ISSN 1467-1069

INTERNATIONAL JOURNAL OF

Clinical Legal Education

Articles

Clinical Practice Profile

NORTHUMBRIA LAW • PRESS

June 2003 pages 1–78

INTERNATIONAL JOURNAL OF
Clinical Legal Education

June 2003 Edition No. 3. Pages 1–78

Notes for contributors

Material intended for publication should be sent to the Editor, Cath Sylvester, School of Law, University of Northumbria at Newcastle, Sutherland Building, Northumberland Road, Newcastle upon Tyne, NE1 8ST, United Kingdom or e-mailed to cath.sylvester@northumbria.ac.uk.
The Editor encourages the submission of articles and comments on topics of interest in the area of Clinical Legal Education. When submitting manuscripts for publication, it would be helpful if authors could observe the following suggestions:

Form of manuscript

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 6 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.

Papers submitted to the International Journal of Clinical Legal Education will not be returned except by request and unless a postage paid envelope is provided by the author.

Footnotes and references

Footnotes to sources should be numbered in one consecutive series of Arabic numerals and placed at the foot of the page. Footnote style must conform to the standards set forth in a Uniform System of Citation, published by Harvard Law Review Association. The publishers are unable to check the accuracy of references and the onus of the accuracy falls on the author.

Copyright

It is the responsibility of the author to obtain any permission necessary to reproduce or quote from published work and suitable acknowledgment should always be made.

Yearly subscription rates (2 issues)

£50 Sterling – Organisations
£20 Sterling – Individuals
Please contact Suzanne Thomas: +44 (0) 191 232 0099
E-mail suzanne.thomas@northumbria.ac.uk
Northumbria Law Press, School of Law,
University of Northumbria, Sutherland Building,
Newcastle upon Tyne NE1 8ST
United Kingdom.

DER-68279B/06/03

Contents

Page

Foreword

This is the third edition of the International Journal of Clinical Legal Education and once again the journal has contributions from a wide geographic area. It is interesting and inspiring to hear of recent developments but I am always intrigued by the different historical bases for the development of clinical legal education across the world. In Croatia, Steven Austermiller's clinical work has emerged against a background of a struggling legal system with inexperienced personnel, whilst in Australia Jeff Giddings' article describes the development of clinical work as a provider of legal services to the poor. Here in the UK the emphasis has been on the educational benefits the clinical approach brings to legal education.

Despite these differences the problems, conflicts and questions arising from the day to day maintenance of such programmes are surprisingly similar. Philip Iya's article considers the seemingly universal conflict between the profession and the academy and the restrictions it places on legal education, whilst Susan Campbell, Alan Ray and Jeff Giddings touch on the problems of staffing, funding and developing new programmes all of which sound very familiar to me.

This third edition is published shortly before our first International Conference on Clinical Legal Education to be held in London. I look forward to meeting some of our contributors and others interested in the field and hope that the conference can be established on a regular basis. Some of the papers from the conference will be published in future editions of the journal. It seems to me that ongoing international debate on clinical legal education has a lot to sustain it. It is precisely the mixture of common ground and differences that make it so interesting and diverse.

Cath Sylvester
Editor

Clinical Legal Education in Australia: A Historical Perspective

*Jeff Giddings**

Introduction

The evening edition of the Melbourne *Herald* for Saturday, January 7, 1933 contains what is probably the first Australian reference to the clinical teaching of law students.[1] Frank Russell, a lawyer, noted that, unlike medical clinics which provided 'the finest medical attention to the suffering poor', legal clinics were not well known in Australia. Russell noted that legal clinics were a familiar phenomenon in the U.S.A. and also existed in some countries of Europe and had been used in England. Russell outlined the operations of the Legal Clinic at the University of Southern California. Students interviewed indigent clients and then in appropriate cases provided ongoing assistance. Their work was supervised by experienced lawyers and the Dean of the Faculty of Law would attend from time to time 'to decide knotty cases, not of law, but of the propriety of the Clinic acting for applicants'.[2]

Russell's description is of a real client clinic with a strong community service focus, a clinic committed to the delivery of legal services to the disadvantaged. Australian clinical legal education programs (CLE) have tended to make use of this model since the establishment of the clinical program at Monash University in 1975. While the live-client model has been very influential, the history of Australian CLE is quite eclectic, with the stories and experiences varying significantly from state to state, law school to law school. The establishment of some programs was heavily student-driven while others saw a 'top down' approach taken, with academics developing programs which have then been enthusiastically accepted by students.

The article focuses on real client clinical work with participating students being supervised by lawyer academics while also referring to other models. This model has enabled clinics to retain a strong commitment to community service whilst also facilitating close work with small groups of students.

* *Associate Professor, Law School, Griffith University*

Thanks to the anonymous reviewer and the editors for their insightful comments on an earlier version of this article.

1 *F. Russell, 'How to Educate Young Lawyers: Legal Clinics in the U.S.A.' Herald, Saturday Evening, January 7, 1933.*

2 *Id*

This has been important to the growing acceptance and popularity of CLE with students, law schools, universities and the legal profession. Use of the real-client model also suggests an aversion to the value-free approach to legal education exemplified by the Socratic appellate case method.

The first part of the article addresses the development of Australia's earliest clinical programs, those at Monash University, La Trobe University and the University of New South Wales. The second part provides an overview of increased Australian interest in CLE during the 1990s while the third part identifies some themes important in the history of Australian CLE.

