW. Sue Green then gave a presentation, using her life history and family history as a means of demonstrating experiences of Indigenous people. She described the extensive language groups existing in Australia at the time of white invasion and showed pictures of her family members and family tree, as well as pictures of passes which her family members had to carry to be allowed to leave the Reserve they lived on. In the second half of the class she answered questions about alcohol use and abuse, why she identified as Aboriginal despite having light coloured skin among other issues.

The following day within the larger student working space a fairly heated discussion began amongst

20 ATSI access policy, KLC.

about eight of the students, about the class the previous day. Some students were critical of Sue for using the word "genocide" when referring to the policies towards Indigenous peoples which had been adopted since white invasion. Others struggled with her identifying as Aboriginal rather than her other cultural identities and thought she was a "victim". Some were strongly supportive of her and focussed on the parts of Australian history they had known nothing about previously. Others were critical of her being "negative" and not doing anything positive in the community to improve the situation of Indigenous people. They referred to her adopting a "victim" stance and questioned her contribution to Indigenous communities and the society at large.

At the beginning of the next class the clinical teacher referred to the previous class and the overheard discussions which had occurred later. There then was a frank discussion with people having quite differing views of the class. Some wanted clearer guidelines on "how to work with Indigenous clients", a succinct list of "what to do". Others were critical of this, stressing the need to deal with each Indigenous client individually. One of the students referred to his grandmother having lived through the holocaust and how this frames her world view. He used this experience to understand why Sue Green used the term 'genocide' when she discussed what has happened to Indigenous peoples.

At the conclusion of the discussion, the clinical teacher described Sue's credentials and achievements. She referred to the fact that Sue Green is an Associate Professor within the University and how constructively she works within the University to ensure Indigenous students get to University and successfully complete their studies. She also talked about different ways of talking and seeing the world and that while law students are used to analysing cases logically, narrative is an equally valid way of seeing and describing the world. Sue had demonstrated what it was like to be Indigenous as opposed to providing a simplistic a list of do's and don'ts for dealing with Indigenous clients.

Following the class we reflected on the students' reactions and responses and decided to try a different introduction to the class next time. It was clear from this experience that the students weren't prepared for a speaker to present differently and came laden with their views about Indigenous people and race issues within Australia more broadly.

> *"Describing to non-Indigenous students the concept of an Aboriginal worldview is difficult, but so is the Aboriginal experience of colonialism, and apart from providing students with my perspective along with those of other Aboriginal guest lecturers, contact with Aboriginal community organizations and the extensive readings by Aboriginal writers, I still find non-Aboriginal students struggle to engage with the idea of a different view of the world and the Aboriginal experience of racism and colonialism. It is difficult for the non-Aboriginal student to engage because the Aboriginal question sits outside of any of their experiences."*[21]

This clearly resonated with our experience in this class.

Unfortunately the class program was not formally evaluated that semester due to an administrative error. Informally many students commented to the teacher about the value of both the class and the discussion afterwards for helping them to understand some Indigenous issues better.

21 Watson I, "Reflections on Teaching Law: Whose Law Yours or Mine?" (2005) 6(8) Indigenous Law Bulletin, p12

The class in Session 1 2006

The following semester a different approach was taken to present this class.

This time, the clinical teacher introduced the guest lecturer, Ms. Sue Green as an Associate Professor of the University. The work of Ms. Green's Nura Gili Centre and its achievements in relation to Indigenous students was described. The clinical teacher also discussed different ways of learning and teaching other than case analysis and talked specifically about the story telling or narrative style which is discussed and used substantially within critical race theorists in the United States of America. The point was to frame the class and the students' expectations of it in light of the previous group's reaction.

The class that Sue presented was substantially the same as the class she had given previously. Discussion flowed easily and students asked questions and explored some of the issues.

After the class, there was no heated discussion in the student area about it, other than students commenting how much they had learnt and enjoyed the class. The class was formally evaluated by 24 students. Of the 24, 12 found it very interesting and relevant, 10 found it interesting and relevant and 2 made no response. No-one thought it was "not interesting or relevant". Of all the classes, this was the class that received the most positive responses and was found to be most interesting and relevant.

Students' comments included:

- *I didn't agree with everything she said, but I guess that is a good thing*
- *I really found her experiences very interesting and insightful*
- *These 2 classes (Indigenous class and pleamaking) were my favourites. Sue Green was fantastic and so was the lady from Blakes*
- *Great presentation. Created a lot of interest from all students*
- *This was the most interesting of all classes*
- *That woman is amazing and an inspiration.*

The difference in response between the two groups of students was marked. It raised for us a number of interesting questions: Were the differing responses due to the personalities and identities of the students or was it due to the way in which the class was introduced? Did the specific emphasis on Sue's academic credentials given in the introduction to the subsequent class make the students more open to hear what she had to say?

We now discuss some observations from the divergent experiences of these two classes.

World view challenged and impact of personal identities

Having an indigenous presenter for this class appears to challenge the students' world view. Some students like it and others don't. Some of the students have the view that by being law students, they are bright, have progressive, community-service-based motives and find it hard to be challenged around race issues. Some of the students at KLC probably see themselves as being socially aware and even radical and for this reason confronting their identities may be more difficult.

"The relationship of Indigenous people to the Anglo-Australian legal system is something that goes to the heart of legal process and legal theory. It constructs our national identity and can even impact on the personal identity of non-Indigenous Australians. How we deal with that history (remembering that history is everything that has happened before this moment) challenges who we are."[22]

The divergent experiences of this class suggest that students find the challenging of their conceptions of themselves confronting. We need to encourage students to be conscious of their own personal identities and how this impacts on their lawyering. KLC's clinical course addresses this in the areas of interviewing and direct individual supervision of case work, but not in formal classes. The discussion of how their identities may impact on their ability to assist Indigenous clients and communities needs to be raised forcefully and directly. An Indigenous academic presenting a class gives an opportunity for students to hear an Indigenous voice who is not the needy client. The class implicitly questions students' identities but this may need to be made more explicit.