Early days for Australian Clinical Legal Education

While the first formal clinical legal education program in Australia was established in 1975 at Monash University, several legal referral services involving students had earlier been established. In June 1970, Melbourne University law students opened a free legal referral service at the Church of All Nations in Carlton. Initially, 5 students participated in the service.[3] In 1971, a telephone referral service run by Monash University law student volunteers with support from Law School academics commenced operation at the premises of the Melbourne Citizens Advice Bureau.[4] Legal academics involved in these services, in particular Ronald Sackville at Melbourne and Peter Hanks at Monash, were also heavily involved in the rapid development of Australian legal aid policy around this time.[5]

In 1972, the Law Society at the Australian National University established a Legal Referral Service. The service ceased operations the following year, 'as a result of the establishment of "official" legal aid offices which led to the loss of a sense of purpose among students and through a lack of leadership of the participants. Another difficulty which faced the service was a degree of reserve concerning its function among the Canberra legal profession.'[6]

Monash

Students played a key role in the establishment of the Monash clinical program in 1975. Simon Smith traces the origins of the program to the establishment in 1971 of the Monash Student Legal Referral Service, noted above. 'Working on roster, third, fourth and final year students would take telephone calls seeking legal assistance. As soon as the problem was identified a member of the Monash academic staff would be telephoned for the legal advice and referral which was then telephoned back to the original caller.'[7] The Referral Service was not part of the Monash curriculum and was not faculty-approved.[8] Students were not formally prepared for their role nor was there any regulation of the academic advisors.[9]

3 *J. Chesterman, Poverty Law and Social Change: The Story of the Fitzroy Legal Service, 1996, Melbourne University Press, 4 & 26.*

4 *S. Smith, 'Clinical Legal Education: The Case of Springvale Legal Service' in Neal, D., (ed) On Tap, Not on Top: Legal Centres in Australia 1972–1982, 49*

5 *In his role as Commissioner for Law and Poverty to the Commission of Inquiry into Poverty 1972, Sackville wrote several influential reports, Legal Aid in Australia (1972), Legal Needs of the Poor (1975) and Law and Poverty in Australia (1976). Hanks published several reports for Commonwealth agencies, including Relationship Between Legal Aid Agencies and Social Agencies (1983) and Social Indicators and the Delivery of Legal Services (1987).*

6 *J. Goldring & R. Hamilton, A Course of "Clinical Legal Education" as part of the Law Degree Course at A.N.U. Discussion Paper, 14/4/78, 2.*

7 *S. Smith, Above, note 4, 49*

8 *G. Nash, 'Clinical Education in Australia' Council on Legal Education for Professional Responsibility, Vol. XII, No. 1, (1979) 6*

9 *Smith, above, note 4, 49*

Early in 1972, the referral service began running afternoon sessions at the Springvale Community Aid and Advice Bureau. This involved students in face-to-face interviews with clients with support from Bureau staff. Smith notes that student frustration with the limited nature of referral work and the example provided by the establishment in December 1972 of the Fitzroy Legal Service, contributed to Springvale Legal Service being established in February 1973.[10] Law students were the main contributors to what was, quite understandably, a very busy and fairly disorganised service. Two of the students most heavily involved in the development of Springvale Legal Service, Neil Rees and Simon Smith, went on to play critical roles in the development of Australian CLE. Smith spent more than 10 years as Coordinator of Springvale Legal Service. Rees was the academic responsible for developing and implementing the UNSW clinical program in the early 1980s and later became Foundation Dean of the University of Newcastle Law School.

Monash academics, including Peter Hanks and Professor Gerry Nash, became involved in Springvale Legal Service and this prompted law school interest in the prospect of a clinical program. During 1973 and 1974, this prospect was discussed in forums including the Faculty Board. A Committee on Clinical Legal Education, chaired by Hanks, met after Faculty Board gave in principle approval to the establishment of a clinical program.[11] Nash developed a subject proposal which was approved by the Faculty Board early in 1974.[12] Nash did so after lengthy consultation with Professor Arthur Berney who was visiting Monash from Boston College Law School.

The elective subject 'Professional Practice' was offered on a pilot basis in second semester, 1975. The subject was based at Springvale Legal Service with 15 students being supervised by Professor Nash with assistance provided by three practitioners as part-time 'tutors'. The three practitioners were all active volunteers at the service and they each attended one evening per week to provide direct supervision of student work. Nash's supervisory role was of a more general nature. Nash had agreed to run the subject in an effort to overcome objections related to the cost of the program. This supervision represented half of Nash's teaching commitment for the semester.[13]

The first offering was obviously quite chaotic. According to Nash, he and Harry Reicher 'were just flat-out.' *Professional Practice* was then run over the summer of 1975/76. 'We had to run it over summer. We couldn't tell the clients to come back in 3 months time.' The summer subject offering was a first both for Monash University and for Australian law schools.[14]

Two further Monash clinic sites were subsequently developed; the Doveton Legal Service, which opened in mid-1977 and Monash-Oakleigh Legal Service, which opened in 1978. The possibility of establishing a clinic at the proposed Springvale office of the Australian Legal Aid Office, discussed in 1975, had to be shelved when that office did not open.[15]

10 *Id*

11 *P. Hanks, 'Clinical Legal Education', Paper to members of the Committee on Clinical Legal Education, 3 May, 1974.*

12 *Nash, above, note 8, 6*

13 *Ibid, 8*

14 *Gerry Nash, personal interview, 1/12/97*

15 *It had been anticipated that a large number of branch offices of the ALAO would be opened during 1975 but this did not eventuate due to resistance from the legal profession and the change of Commonwealth government in December, 1975. For an account of this curtailment of the ALAO, see Tomsen, S., 'Professionalism and State Engagement: Lawyers and Legal Aid Policy in Australia in the 1970's and 1980's' (1992) 28 Australian and New Zealand Journal of Sociology 307*

Each of the clinics relied heavily on part-time tutors. One of the supervisors at Doveton was a local solicitor, Michael Duffy, who subsequently was Federal Attorney-General in the Hawke Labor Government.[16] Nash hoped that over time more academics would become involved in the clinic and would be better teachers because of this involvement. However, this did not happen to the extent Nash hoped, with the clinics remaining relatively self-contained.[17]

The 3 Monash clinic sites differed in a number of significant aspects. Nash stated that it was 'interesting that the official philosophy (so far as the university is concerned and so far as I am concerned) behind the University operation of these three legal services is identical but the nature of the operation tends to differ.'[18] While the 'great majority' of Springvale Legal Service clients were of non-English speaking origin, the corresponding figure for Doveton was 25%.[19] While arrangements were made at Doveton to limit to 20 the number of clients seen during any one session, the 'Springvale operation has always been premised on the assumption that all-comers should be served.'[20]

Nash also notes that the emphasis at Springvale was on 'informality and assistance to the client. Because of the ethos of the establishment, the way in which it originally began, and the personality of those who work there, the educational element is perhaps subservient to the legal aid element.'[21] The person who was central to the development of the particular Springvale Legal Service focus was Simon Smith. Smith was employed as an administrative assistant by Nash, by then the Law School Dean, in January 1978 although Smith's work was focussed on the coordination of the Springvale Legal Service legal practice and supervising students. The fact that Smith was employed as an administrative assistant rather than as an academic highlights that, although clinical legal education was further advanced at Monash than at any other Australian university, its legitimacy had not yet been accepted. Smith's position was not converted to a lectureship until 1982, 7 years after establishment of the clinical program.

The importance of Simon Smith's coordination role was increased because of the program's heavy reliance on part-time teachers. 11 part-time tutors were involved in student supervision at the Monash clinic sites during the three semesters completed in the 1979–80 financial year.[22] Smith later referred to a stage where 8 different people were involved in supervision and teaching at Springvale Legal Service alone and the difficulties this caused for students in terms of access to tutors for follow-up supervision. Smith described this situation as unworkable.[23] Further difficulties arose due to different styles of supervision. Guy Powles, then coordinator of the Monash clinical program, expressed concern that the clinical program not be built up through the employment of part time staff on an ad hoc basis:

> 'Above all else, the course requires continuity of supervision. What is needed is the part-time commitment of a full-time lecturer with good all round practical experience.'[24]

16 *Nash, interview, 1/12/97*

17 *Nash, interview, 1/12/97*

18 *Nash, above, note 8, 15*

19 *Ibid, 13*

20 *Ibid, 14. It was not until November 1987 that a limit of 15 client interviews per session was introduced. See K. Greenwood, It Seemed Like a Good Idea at the Time, 1994, Springvale Legal Service, 127.*

21 *Ibid, 12*

22 *Attachment to Memorandum from Guy Powles to Professor Nash Re: Professional Practice tutors dated 4 October 1979.*

23 *Smith, above, note 4, 51*

24 *Id.*

At Monash, there was also a 'Godfather Scheme' whereby students were given the opportunity to shadow experienced practitioners. In 1980, there were 69 students placed, including the present Victorian Deputy Premier, John Thwaites and ABC Radio presenter Jon Faine. The program appears to have suffered from the inconsistencies in student learning which bedevil these external part-time programs.

The Monash clinical program has benefited greatly from continuity of staff in several key positions. Sue Campbell has coordinated the Monash program since the mid-1980s and both Simon Smith and Adrian Evans spent in excess of 10 years as Coordinator of Springvale Legal Service. Ross Hyams, currently Director of what is now known as the Springvale-Monash Legal Service, has also worked in the clinical program for more than 10 years, principally as Coordinator of Monash-Oakleigh Legal Service. During the 1990s, Monash developed specialist clinics as well as a model for involving clinic students in community development work, significant initiatives in the development of Australian CLE.

La Trobe

The La Trobe University clinical program can be traced to the 1974 establishment of the La Trobe Legal Service by staff from the Legal Studies Department.[25] There was strong student demand both for the provision of legal services to the student population and for involvement in the delivery of those services. In 1976, the La Trobe Legal Service employed a lawyer with Students' Representative Council funds and by 1977 'it was clear that the time was ripe to begin training "para-legal" personnel for work in the service.'[26] This was done through a clinical course established by Adrian Evans, then a solicitor at the La Trobe SRC Legal Service, called Clinical Legal Education. Twelve students were placed with the SRC Legal Service as well as participating in seminars on interviewing skills and various substantive legal areas. The Legal Studies Department made a payment to the Legal Service for having the students on placement.[27]

In 1978, the Legal Studies Department also employed a lecturer in Legal Aid with responsibility for establishing the West Heidelberg Community Legal Service (WHCLS) at the local West Heidelberg Community Centre[28] which became the second placement site for the La Trobe Legal Studies students. Phil Molan was the first person appointed to that position, which he held until 1981.[29] A course titled Law and Social Justice developed out of the student work at WHCLS and students from the course continued to be placed at WHCLS until 1987.[30]

The decision to provide a clinical program for legal studies students was based on the view that the agents for change of the legal system would come from outside the legal profession and that para-legals had a key role to play in improving the workings of the legal system.[31] A focus of the program was the training of students to work as para-legal volunteers at the La Trobe Legal Service with such work continuing after the students' completion of the clinical program.

25 *A. Evans, 'Para-legal Training at La Trobe University' (1978) 3 (2) Legal Service Bulletin 65.*

26 *Id.*

27 *M. A. Noone, 'Draft History of Clinical Legal Education in Legal Studies Department' (undated).*

28 *D. Neal, 'The New Lawyer Bloke' (1978) 3 (4) Legal Service Bulletin 148.*

29 *Phil Molan discussed his work in community legal centres, including the development of the West Heidelberg Community Legal Service in an interview with David Neal, 'Interviews: Some Founding Mothers and Fathers' in Neal, D., (ed) On Tap, Not on Top: Legal Centres in Australia 1972–1982, 60–64.*

30 *Noone, above, note 27.*

31 *A. Evans, interview, 17 October 1997.*

In 1986, Adrian Evans and Mary Anne Noone (who in 1985 had replaced Kevin Bell in the lecturer position originally held by Phil Molan) reviewed the Clinical Legal Education course with a view to involving both the La Trobe SRC Legal Service and WHCLS in a 2-semester course. The offering of placements at 2 legal services was considered to enhance the learning experience of students. The revised Clinical Legal Education course was first offered in 1987 with a quota of 24 students. The course 'sought to link clinical skills, substantive law, research, exposure to case work environments and techniques of public interest legal analysis.'[32]

The La Trobe SRC Legal Service maintained an involvement in the clinical program until 1992 and WHCLS remains a major placement site. The distinctive nature of the La Trobe program, as one offered to non-law students, changed in 1991 when the Legal Studies Department became the School of Law and Legal Studies.[33]

During the 1990s, the La Trobe clinical program pioneered the development of links with a legal aid commission rather than a community legal centre. From 1994, La Trobe offered an optional one-semester subject, *Legal Practice and Conduct*, which included clinical placements at the Preston Office of the then Legal Aid Commission of Victoria (now Victoria Legal Aid).[34] In 1996, La Trobe commenced a mentoring program which saw a small number of second year students individually placed with magistrates during one semester. There is clearly a strong commitment at La Trobe to continued development of its clinical program.