It may be useful to add a separate seminar class in which we question and discuss:

How will my cultural background, class, gender, sexuality impact on my ability to assist my client?

Is an Indigenous lawyer more likely to be able to help an Indigenous client?

Can a non-Indigenous lawyer develop a rapport with Indigenous clients?

It may be useful to ask students who are working with Indigenous clients to reflect on their experience within the class setting. These discussions arise in an informal way currently in morning tutorials in which larger questions about the fairness of the legal system arise. Frequently students are confronted with the huge difficulties which Indigenous clients face, health problems, lack of education, family obligations and the ways in which this makes it more difficult to claim legal rights or pursue legal remedies. These issues haven't been teased out more formally but rather arisen in a more informal way and in individual supervision with clinical teachers.

Another shift in the last one to two years is the experience of non Indigenous students working closely with Indigenous students enrolled in the clinical courses. As the clinical experience encourages team work, and close working relationships, this again provides an opportunity for students to develop relationships and links which they may not have previously. Hopefully this contributes to breaking down stereotypes. Generally for Indigenous students to have reached final year of law they are high achievers in their communities who are articulate, committed, active and hard-working. This contradicts stereotypes of Indigenous people as victims who are unable to deal with their communities problems.

Ideally these classes should be co-taught with an Indigenous teacher to ensure a range of inputs and perspectives. Currently none of the clinical teachers are Indigenous thus do not bring this perspective to their work. They bring a range of cultural backgrounds and other forms of diversity to their work. These issues could all be explored more fully as well as the diversity of the student body.

22 Kelly L, "Personal Reflection on being an Indigenous Law Academic", (2004-2005), 6(8) Indigenous Law Bulletin, p3

Another broad reason for teaching personal identification issues in lawyering courses is that lawyers, as people who deal with the public professionally, should demonstrate leadership and set examples of tolerance and pluralism. The importance of being non-judgemental in our work is discussed from induction, through individual case discussions, interviews and morning tutorials. The need for tolerance and pluralism can be especially important for public interest lawyers whose clients are from subordinated communities, as these communities stand to gain the most from respect of difference and diversity.[23] When students are judgemental about clients, for not taking action sooner, for "lying", for being "victims", clinical teachers question these points of view. Frequently as the student gets to know the client better, their immediate judgements soften and are often proved wrong. This provides rich ground for discussion and analysis, and encouraging tolerance and non judgemental attitudes towards clients.

Talking about race

Another observation from the experiences of these classes is that it may be easier for students to see Aboriginal people as needing help in the role of a client. A presentation by an Aboriginal female Associate Professor subverts the roles and expectations of students even if they are unarticulated. To point out to students that there is a race issue in Australia disturbs people. If you are in the dominant cultural group it is often easy not to see the race issue. It would be easier to have a "checklist of simplistic cultural stereotypes"[24] on "how to deal with Indigenous clients and communities" than a discussion of racism in Australian society. It may be more useful and also more challenging for us as teachers to encourage students to interrogate their cultural and other identities. The class asks them to be aware of their own ethnicity and race. We need to help them recognise what they don't know rather than use stereotypical lists.

Use of narrative as a style of teaching

The class uses a narrative style of teaching. Students are not accustomed to learning in a university setting, without "academic-speak". Using everyday speech rather than an academic style means students may value the content less.

Narrative is excluded from traditional law teaching. Critical race theorists in the USA have commented extensively on the importance of story for the inclusion of minority voices within law.[25] Indigenous scholars in Australia also recognise the importance of narrative. As Kelly writes "*Story –telling is a huge part of my traditional culture so I'll take this opportunity to tell a bit of my story…even though writing 'in the narrative' is not so acceptable in legal scholarship.*"[26] The difficulty the later year law students had with dealing with narrative as a form for learning was striking. This made us question how to teach the class. We asked, "Do students need to be prepared to hear narrative, rather than a logical case analysis?" or should they be allowed to experience the class, without being prepared and allowed to respond however they do?

23 Hing B O, "Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses", (1993), 45(6) Stanford Law Review, p1810

24 O'Donnell A, "Thinking Culture in Legal Education", (1996),7(2) Legal Education Review, p152

25 Delgado R, *Critical Race Theory: The Cutting Edge*, (1995) Temple University Press: Philadelphia

26 Kelly, above n 19, 1.

Cultural diversity of students

The student body at UNSW is increasingly culturally diverse. The student body is no longer predominantly made up of Anglo Saxon white Australians. There are many Australian born students from culturally and linguistically diverse backgrounds. There is also a growing international student body, with many students coming from economically privileged backgrounds in South East Asia. These students may be culturally in the minority in Australia and have experienced racism here, but have not grown up in a culture where they are disadvantaged or in the minority.

Many of the international students may not necessarily have been aware of Indigenous issues in Australia before coming here. Once they have been here a while, they will have been exposed, through the media, to various Indigenous issues but will probably have not met Indigenous people and thus their views are more likely to be shaped by stereotypes rather than reality.

Students of more recent non-Anglo migrant background may have views which have been influenced by their parents' ability to "make it" in Australia. The fact that these students belong to a minority group and may have experienced discrimination and marginalisation along the way, does not mean that they will necessarily understand or connect with the circumstances of Indigenous people who occupy a very specific and historical position of disadvantage in this country.

It may be useful to question more broadly issues of "culture". Some have argued that Australia is "a society with a multicultural population, regulated and governed by a mono-cultural power structure."[27] Rather than just focussing on cross cultural awareness, it is important to raise a larger pedagogical question "in which relations of power and racial identity become paramount as part of a language of critique and possibility." We need to question, what is culture and challenge the notion of it as static and unchanging. "A view of culture and ethnicity that sees them as static and unchanging will also tend to attribute a homogeneity to cultures that obscures important differences of class and gender within recognised "ethnic communities" or commonalities of interest across communities."[28] The range of students from diverse cultural backgrounds would be rich material for discussion around "what is culture" and "how does it impact on our work".

The class has much scope to discuss culture/race as formative of identity within a range of experiences. A broader discussion about culture as one of the identities we all have would be a useful and insight provoking discussion.

Conclusion

In summary, in this article we described two examples of clinical legal education attempts to make law school a more useful and less alienating environment for Indigenous students. We also described an experience of trying to educate non-Indigenous students about working with Indigenous clients and communities and reflected on the challenges and issues it triggered for us.

Clinical legal education can be a valuable approach to address the feelings of alienation of Indigenous students and one which other law schools could emulate. Clinical courses help students to ground legal concepts, and have the potential to reaffirm the reasons they chose to study law in

27 O'Donnell, above n 21 quoting Jamrozik A, Boland C and Urquhart R, *Social Change and Cultural Transformation in Australia*, (1995), Cambridge University Press: Victoria, p xi

28 O'Donnell, above n 21, 142.

the first place. For students who might otherwise be marginalised or excluded, this is particularly important. The very positive experience of first year Indigenous students of early clinical courses raises the larger question of the value of clinical legal education for ALL law students, early on in their degrees. The evaluations of these courses demonstrate the benefits to students of doing clinical courses early in their degree programs. They increase their commitment to their studies, and to the practice of law for the benefit of the community. It also grounds their legal studies and makes the theory more alive through real client experiences. While providing clinical experiences for all law students early on in their degrees would be valuable, it would require a greater dedication of resources than is likely at this point in any University in Australia. At least the value of clinical legal education has been recognised at UNSW as vital for Indigenous first year students. And from this experience, we argue that the provision of clinical courses early on is particularly valuable for disadvantaged students at risk of withdrawing from law. Ensuring that disadvantaged students, including Indigenous students, can participate in legal studies, can only enrich the overall learning experience for other students and for the Faculty more broadly.

Supporting Indigenous students is however just one part of the response to the needs of Indigenous students. The other is developing and modifying curriculum in all courses to take account of Indigenous perspectives and for all students to be more inclusive of Indigenous points of view and be challenged to think more deeply about culture and race.

> *"From a teaching perspective, it is imperative to understand that the law we teach has grossly impacted on Indigenous peoples' lives and ways of being in this country. Academics need to remember that disputes over the legal validity and history of Australian colonisation, widespread mistreatment of Indigenous people following the European invasion, and unequal treatment under the law remain understandable sources of contention between Indigenous and non-Indigenous people to this day."*[29]

Students need to hear Indigenous voices directly. Challenging non-Indigenous students about where Indigenous communities and clients are within society and how to work with them has proven difficult. This involves challenging the ways in which non-Indigenous students expect to be taught about law and preparing them to hear stories of entrenched injustice and racism as an issue in current Australia. Working with clients in clinical courses provides a direct means of challenging students views about Indigenous clients and encouraging them to be tolerant and non judgemental. This is unique within the legal curriculum.

> *"It is through the possibility of Aboriginalising our legal education that we could bring another way of knowing the world and its legal systems, and thereby introduce students to other ways of coming to know the law."*[30]

It is both the how and the what which will change if we truly Aboriginalise our legal education. While some attempts have been made to do this in clinical courses, ILEC continues to have much work to do to ensure that all the law courses truly reflect Indigenous points of view at UNSW. This is part of a larger project and continues to be a work in progress.

29 Falk above n 11, 6.

30 Watson above n 18, 23.

Constructing a Clinical Legal Education Approach for Large Multicultural Classes: Insights from the Nigerian Law School

*Ada Okoye Ordor**

Introduction.

The Nigerian Law School presents a unique case study in the teaching of law in a developing society for several reasons.[1] First, attendance at the institution for an average period of ten months is a pre-requisite for sitting for the Nigerian bar final examinations to qualify as a barrister and solicitor. The Nigerian Law School administers uniform training for all aspirants to the Nigerian Bar, irrespective of where practice is to be conducted. This means that all lawyers currently in practice in Nigeria, apart from those who passed through the Inns-of-court in England from the colonial period through the 1960s, attended the Nigerian Law School.[2] Secondly, each campus is a microcosm of Nigerian Society, as law graduates from all the accredited Law Faculties are distributed across the four campuses.[3] Thirdly, in the highly competitive Nigerian labour market, the Bachelor of Laws degree (LL.B), which is a first degree, is considered incomplete without the BL, which is obtained on successful completion of the bar examinations.[4] Although the LL.B and the BL are distinct qualifications, they are perceived as fused by employers. The BL is viewed

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1 The equivalent of the Nigerian Law School in South Africa is the School for Legal Practice.

2 The development of legal training in Nigeria is discussed in detail in C.O. Okonkwo, "A Historical Overview of the Legal Profession in Nigeria" in I.A. Ayua and D.A Guobadia (Eds.) *Legal Education for Twenty-first Century Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 2000) pp.1-37.

3 Campuses are located in Abuja in the north-central, Kano in the north-west, Enugu in the south-east and Lagos in the south-west.

4 BL stands for Barrister-at-Law.

socially as the minimum demonstration of competence in Law, whether or not a person intends to practice. Indeed, employers prefer to see the one-year legal practice course at the Nigerian Law School as the final year of the LL.B. These factors, in addition to the traditionally acknowledged roles of law in developing societies, make it imperative that legal education is made more comprehensive, relevant and responsive to changing situations. A key vehicle for achieving this is clinical legal education.

This paper starts by discussing ways in which the current teaching system at the Nigerian Law School reflects a clinical approach. Issues examined include classroom participation, court and law office attachment, law dinners, moot court and other practice week activities. Certain issues are problematised and options for improving clinical teaching methods for large multicultural classes are proffered. Central to the options proffered is a project management approach where, for instance, students do not just participate in a moot court session, but the class *executes a moot court project*. This means that every stage of the project is constructed as a distinct, but integral exercise in which students need to develop competencies. This would create the opportunity for students to develop 'extended' lawyering skills of project management, reporting and evaluation in addition to the already established skills of research, interviewing, counselling, negotiation, advocacy and so on, much in the same way as medical doctors in training are involved in public health projects, within which they practice community medicine. Clinical projects would as much as possible, accommodate personal skills preferences, while methods of assessment suited to each area of competence would be developed and applied as part of the overall assessment of students' performance.