Several discussions of Australian clinical programs have ignored La Trobe. The discussion of clinical legal education in the Pearce Committee Report focussed on Monash and UNSW. The 1990 Report of the Queensland Working Party on Clinical Legal Education Discussion Paper reviewed the clinics at Monash and UNSW and 3 Canadian clinics but makes no reference to La Trobe.[35] Perhaps this can be explained by a view amongst law schools that a clinical program in a Legal Studies Department did not provide useful insights for the establishment of a clinic within a law school. In fact, the La Trobe program offers many useful insights into the potential for clinical experiences to show students how the law and legal system may be used to promote social change.

32 *Noone, above, note 27.*

33 *M. A. Noone 'Australian Community Legal Centres – the University Connection' in Cooper, J & Trubek, L. (eds) 1997, Educating for Justice: Social Values & Legal Education, Dartmouth, 12.*

34 *J. Dickson & M. A. Noone, 'The Challenge of Teaching Professional Ethics', paper presented at the Australasian Professional Legal Education Council International Conference, Skills Development for Tomorrow's Lawyers: Needs and Strategies, Sydney, September 1996, published in Conference Papers Volume 2, 847, 850.*

35 *D. Pearce, Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission, 1987, AGPS. See Volume 1, 115, 122–129 (Perhaps this is explained by the Pearce Committee focus on law schools rather than legal studies departments such as that at La Trobe), Queensland Association of Independent Legal Services, Clinical Legal Education Committee, Report of the Clinical Legal Education Committee, November 1990, Appendix B, 5–6. For a more recent example of the lack of attention paid to the La Trobe clinical program, see I. Styles & A. Zariski, 'Law Clinics and the Promotion of Public Interest Lawyering' (2001) 19 Law in Context 65, 66 where reference is made to the positive experiences of the Monash and UNSW clinics but no reference is made to La Trobe.*

University of New South Wales

The University of New South Wales (UNSW) established its in-house clinical legal education program in 1981 with the opening of Kingsford Legal Centre. Neil Rees, the founding director of Kingsford Legal Centre, attributes the development of the UNSW clinical program to the desire of the recently established UNSW to challenge the pre-eminence of Sydney University. In the late-1970s, Sydney University Law School was considered by UNSW to be fairly weak 'so they saw law as an area where they could overtake Sydney fairly quickly.'[36]

Both simulation programs and an externship program, established in mid-1975, preceded the establishment of the in-house clinical program. Neil Rees recalls an incident in 1980 when, having been at the UNSW law school for only a week, 'a student came in and told me "I have relatives in a legal firm in New York so I'm going to do my Clinical Legal Experience placement in New York. Will you approve this?"'. The UNSW *Trial Practice* subject was 'your classical simulation-style subject, running through a whole range of litigation with students playing all the major roles.'[37]

The UNSW clinical program is distinctive in a number of respects. Kingsford Legal Centre developed a very strong test case focus, conducting a series of major anti-discrimination cases. UNSW also used Kingsford Legal Centre to forge novel links between the teaching of law and other disciplines, in this case social work. Kingsford Legal Centre also introduced student supervision practices different to those employed by the Monash program. (These differences are discussed later in this article)

Initially, it had been proposed to operate the UNSW clinical program from Redfern Legal Centre. Redfern Legal Centre was established in 1977[38] and several of the key people in the operation of the centre were academics from the UNSW Law School. In Neil Rees' view, 'the people who ran Redfern were the people from the UNSW Law School. They were the same people just with different hats on. The movers and shakers at Redfern were John Basten, Terry Budden, John Kirkwood, Robyn Lansdowne.'[39]

A meeting was convened by Rees early in 1980 with key Redfern people (those referred to above plus key staff – Roger West and Clare Petre). 'The Redfern people pretty quickly decided that it would somehow taint the intellectual purity of the Redfern Legal Centre and they were reasonably well funded, didn't want any resources UNSW could offer them and, I think, feared a university takeover of Redfern at the time... These were fairly junior members of staff and they feared the professoriate taking over their baby.' While Redfern Legal Centre did not become part of the clinical program, harmonious relationships were maintained between the law school and the centre.

The planning for the clinical program clearly benefited from Neil Rees' experience at Monash with the development of Springvale Legal Service. The importance of having the clinic co-ordinator/director as a full-time member of academic staff was recognised. Student supervision and the teaching of the classroom component of the subject comprised this staff member's teaching load.[40] Rees also noted, 'We should learn from the Monash experience and discourage the use of academic teaching staff who are admitted to practise, but who may lack substantial experience in the necessary areas of law.'[41]

36 *Neil Rees, personal interview, 4 September 1997*

37 *Id*

38 *See D. Neal (ed) On Tap, Not On Top: Legal Centres in Australia 1972–1982, 1984, Legal Service Bulletin Co-operative.*

39 *Neil Rees, personal interview, 4 September 1997*

40 *Neil Rees, Clinical Legal Education (18 March 1981), 15*

41 *Id*

As late as the end of March 1981, Neil Rees was writing that it would take a considerable period of time to establish the clinic. 'It may be possible, if finance were available, to open the clinic sometime in the second half of 1981. It might be more realistic to aim for a date early in 1982.'[42] However, the Kingsford Legal Centre was established on 27 July 1981. It was officially opened by Mr Frank Walker, the then Attorney-General of New South Wales on 9 September 1981.'[43]

The UNSW Law School encountered significant resistance from the Law Society of New South Wales to the establishment of the clinic. Neil Rees attributes this in part to the links between the law school and Redfern Legal Centre. 'Redfern had had lots of run-ins with the Law Society from Day One. The people at Redfern were behind the establishment of the Australian Legal Workers Group which was setting itself up as the alternative law society for radical young lawyers. ALWG was a very volatile organisation... The Law Society saw Redfern, ALWG, Kingsford, Ron Sackville and John Basten and others as this sort of amorphous group of feared lefties. The Aboriginal Legal Service as well. The tentacles were all there. They were pretty horrified as to what was going to happen... So, I found myself at 30 years of age sitting down negotiating with the President and Secretary of the Law Society about the opening of Kingsford and what type of practising certificate they were prepared to give me.'[44]

Kingsford Legal Centre quickly developed a substantial litigation practice, especially in the areas of anti-discrimination and domestic violence. Up to 75 anti-discrimination cases were conducted each year and on 6 occasions, these cases were taken to the High Court of Australia.[45] Domestic violence issues were the key focus for Robyn Lansdowne, the casework lawyer at Kingsford Legal Centre from 1982 to 1986.

While Kingsford's litigation profile was of considerable benefit to the law school, the relationship between the clinic teachers and other academics suffered when the clinicians sought to have time away from the clinic, either for sabbaticals or to teach other subjects in the law school. The catalyst for the departure from Kingsford Legal Centre of Neil Rees and Robyn Lansdowne in 1986 was 'a big blow-up between clinicians and this new school of legal scholars who were great supporters of clinical in theory so long as two things happened. One, it didn't suck away what they thought was a disproportionate share of the funds and two, that they weren't asked to go and work there.'[46]

In 1987, the schools of law and social work were more successful in developing links. The Law Foundation of New South Wales funded the School of Social Work at UNSW to report on the feasibility of a legal studies course in the social work degree. As a result of that report, the School obtained a development grant from the University to commence, in 1989, a social work placement at Kingsford Legal Centre. The grant was necessary to cover the cost of a social work supervisor at the Centre, and to defray the administrative costs to the Centre of the social work placement.[47]

In 1991, Kingsford Legal Centre Director, Simon Rice reported that the 'presence of an academic/practitioner from the Social Work School, as well as three students on placement, has been of great benefit to the social work studies. More importantly, from the clinical legal education view, it has added a new dimension to the legal casework possibilities and has invited students to

42 *Ibid*, 7

43 *N. Rees & R. Lansdowne, Report to the School on Clinical Legal Education, 6 October 1983, 3*

44 *Rees, personal interview, 4 September 1997*

45 *J. Giddings, 'Casework, Bloody Casework' (1992) 17 (6) Alternative Law Journal 261, 263*

46 *Rees, personal interview, 4 September 1997*

47 *S. Rice, Review of the Clinical Legal Education Program in the Law Faculty at the University of New South Wales (June 1991) 15*

take a close look at the way lawyers may be introduced to working with related professions.' 'It has been a considerable challenge to the supervisors and to the students to explore the possibilities of the two professions working co-operatively. The project requires further time and resources, but shows considerable promise if it can be maintained.'[48]

Supervision of First Interviews – a key teaching difference

In a 1984 paper, Robyn Lansdowne & Neil Rees, the clinic teachers at Kingsford, noted that they faced the 'difficult task of leading students to believe that they must accept responsibility for the conduct of a particular case whilst at the same time ensuring that our clients are not disadvantaged in any way by student involvement. In part, we have to create an illusion of responsibility.'[49] In a 1983 paper, they had referred to their approach to supervision being 'akin to placing students on a rope. The rope is gradually let out if a student is performing well. If a student fails to perform adequately we are forced to draw in the rope and explore every minor detail of a case with the student.'[50]

One mechanism used to support this illusion of responsibility remains a key difference between clinical programs in New South Wales and programs in Victoria, Western Australia & Queensland. While all Australian real-client clinical programs provide students with the opportunity to take instructions from clients without their supervisor being present, different approaches are taken to the provision of advice to the client once the student has discussed the situation with their supervisor. When a client is being interviewed for the first time at either the UNSW or Newcastle clinic, the student will not advise the client alone. They do so with their supervisor. Clinical programs outside New South Wales have adopted the approach pioneered at Monash whereby the student returns to the client and advises them unaccompanied by a supervisor. Students involved in the La Trobe clinical program did not conduct client interviews until the second half of the 1990s, by which time the La Trobe Legal Studies Department had become a Law School.

The Monash approach was based on the importance of the student taking responsibility for the client and to be seen by the client as doing so. Students would first observe interviews conducted by their supervisor early in their placement before being given the opportunity to conduct interviews and provide advice without their supervisor present. Simon Rice viewed the Kingsford approach as appropriate both from a client service perspective and educationally. While not wanting 'to take away the unique student-client dynamic' he saw 'a very useful role for a solicitor to lead by example and teach' as well as to safeguard the quality of advice provided 'when there's that degree of seriousness.'[51]

48 *S. Rice, 'Some Observations on the Operation of a Clinical program in New South Wales', undated, 12*

49 *R. Lansdowne & N. Rees, Kingsford Legal Centre: A Clinical Experience, Paper to the 1984 conference of the Australian Law Teachers Association, 10.*

50 *N. Rees & R. Lansdowne, Above, Note 43, 35.*

51 *Simon Rice, personal interview, 14 February 1997*

Programs that did not eventuate

Several other Australian law schools considered the establishment of clinical programs in the late 1970s and 1980s. In 1975, moves to establish a clinical program at the Australian National University (ANU) came to nothing after the Federal Budget, delivered by Labor Treasurer Bill Hayden, failed to deliver additional funding for universities. The then Dean of Law at ANU, Lesley Zines was very supportive of moves to establish the clinic.[52]

The call for a clinical program at the ANU was renewed in 1978. Jack Goldring and Roger Hamilton produced a discussion paper which suggested that without a clinical program, students 'are denied a perspective of the law which, in our view, is essential to a critical awareness of the workings of the legal system.'[53] Again, despite support, the clinic proposal was not adopted due to resource issues.