In the paper, the term "Law School" is used to refer to the Nigerian Law School, while "Law Faculty" is used to describe the Faculty of Law located in the Universities.

Current Teaching Methods[5]

In addition to lectures, a number of learning methods are incorporated into the Law School calendar as co-curricula activities. These do not form part of the assessment for the overall performance of students, as this is determined solely by performance in the bar examinations.

Lectures

At each campus of the Law School, the class is made up of the entire student body. This means that all the students are in class at once. Currently, student population oscillates between 500 in the smallest Campus and approximately 1,500 in the largest Campus.[6] Lectures are held for students in a large auditorium on each campus, and lecturers deliver lectures using audio-visual equipment which include a microphone and a multimedia system. Each course is taught four hours a week, with one hour allotted to each lecture four days in the week. The large class size presents a major challenge to optimal student-participation. Lecturers are constantly devising interactive methods to fit into the limited time-allocation for each class.[7]

5 Some of these methods are briefly discussed in P. C. Anaekwe, "Vocational Aspects of Legal Training: Critique of the Content and Scope of the Law School Curriculum" in I.A. Ayua and D.A Guobadia (Eds.) op. cit. at 99-101.

6 The only exception to the extra-large class number is the preliminary Bar Part 1 Course which LL.B. graduates of non-Nigerian universities take before proceeding to the Bar final course, which tends to have an average of 100 students.

7 More is said on this under "Classroom Participation" in the section on *Deconstructing Current Teaching Methods*.

Moot Court

Two scenarios are created, one for the criminal mock trial and the other for the civil moot court. An auditioning is conducted to select students suited to play particular roles. Typically, for one moot court session, participants are trimmed down from about one hundred students who may indicate interest, to about twenty, who actually end up playing roles. Of these twenty, about eight appear as counsel, four on either side, two feature as court clerks, while the remaining eight is made up of witnesses on both sides. In the course of rehearsals and before final selection, another ten may have been exposed to research, case preparation and advocacy skills. Many other students watch the rehearsals.

Court attachment

For a period ranging from two to five weeks, students are posted to various courts across the country to observe court proceedings. In this exercise, students are attached to specific judges or magistrates who usually assume the responsibility of reviewing court proceedings with students at the end of each day's sitting, or periodically. This exercise serves as a prelude to more sustained court attendance which follows during the Law office attachment.

Law office attachment

Students are posted to various law offices across the country, where they intern for a period of about two months. This usually comes immediately after the court attachment, and the entire exercise is known as court and law office attachment. In a dual session, that is in an academic year when the Law School runs two alternate sessions, the two exercises are split over two terms. This is because the two sets of students enrolled at the Law School within a given year alternate in terms of residence on campus, making it necessary to separate the court and law office attachment periods instead of conducting them back-to-back.

Tutorials[8]

The class is divided into five smaller groups of about 55 students each for tutorials. In this way, the five tutorial classrooms accommodate about 275 students in total. The other 425 to 525 students (depending on the size of enrolments in a particular session) receive tutorials in the auditorium. This arrangement is alternated every other week to give the auditorium group the benefit of learning in the smaller classes. The tutorial period is one hour of answering problem questions, which usually comes up between 3pm and 4.30pm. Tutorials usually start in the second term of lectures.

Legal Skills Video Screening

A set of video tapes on various aspects of legal practice are shown to students during the practice week. Students are divided into smaller groups for this purpose and the legal skills video tapes produced for the English Bar are used. Subjects covered include interviewing skills, advocacy skills and negotiating skills.

8 The information on tutorials given here is based on the system at the Enugu Campus. Each Campus organises tutorial classes to fit into its facilities.

Guest Lectures

In the course of the academic session, lawyers in various fields of practice are invited to speak to the students on different areas of expertise. Guest lecturers are drawn from a variety of sectors, institutions and disciplines. These include the Corporate Affairs Commission, the Securities and Exchange Commission, the energy and petroleum industry, information technology, alternative dispute resolution and so on. Occasionally, lawyers visiting from other countries or from diplomatic missions within the country are involved.

Practice Week

The practice week is a period lasting from Monday to Friday, when various activities with a focus on legal practice are held. It is in the practice week that the moot court, legal skills video screening and certain guest lectures are held. These include lectures on the Criminal Code, the Penal Code, alternative dispute resolution and information technology in law. The practice week usually comes up in the second lecture term.

Law Dinners

Twice in the session, students participate in law dinners on campus. Dinners are held over a period of three to five days, depending on the size of the student population on each Campus. Students are divided into groups of 150 to 200, and each group dines on one of the dinner days.[9] Dinner guests are usually made up of Judges, senior practitioners, and distinguished academics. Lawyers on the staff of the Law School attend and are assigned to dine on different days. The dinner usually ends with a brief address by one of the visiting jurists on aspects of professional ethics and lawyers' role in society.

Applying the experiential learning classification to the practical teaching methods discussed in this section, the moot court would fit into simulations, while the court and law office attachment would be categorised as forms of externship.[10]

Deconstructing Current Teaching Methods

In this section, a constructive critique of the teaching methods described above is done. The purpose is to highlight certain dynamics of Law School teaching that can be positively directed to shape and facilitate a more effective learning framework. The subject matter of this section is treated under three broad heads, namely, academic, vocational or co-curricula and administrative.

Academic

Classroom Participation

As earlier mentioned, the class size is as high as the campus student population, a situation which severely limits participation. Each lecturer is tasked with devising creative methods of promoting student participation in lectures. One way is to throw a session open to random participation. Often, when this method is applied, only a handful of students tend to participate. From students'

9 This is the practice at the Enugu Campus.

10 See D.F. Chavkin, *Clinical Legal Education: A Textbook for Law School Clinical Programs* (Cincinnati: Anderson Publishing Co. 2002) pp.4-5.

point of view, it takes courage to 'march up' to the podium and use the microphone to ask a question, proffer an answer or make a contribution before hundreds of their peers. While the few who summon this courage tend to get more confident with repeated attempts, the staggering majority remains passive. Alternatively, or in addition, the lecturer may decide to walk down the aisles, talk show-style, offering the cordless microphone to those who indicate that they wish to speak. This tends to generate responses from more students and especially from those who would not ordinarily stand and face the class. Since they speak while seated in their regular seats, and out of view of the majority of the class, a large chunk of the nervous response to crowd engagement is removed. The reasoning seems to be: *after all, they can only disagree with my voice, not with me!*

Another option is a phased participation. Here, the lecturer rotates between distinct blocs of students according to their seating arrangement. The auditorium is divided into blocs, each made up of several rows by criss-crossing aisles. Each row is made up of four connected chairs. The key facilitating factor in the phased method is that seating arrangement is permanent. This makes it possible to continue from where the class stopped the last time. While the bloc of students who participated in the last class can often safely assume that they are 'off-the-hook', it is not known which bloc will be next, as there is no particular sequence. This promotes a more evenly spread participation, and it serves to get many more students to prepare for the class.

Other factors that affect classroom participation are evaluation mechanisms such as needs assessments. When a needs assessment survey was mooted in the Legal Drafting and Conveyancing class in July 2006, there was an overwhelmingly enthusiastic response from students. All were keen to indicate what two topics in the course they found most challenging. The results of the survey clearly confirmed the assumptions of the lecturers in the course, even though this kind of survey had not been done with this class before. It was striking how students readily responded when faced with a motivation that was directed at identifying and strengthening their areas of weakness, rather than testing their strong points endlessly.

The dynamics of classroom participation are further affected by the context created or assumed by illustrations used in teaching, especially in multicultural classes. These illustrations could be names, imagery, terminologies used in problem questions, simulations and so on. For instance, it is very common to use examples from large commercial centres to illustrate commercial transactions in teaching. Such cities may have the largest single component group in the class, but would often not outnumber the total of all the other students. For example, the status of Lagos as the commercial capital and formerly the political capital of Nigeria, as well as the sole location of the Nigerian Law School for over thirty years, made it a very handy teacher's tool in illustrating commercial transactions. Where an illustration was made using streets and areas in Lagos, a section of the class could identify, but where names peculiar to another part of the country, was used, it drew contributions from a different set of students. These students may not have been conversant with Lagos and may have no plans of practising there as lawyers.

The nuances of classroom interaction highlighted in this section and tabulated below are indicative of the internal dynamics which teachers of large multicultural classes expect to engage with and adapt to clinical forms of legal education. Multiculturality does present a platform for the exercise of creativity and innovation in the clinical teaching of law. A recent catalyst in this respect came by way of intensive clinical teacher training workshops involving all lecturers of the Nigerian Law

School.[11] In this way, a long dormant potential is being stirred up at an institutional level, a development which can only be advantageous for the future of legal education in Nigeria.

Table 1: Class dynamics

Element/ Activity	*Challenge*
Size	Participation
Diversity	Identification
Multi-campus structure	Uniform curriculum

Assignments

Administering regular assignments is often not feasible with a large class. Still, it is important to have a means of assessing students' understanding of concepts and application of principles. Assignments can be given in general to the whole class. Alternatively, parts of one broad assignment or different assignments can be given to different blocs of students, in which case there would be group presentation of assignments. With the emphasis on producing 'internet ready' lawyers, lecturers are now required to create assignments that require students to search for resources on the internet.[12] The fact that students are all in class or out of class at the same time means that there is pressure on the limited number of computers at certain times of the day. With a computer-student ratio of about 1:40, it is imperative that assignments are structured in a way that some members of the class, at least, are able to attempt them, given the infrastructural limitations. One way of doing this is to give simple assignments, one at a time, not to the whole class, but to groups of students, determined either by classroom blocs or tutorial groups or some other workable classification model. A more involving assignment, suitable for the whole class, could be given at the end of the term as a holiday assignment.

The academic activities described so far are complemented by vocational exercises, which are examined next.

Vocational or Co-curricula Activities

Practice Week Activities

One week in the ten-month academic calendar is designated as practice week and scheduled for vocational learning activities, earlier mentioned. The highlight of the practice week is the moot court. A mock criminal trial and a civil moot court are usually held. The process leading up to this starts with a compilation of the names of students who indicate an interest in participating in the exercise. A scenario is created and given to students who sign up. Students decide whether they want to be in the prosecuting team or the defence team of lawyers. Facts need not be based on a real life case, but are generally reflective of current societal realities. The trial is conducted using real laws, and a serving judge of the High Court presides and delivers judgment at the end.

While the emphasis in the moot court is primarily on developing trial advocacy skills, research

11 In May 2007, a series of workshops were held in Abuja, Nigeria for all lecturers of the Nigerian Law School, featuring notable trainers, Professors David McQuoid Mason and Richard Grimes.

12 This trend is facilitated by the completion of state-of-the-art internet facilities provided on each of the four Campuses by the UK Department for International Development.

skills are also sharpened as students prepare their respective cases. Still, Criminal Procedure and Civil Procedure are only two out of six subjects taught at the Law School. It is possible to extend the scope of the moot court scenario to incorporate issues that would serve to test skills learned from other courses. For example, a civil trial scenario could be drawn up around a company transaction in way that brings in elements of company law and legal drafting. An unauthorised property purchase on behalf of a company, for instance, will call into play documents such as the memorandum and articles of association of the company as well as relevant conveyancing documents. This then creates the opportunity for students to apply knowledge and skills gained from those courses.