There were also proposals in the late-1970s to establish a clinical program at Macquarie University, in conjunction with the Macquarie Legal Centre. Ben Boer and Jack Goldring proposed the development of a clinic like that operating at Springvale Legal Service and Goldring considers they were close to receiving support from the Macquarie Vice-Chancellor until funding issues once again intervened.[54]

In 1983, Diana Hardy, a PhD student at the University of Western Australia (UWA) visited the Monash and UNSW clinics and then reported to the UWA Law School regarding the prospect of establishing a clinical program.[55] There was already a well-established legal service operating at UWA, the Parkways Legal Service. While students at the Parkways Legal Service observed client interviews conducted by lawyers, they were not given responsibility for those clients and their cases. Gosnells Community Centre subsequently approached UWA with a proposal to establish a clinic but it did not eventuate.[56]

The 1990s – Renewed Interest in Clinical Legal Education

The number of law schools in Australia expanded dramatically following a range of reforms to the university sector in 1987.[57] Interest in clinical legal education was reactivated with a number of the newly established 'third wave' law schools considering the establishment of clinical programs. Not all of these new programs have made use of the live-client model with simulation-based and placement activities also being characterised as clinical. Clinic appears to have been viewed by some of these new schools as a means of differentiating themselves from other new law programs in an increasingly competitive environment.[58]

52 *Jack Goldring, personal interview, 9 September 1997*

53 *J. Goldring & R. Hamilton, above, note 6, 1*

54 *Jack Goldring, personal interview, 9 September 1997*

55 *D. Hardy, Report on Clinical Legal Education, undated.*

56 *Michael Hovane, personal interview, 14 May 1999*

57 *McInnis and Marginson note that from 1987 to 1992, law student numbers rose by 58.7%, making law the third fastest growing discipline during that period. C. McInnis & S. Marginson, Australian Law Schools After the 1987 Pearce Report, (1994) AGPS, Canberra, 13.*

58 *See R. Handley & D. Considine, 'Introducing a Client-Centred Focus into the Law School Curriculum' (1996) 7 Legal Education Review 193 at 208 for a discussion of the increasingly competitive law school environment in Australia.*

The Newcastle Professional Program

The clinic-oriented law degree at the University of Newcastle is the largest and most ambitious of these new programs. The Newcastle program enables students to satisfy their post-degree Practical Legal Training requirements through their undergraduate program by way of involvement in a range of clinical activities.[59] The University established the Newcastle Legal Centre (since renamed the University of Newcastle Legal Centre) which has been the key clinic site. The Legal Centre has been involved in an impressive range of major litigation, particularly in relation to police accountability.[60]

A substantial amount of limited-term 'soft money' was used to develop the Newcastle Legal Centre as the program's centrepiece. The external funds used to fund the development of the clinical program were provided by the Solicitors Trust Account Fund.[61] From 1995, Newcastle Law School received a clinical loading of approximately $250,000 per year from central university funds. This payment recognised that the Relative Funding Model used by the Commonwealth Department of Education, Training and Youth Affairs renders it almost impossible for law schools to maintain substantial clinical programs.[62]

Other Australian law schools also developed a substantial commitment to clinical teaching in law during the 1990s. After the failure of efforts to develop clinic arrangements which would include all the law schools in South-East Queensland, Griffith University established a clinic relationship with Caxton Legal Centre and now operates 6 clinical programs.[63] James Cook University also operates a clinical program with Townsville Community Legal Service. Queensland University of Technology places students with Legal Aid Queensland who are supervised by Legal Aid Queensland staff.

Murdoch – Attracting Direct Commonwealth Support

The establishment in 1997 of the Southern Communities Advocacy Law Education Service (SCALES) by Murdoch University is significant in the development of Australian clinical legal education in several respects. SCALES was the first clinical program to receive direct Commonwealth Government funding and continues to receive such funding as one of the 4 programs supported by the establishment of a CLE funding program as part of the 1998 Federal

59 *J. Boersig, 'Clinical Legal Education: The Newcastle Model', paper presented at the Australasian Professional Legal Education Council International Conference, Skills Development for Tomorrow's Lawyers: Needs and Strategies, Sydney, New South Wales, September 1996. Published in Conference Papers, Vol. 1, 463.*

60 *For example, the Legal Centre has been acting for the family of Leigh Leigh, a Newcastle teenager who was murdered in 1989 and the family of Roni Levi who was shot dead by police on Bondi Beach in July, 1997. See R. Watterson, R. Cavanagh & J. Boersig, 'Law School Based Public Interest Advocacy' (2002) 2 International Journal of Clinical Legal Education 7.*

61 *This fund comprises interest payments on funds held in solicitors' trust accounts which are not centrally deposited. The fund was established in the 1980's following agreement between the major banks and the Law Society of NSW.*

62 *The implications of the DETYA Relative Funding Model for clinics are discussed in J. Giddings, 'A Circle Game: Issues in Australian Clinical Legal Education' (1999) 10 (1) Legal Education Review 33, 44–46.*

63 *Griffith operates a generalist and a specialist family law clinic in partnership with Caxton Legal Centre, a specialist alternative dispute resolution clinic in partnership with the Alternative Dispute Resolution Branch of the Queensland Department of Justice and Attorney-General, an externship program, a public interest lawyering program with the Queensland Public Interest Law Clearing House and an Innocence Project.*

budget. Murdoch remains the only Australian Law School which attracted substantial financial support from outside the university for the establishment of a clinical program.

The success of Murdoch in obtaining direct funding from the Commonwealth government for the establishment of their clinic has clearly had a significant effect on the development of clinical legal education in Australia. To some extent, the SCALES story is one of 'being in the right place at the right time' but it is more an example of developing a persuasive case for support. Murdoch Law School, with support from the central University, worked methodically to gather information about CLE practice and then worked with interested parties to address a wide range of issues. Ultimately, Murdoch has been able to develop a range of funders for SCALES. Murdoch University's agenda in promoting the SCALES concept went beyond the Law School. The University was directly focussed on the development of its new campus at Rockingham in the rapidly developing region south of Perth and to institutionalising its provision of community service to that region.