The legal skills video tapes screened during the practice week cover core skills of trial advocacy and alternative dispute resolution. Tapes produced by the Inns-of-court in England are used. These cover client counselling, cross-examination, address, and negotiation. A learn-by-watching approach is complemented by discussion during breaks in each video session. The video screening provides a very useful platform for tying down many of the principles learnt in class to a particular set of facts. With the tutoring given by the judge in the tapes, students begin to identify some strengths and weaknesses in the performance of lawyers. Nevertheless, socio-cultural divergences, as well as differences pertaining to jurisdiction often show up when materials produced primarily for a specific jurisdiction are used in another. Contextualisation of training tapes to the jurisdiction within which they are to be used will no doubt make the learning experience even more effective.

Court and Law Office Attachment

In this exercise, students choose the city, but not the court, in which to serve the attachment. Timing is essential to this process. Usually, court attachment is carried out in the middle of the legal year, when courts are in active session. In a dual session, as was the case in 2006 and again in 2007, the timing for the court attachment may not always fit into the peak court season. If an attachment period falls at the beginning or end of a court vacation, students' opportunity to learn from court proceedings may be severely limited. Where this is the case however, the lack of consistency in court sittings is usually made up for during the law office attachment period which presents a lengthier opportunity for court attendance.

Law office attachment is carried out in an assortment of Law firms across the country. A list of accredited Law offices is maintained for this purpose. The degree of exposure to legal practice experienced by students during the Law office attachment depends significantly on the understanding and commitment of the principal lawyers in the firm to clinical training. With repeated hosting of interns over time, firms tend to create a definite programme of involvement for them. Law office attachment supervision experience has shown that the versatility of the practice in a firm impacts on how much students are able to learn. Further, the timing of the law office attachment exercise, usually just before the last term, which is also the examination term, engenders a contest between studying and practical learning. Quite often, students opt out of court attendance and other activities to focus on studying for the impending bar examinations.[13] This problem would be avoided if, for instance, the Law Office attachment exercise took place during a less-contested period, such as after the bar examinations but before the release of results. That way, students are more open to attending court for the purpose of learning. Alternatively, the exercise

13 Anaekwe, op. cit. at 100-1 also mentions this challenge.

can come up earlier in the session. Supervision is key to the success of the externship, as this would ensure that host firms are active partners in meeting the clinical legal education goals of the process. Further, the supervision exercise this presents a priceless opportunity for supervising staff to interact more closely with principals of host firms, most of whom are senior alumni of the Nigerian Law School. More is said on this in the section on *developing an alumni funding base*.

Law Dinners

The inculcation of professional values is a key goal of clinical legal education.[14] The law dinner provides an opportunity for students to meet jurists whose textbooks, judgments and arguments they must have read in the LL.B programme. It is an occasion which students attend with *great* expectations, dressed in their best. This very fact makes this occasion a powerful tool in clinical legal education. Relieved from the tedium of lectures and tutorials, and mellowed by the special cuisine, students listen to an after dinner speech presented by one of the visiting jurists. Typically, such a speech would last for about ten minutes and takes varying forms such as an address on ethical conduct, an anecdote or a reflection on legal practice development. Because students are delighted to be in the presence of jurists whom they revere, it is an occasion that could be better used to draw their attention to topical issues within a law-in-development context. Clinical legal education is no doubt about securing students' attention as much as it is about making good use of the attention when secured. The law dinner presents an excellent opportunity for directing students' attention purposefully where it is most needed in a society in transition – to issues of social justice, promoting the rule of law, increasing access to justice, legislative advocacy and a contextualised use of law for development. The thrust of the after-dinner speech should be discussed and concluded with a confirmed dinner speaker early on. The two dinners per set of students can be co-ordinated to ensure that the address at the second dinner is not a repetition of the first. Currently, the potential of the law dinner, as a tool of clinical legal education is largely unexplored. In many ways, it has become a formality, a mysterious rite of initiation into the legal profession, when it has the capacity to be a social justice catalyst and more. The limitations of certain co-curricula activities are shown in table 2

Table 2: Limitations of co-curricula activities

Activity	*Limitation*
Moot Court	Few Roles in simulation
Court and Law office attachment	Observing not doing
Law Dinner	Underutilised

The next section describes some administrative steps that need to be taken to support the development of clinical forms of legal education.

14 P.A. Joy, "Law Students in Court: Providing Access to Justice" in *Issues of Democracy* (Electronic Journal of the U.S. Department of State, August 2004) at 19.

Administrative Support Framework

Clinical Resources Unit

It is important that a specific unit is given the responsibility for co-ordinating training resources.[15] This is even more important in institutions where a bureaucratic tradition is entrenched. The clinical resources unit proposed would be responsible for contributing to the development of clinical legal education methods, providing training and support, maintaining and managing audio visuals and other clinical legal education resources and materials. This point is clearly brought out in the report of the pioneering clinical legal education work of the Network of University Legal Aid Institutions (NULAI) Nigeria.[16]

Alumni Funding base

Any effort to address the challenges of training large classes of candidates for the bar requires a multiplied input of resources, not just once-off, but on an ongoing basis. Government allocations for this are not only inadequate, but may not always be desirable, in the interests of maintaining the integrity of the process of training professionals who staff the judicial arm of government in a country in transition. Alternative long-term sources of funding need to be developed. In this context, it is important to explore an income base that is successfully tapped in places with advanced educational traditions, namely, alumni giving. Every institution of learning, over time, accumulates a large body of alumni. In this respect the Law School occupies an advantageous position, in that virtually all lawyers who qualified to practice Law in Nigeria since the early 1970s are alumni of the institution. After graduating from the University with the LL.B, practically all law graduates proceed to the Law School immediately, or at least queue up to enrol at the institution. Thus, it would be safe to say that all lawyers in Nigeria with about 35 years post-call qualification attended the same 'finishing school'. Stories of Law School experiences are frequently exchanged in courtroom banter across the country, in lawyers' meetings and Bar conferences, as lawyers reminisce over the final stage of their legal training. Strangely enough, the Law School does not return this compliment of remembering its past students, although it could do so in many beneficial ways.

For starters, a database of Law School alumni could be created, using the last known contact address of each past student. This would then be updated on an ongoing basis from the records of the Nigerian Bar Association (NBA) secretariat which would usually have more current information on practising lawyers. Secondly and not necessarily in that order, an Alumni Fund could be created and a strategy developed for planned alumni giving to the Law School. Some basic research on the donor attitudes of lawyers will be required, and in this regard, a survey can be carried out in conjunction with the NBA. This survey could be conducted by Law school staff when they go on supervision of students on Law office attachment. Developing an alumni funding base would take healthy advantage of the competitive tendencies that already exist among legal practitioners, while promoting ongoing interaction between practising lawyers, law teachers and

15 Anaekwe, op. cit. at 101, makes reference to the absence of teaching aids and the lack of resources to acquire them.

16 See E. Ojukwu, "Developments Towards Introducing Clinical Legal Education in Nigeria" in Network of University Legal Aid Institutions (NULAI) Nigeria 2004-2006 Activities Report. (Abuja: NULAI Nigeria, 2007) p.7.

students. Useful attention has been drawn to "the rich traditions of giving in multicultural contexts in different parts of the world."[17]

Constructing a Multi-skill Clinical Legal Education Approach

Clinical legal education is about learning how to practice law, in the twin sense of learning lawyering skills and professional values, while attending to clients' legal needs.[18] As such, it should prepare law students for as many different facets of practice as possible. One of these facets is practice that is conducted through the nonprofit organization, whether the character of the practice is described as public interest law, activism, NGO advocacy and so on. Alongside career options in conventional legal practice, government and business, the position of the nonprofit sector as an employer of lawyers is increasing.[19] Often there are partnerships between nonprofit sector lawyers, government lawyers and lawyers in private practice, usually on issues of social justice.[20]

To accommodate these forms of legal practice which meet a critical need in transition countries like Nigeria, a reconfiguration of current legal training methods is proposed. The aim is to create room for greater student involvement in training processes in a way that gives them the opportunity of learning new skills. For example, a moot court competition is essentially designed to teach students trial advocacy skills. In this court room simulation exercise, students are involved primarily as counsel, witnesses and court clerks. It is possible, however, to optimise this exercise by getting students involved in the conceptualisation, design, planning and execution of the moot court exercise. This exercise would be part simulation and part real life. Thus, instead of being limited to participation in courtroom simulation, students would be required to *execute a moot court project*.

The project proposed will involve, at least six distinct activities. First is the establishing of a nonprofit legal aid entity or law service known, for purposes of this illustration, as the Clinical Law League (the League). Secondly, a litigation fund through which the activities of the League will be funded would have to be set up. Next, a client's interview and counselling session in respect of a particular case referred to the League is conducted. At the fourth stage, case analysis and legal opinions are prepared, then comes the trial, and finally, the reporting. The six stages are discussed briefly.

Establishing a Nonprofit

At this stage, participants in this section would have to do the necessary solicitor-client consultation, assemble the relevant information and prepare documents for the registration of a nonprofit association under the relevant section of the law.[21] In this exercise, students apply interviewing, advising, research and drafting skills. This is perhaps the other side of the coin to

17 D. Everatt et al, "Patterns of Giving in South Africa" in *Voluntas: International Journal of Voluntary and Nonprofit Organizations* Vol.16, No.3, September 2005, p. 275 at 277.

18 Joy, loc. cit.

19 The LL.B programme brochure of the University of Cape Town mentions the demand for law graduates in organisations such as Legal Resources Centre, Lawyers for Human Rights and Women's Legal Centre. See online version 'Practising Law in South Africa' at www.law.uct.ac.za.

20 See for instance, the profile of the Human Rights Law Service (HURILAWS) Nigeria www.hurilaws.org as well as the Constitutional Rights Project (CRP) www.crpnigeria.org.

21 In Nigeria, this is done under the Companies and Allied Matters Act 1990, Part C.

Joy's suggestion of externships in nongovernmental organisations and government funded programs in countries where this would be a more feasible option than in-house clinics.[22] However, this is not only about gaining legal practice experience through an NGO, but about doing the legal work necessary to set up an NGO. At this stage, the clients are the law students who want to set up a public interest law service.

Public Interest Advocacy

This will involve both oral and written (non-trial) advocacy articulating the mission of the League and the ways in which this mission will be pursued, including the place of litigation in the achievement of the goals of the League. This will also require the writing of a proposal, motivating contribution and support for the Fund from prospective donors and supporters. The proposal will include a budget for the different services involved in case management, including a determination and description of a billing system. This way, law students have an opportunity to reactivate their quantitative aptitude, which is often laid down at the door of legal studies, but which becomes an imperative at the onset of practice. Moreover, it is important to keep track of the actual or potential economic value of services that are rendered through clinical law practice to demonstrate its usefulness. Since this phase of the project has oral and written components, it creates the opportunity for students to develop skills in proposal writing, budgeting, billing, public interest advocacy and fund raising. The importance of these "extended lawyering skills" in developing jurisdictions is reinforced by the pioneering experience of Nigeria's clinical legal educators, who recommend that "Faculty members of clinical programmes should be trained in fund raising and grant management skills."[23]

Client Interview and Counselling

At this stage, the League is faced with a specific case, which has been brought directly to it by a client or referred from another source. Little imagination is required to generate a suitable scenario. Life in developing societies is characterised by daily tales of injustice at the personal, communal, institutional and other levels. Here, students apply the skills necessary for drawing out the facts of a matter from a client. These include the skills of active listening, effective questioning and appropriate counselling.[24]

Case Analysis and Legal Opinion

The facts of the case may or may not be designed to make it eligible for support from the Fund. Students will also need to exercise research skills and skills of case analysis and consultation, after which a legal opinion is prepared and communicated to the relevant quarters, perhaps the Litigation Committee of the League or the referring agency as the case may be. Students' ability to analyse a case, determine what aspects of law are involved, advise on what primary course of action should be taken and articulate these in a written legal opinion will be tested and further developed at this stage.