SCALES is the first Australian CLE program involving a formal mentoring process with another existing clinical program, in this case involving clinicians from Monash. Most other Australian clinics were established with the direct involvement of people who had experience working in similar programs elsewhere. Murdoch relied on Chris Shanahan, a jurisprudence lecturer with experience working in community legal centres in New South Wales, to develop a clinic proposal and pursue funding avenues. Shanahan's community legal centre background was arguably very important to the success of Murdoch in developing a viable model for the proposed clinic and to ensuring the strong community service focus the clinic would adopt. The close connections between the Australian clinical legal education and community legal centre movements are well illustrated by the Murdoch example.

Clinic as a Marker of Difference

Clinics continue to be used to differentiate some law schools from others. The increase in the number of Australian law schools during the 1990s appears to have intensified both the need for new law schools to 'find a niche' and the attractiveness of clinics as a possible marker of difference. Just as Kingsford Legal Centre was part of the UNSW Law School challenge to Sydney Law School in the early 1980s, SCALES differentiated Murdoch Law School from other law schools west of the Nullarbor in the mid-1990s.

Archie Zariski notes that Murdoch was a new law school at the time of developing the CLE proposal and that 'everyone at Murdoch was looking for ways to distinguish Murdoch, to take an innovative approach to legal education, to do things a little bit differently to the traditional. . . We were all looking for ways to make Murdoch stand out as a new law school and I thought that a clinical approach might well be one of them.'[64]

Griffith Law School operates a much more substantial clinical program than the other South East Queensland law schools, Bond University, Queensland University of Technology and University of Queensland. Griffith Law School offers 6 different clinical courses which feature heavily in promotional literature from both the law school and the university. In particular, the prospect of students having opportunities to take responsibility for legal issues faced by real people has been emphasised.

64 *Archie Zariski, personal interview, 14 May 1999*

Growing Commonwealth support for clinics

Following the pilot phase of the SCALES project, the Commonwealth government made a more substantial commitment to promoting Clinical legal education. In February 1999, the Commonwealth Attorney-General, Daryl Williams selected 4 clinical legal education projects to be funded under its Clinical Legal Education Funding Program. Funds have been provided to Griffith University, Monash University, Murdoch University and the University of New South Wales (UNSW). Both Griffith and Monash established specialist family law clinical programs, UNSW established an employment law service and Murdoch used their funding to maintain existing operations. As might be expected, all 4 programs supported by the commonwealth strongly emphasise the importance of community service objectives.

The Commonwealth's interest in clinical legal education has been prompted both by a concern to deliver cheaper legal services to the community as well as an interest in improving legal education. The question is the extent to which both community service and educational objectives can be achieved in the same program.[65] To date, the Commonwealth have been supportive of the approaches taken by each of the funded programs with funding continuing beyond the initial 3-year allocation.

Student Appearance Work

The rise in the number of unrepresented litigants appearing before courts may provide the catalyst for Australian clinical programs to follow the United States of America in providing greater opportunities for students to engage in real advocacy work. Advocacy training in Australian law schools has to date been dominated by simulation exercises.[66] Australian Law Schools including Newcastle, Monash and Griffith incorporate student appearance work into their clinical programs.[67] These programs rely on the discretion of individual magistrates and judges to grant leave to students to appear in their court and this reliance created difficulties for the Monash program in 1997.[68]

Student appearance rights has been an issue of longstanding interest for clinicians with a wide range of proposals, involving courts (including the Family Court and Magistrates Court), tribunals and bodies like the Tribunal for the New South Wales Australian Football League. In October 1987, the League wrote to UNSW Law Dean Garth Nettheim 'to ascertain if we might interest some students who could be looking to gain practical advocacy experience in a court room type situation in assuming an advocate's role'.[69]

65 *J. Giddings, 'The Commonwealth Discovers Clinical Legal Education' (1998) 23 (3) Alternative Law Journal 140*

66 *A. Lynch, 'Why Do We Moot?: Exploring the Role of Mooting in Legal Education' (1996) 7 Legal Education Review 67, M. Keyes & M. Whincop, 'The Moot Reconceived: Some Theory and Evidence on Legal Skills' (1997) 8 (1) Legal Education Review 1.*

67 *For an outline of the Monash program, see S. Campbell 'My Learning Friend' (1993) 67 (10) Law Institute Journal 915*

68 *Changes to the Legal Profession Practice Act have raised concerns regarding the standing of students to appear in court as advocates. See J. Faine, 'Student Counsel Scheme Under Threat' (1997) 71 (1) Law Institute Journal 17. Noone suggested in 1991 that legislative amendment as the best way to create the certainty needed to promote student appearances. Noone, M.A., 'Student Practice Rule – Is it Time?' (1992) 66 (3) Law Institute Journal, 190.*

69 *Letter to Garth Nettheim from Ian Garland, Chief Executive, NSW Australian Football League, 30 October 1987.*

As part of the 1990 review of the operations of Kingsford Legal Centre, a survey was conducted of students who had completed the *Clinical Legal Experience* subject between 1986 and 1990.[70] Seventy percent of respondents identified their reason for choosing to do the clinic subject as being 'to develop practical legal skills and experience' while 23% referred to 'wanting to work in a community legal centre'.[71] The most common suggested improvement to the subject was the incorporation of more court experience and advocacy work.[72]

In 1998, Judith Dickson published a comprehensive article arguing in support of clinical legal education students being given a statutory right of audience before Australian courts.[73] Dickson outlined the close student supervision processes used by Australian clinics. She then argued that Australian clinical programs 'emphasise the assumption of responsibility by the students for the satisfactory conduct of clients' files.'[74] This assumption of responsibility involves students learning and practising the application of legal rules and processes as well as ethical practices. This need to adhere to the standards of competency and ethical conduct of lawyers is argued to distinguish clinical legal education students from other non-legally qualified persons.