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22 Joy, op. cit. at 22.

23 Ojukwu, op. cit. at 8.

24 These communication skills are described in detail in P. Lisnek, *Lawyer's Handbook for Interview and Counselling* (St. Paul, Minn.: West Publishing Co., 1991), Chapter 3.

The Trial

This presents the conventional setting for the demonstration of advocacy skills backed by research skills. These include the ability to conduct effective examination-in-chief, cross-examination, re-examination, present an address and so on. This is a traditional focus of clinical legal education, and does not require much description at this point.

Reporting

At the end of the trial, students are expected to write a report for several purposes, including briefing the instructing body such as the Litigation Committee. The report will also be published in the annual report of the League which should be made available to donors to the Litigation Fund. The client should also receive a suitable variant of this report. It would also be appropriate at this stage to prepare a final bill or case account, which may be incorporated as part of the report or presented separately.

Strategy

The project-type approach proposed may be done by the Law Faculties or at the Law School, or both. The project will be phased over the session, to be completed before the examination term commences. A different group of students will be involved at each stage in a relay-type progression, which should, as much as possible, accommodate students' preferences. It is important for students to begin early on to identify their preferred tasks in the legal practice continuum and develop them, as this contributes to their effectiveness in making suitable career choices in the future.[25]

A number of distinct projects can run concurrently to ensure that all students participate. Assessment is done as the project unfolds, and scores are recorded either as part of sessional results or for purposes of recognition and award of prizes or both. However, since the focus is not merely on the end result, but on the learning that takes place in the process, assessment should be designed accordingly. As Chavkin points out, "*Instead of looking at whether you won or lost, we will be looking at the process you used to assist your clients*."[26]

The early stages of establishing a nonprofit organisation, setting up a litigation fund and engaging in public interest advocacy jointly create a social justice ideological framework or point of reference for the client counselling and moot court proceedings that follow.[27] With the unfolding of a consistent story line, the project may take on the appearance of a legal soap opera, albeit with timelines. While this may have its appeal for securing lively participation from students, the phased system also lends itself to termination at the end of any phase if necessary. A new set of facts altogether could then be introduced if desired. The variations that may be made to the project approach seem almost limitless.

The co-ordinators of clinical programs will work out which aspects of the project can accommodate real life activity and which to simulate. The fact that clinical legal education methods need not be boxed into a specific mould is captured by the observation that "*some form of clinical legal education is possible in every country wishing to involve law students in providing access to justice*."[28]

25 Chavkin, op. cit. at 155-64, discusses this all-important subject as 'developing a theory of ourselves'.

26 Ibid. at 20.

27 A tabular representation of the multi-skill project proposed here is shown below.

28 Joy, op. cit. at 22.

Table 3: Phased multi-skill project proposal

Activity	Key Skills	Character	Team
Registering a non-profit law service	Interviewing (the client) research and drafting	First time real, subsequently simulated	A
Public interest advocacy	Proposal writing, non-trial advocacy	Real and simulated	B
Client interview	Interviewing and counselling	Real or simulated	C
Case analysis	Research, analytical, writing	Real or simulated	D
Mock trial	Trial advocacy	Simulated	E

Conclusion

With the relative stabilisation of civilian governance in Nigeria and the accompanying economic and legal reforms, an enlarged marketplace for lawyers has grown, making it necessary to expand the complement of skills developed through legal education. In the context of a developing society like Nigeria, this may require a reconstruction of clinical legal education to create the settings necessary for growing these skills. The demand for legal training, which has always been disproportionately high, is increasing, placing immense pressure on the legal education system, made up of the Faculties of Law and the Nigerian Law School, a phenomenon that has been described as no less than a 'national problem'.[29]

The time spent at the Nigerian Law School is short, fragmented and fully apportioned. Consequently, the continuity required for running conventional law clinics may not be easily accommodated in the regular Law School calendar. The prospects seem more promising in the Law Faculties, where students spend five years in the LL.B programme.[30] Yet the Law School is the only stage of legal training which presents a uniform opportunity for the reinforcement of the clinical legal education ethos to prospective legal practitioners. The key need at the Law School stage of legal training is to advance a clinical legal education that ties together the threads of experience garnered by students through the law clinics and other forms of legal training administered by various Law Faculties.

Although current teaching methods are designed to secure a practical component to the Law School programme, these methods can be restructured to offer more than they are currently able to. For example, it would be more effective to contextualise legal skills training resources, like video tapes, to local jurisdictions, using local characters and settings. Court and Law office attachment could be more constructively supervised and the supervision exercise itself can be optimised to promote useful interaction between Law School teachers and practising alumni. The development of an alumni funding system presents itself as a sustainable supplement and

29 I.A. Ayua, "The Objectives of Legal Education in Nigeria" in I.A. Ayua and D.A Guobadia (Eds.) op. cit. at 43.

30 See reports of pilot law clinics in Network of University Legal Aid Institutions (NULAI) Nigeria 2004-2006 Activities Report, pp.36-52.

alternative to government funding. The law dinner component constitutes an excellent platform for motivating and conscientising prospective lawyers on professional values, including the social justice role of their profession of choice.

Moot court events can be made more comprehensive and inclusive of other Law School courses. A project-type, as distinct from case-type approach may be used to create a more expansive field for the learning and application of a variety of lawyering skills. With regard to the key challenge of extra-large class sizes, a multiphase project approach complements a class grouping strategy for more effective inclusion and management of students. These observations are not intended to be exhaustive, but indicative of ways in which the Law School can become better positioned to offer 'finishing school' training, not in a superficial sense, but in the sense of anchoring the clinical legal education received in the Law Faculties to a social justice rubric.