Specialist Clinical Programs

There has also been a move towards establishing clinical programs in specialist areas of law. Various law school have established specialist clinical programs, both in-house and in conjunction with a wide range of external organizations, from private legal firms to public interest law offices.[75] Monash operates 2 specialist CLE programs; one in family law and another in which a small group of experienced students provide legal advice to victims of sexual assault.[76]

Griffith operates 2 specialist CLE programs, an Alternative Dispute Resolution clinic with students being placed with the ADR Branch of the Queensland Department of Justice[77] and a family law clinic focussing on people in regional Queensland and on unrepresented litigants. Both the Griffith and Monash family law clinics have been funded by the Commonwealth Attorney-General's Department. UNSW operates a specialist employment law service, also with financial support from the Commonwealth.

It is likely that further specialist clinical programs will be developed, in schools seeking to make broader use of a strength in a particular substantive legal area or to meet community service obligations to groups with particular legal service needs. There is clearly scope for advanced elective courses to incorporate a clinical component. Areas likely to see specialist clinics develop include refugee law, intellectual property and mediation.

70 *MSJ Keys Young, Clinical Legal Experience: Survey of Former Students, January 1991*

71 *Ibid, 5*

72 *Ibid, 15*

73 *J. Dickson, 'Students in Court: Competent and Ethical Advocates' (1998) 16(2) Journal of Professional Legal Education 155.*

74 *Ibid, 168.*

75 *See Kingsford Legal Centre, Clinical Legal Education Guide 2001/2002,*

76 *A. Evans, 'Specialised Clinical Legal Education Begins in Australia' (1996) 21 Alternative Law Journal 79.*

77 *J. Giddings, 'Using Clinical Methods to Teach Alternative Dispute Resolution: Developments at Griffith University' (1999) 10 (3) Australasian Dispute Resolution Journal 206*

Links with Practical Legal Training

There has recently been substantial 'movement at the station' in relation to the provision of Practical Legal Training (PLT) programs by Australian law schools.[78] The expansion in New South Wales of the number of PLT providers has been followed by similar moves in both Victoria and Queensland. In states where articles of clerkship are still available as the alternative post-degree route to admission, there have been moves from major national law firms to have their 'graduate clerks' complete a PLT program rather than articles.[79]

The dividing line between undergraduate CLE and PLT courses is becoming increasingly difficult to define. This lack of clarity arises from changing perceptions of the place of legal skills teaching in undergraduate law programs. Rice states that 'In those jurisdictions such as Australia where articles or post-degree, pre-admission practical education courses are compulsory, the need for undergraduate skills training is less pressing. Consequently the teaching of legal skills [at undergraduate level] need be necessary only to a degree that enables students to work effectively in the clinical program while pursuing other aims.'[80] This view of the limited role of skills training in CLE programs is likely to be undermined due to extra pressure being placed on the PLT system with the increase in law graduates seeking entry to the profession. As Sue Campbell anticipated in 1995, PLT providers are now granting some students credit for skills learning contained in their LLB studies, including involvement in a CLE program.[81]

Clinic teachers involved in the development of PLT programs need to encourage a broad perspective to be taken of pre-admission training for lawyers, moving away from a transactional focus. Newcastle Legal Centre founder, John Boersig has noted that planners must keep in mind the need to ensure courses do more than simply teach students how to fill in forms. Such programs need to emphasise the teaching of generic skills 'essential to a broad range of legal activities'.[82]

Greater Expectations

Law schools are now expecting more and more from their clinical programs and clinicians. Clinics are promoted to students as the best environment in which to develop 'hands on' legal skills while being showcased to the general community as examples of university commitment to community service and access to justice. Interestingly, we have seen name changes for several Australian clinics, changes clearly designed to more closely connect these clinics with their law school and university. Springvale Legal Service has become the Springvale Monash Legal Service and the Newcastle Legal Centre has become the University of Newcastle Legal Centre.

Clinical programs, combining small class sizes with community service, have been used by universities to showcase excellence in teaching. Clinicians have been well represented in university teaching awards. In the first 5 years of the Australian Awards for University Teaching (1997–2001), clinical teachers from Griffith (1999), Monash (1998) and UNSW (2001) have been finalists for the Australian Award for University Teaching in Law and Legal Studies with the Griffith and UNSW

78 *A. Lamb, 'Preparation for Practice: Recent Developments in Practical Legal Training in Australia' Paper Presented at the Commonwealth Legal Education Association Conference 2000, Adelaide, April 2000.*

79 *C. Banham, 'Big Firms Take Student Training In-House' Friday, May 5, 2000 Justinian.*

80 *Rice, above note 40,25*

81 *S. Campbell, Clinical Legal Education Newsletter, No.8, November 1995, 2*

82 *J. Boersig, Above, note , 466*

83 *J. Giddings, Above, Note 62, 38.*

teachers having the good fortune to receive the award. The work of SCALES was a key feature of Murdoch University's successful nomination for the 1998 Australian Award for University Teaching for services to students and the Rockingham region.

Themes in Australian Clinical Legal Education

There are some underlying similarities that should be considered in attempting to identify the character of Australian CLE. They relate to:

- Emphasising community service, including focussing on real cases rather than simulations;
- Enhancing Student Learning – 'Legal Education in Context';
- Practical legal scholarship;
- Client-centred lawyering.

Emphasising Community Service

In my view, Australian clinical programs have been shaped to a significant extent by the backgrounds of the people working in those clinics. Australian clinical programs tend to have been and continue to be staffed by people with a strong community legal centre / legal aid background. This tends to bring with it a strong commitment to community service and to using the law and legal system to achieve community development objectives.[83]

Australian clinical programs are now increasingly focussed on taking their work beyond the traditional service delivery model of advice and representation for individual clients. This is being done principally to enhance the impact of the community service provided and also to enrich student learning. Various models have been developed to enhance and extend the impact of the work of clinic students and teachers.

Clinical programs in New South Wales have a particularly impressive record of running major superior court public interest cases. There are the continuing efforts of teachers and students involved at the University of Newcastle Legal Centre in cases such as the Eastman[84] appeal to the High Court, the compensation claim arising from the 1993 murder of Leigh Leigh and litigation arising from the police shooting of Roni Levi.[85] The Newcastle program has been particularly effective in pursuing issues regarding police accountability using a range of mechanisms, including strategic work with the media, submissions to government and acting at coronial and other inquiries. Another recent example is that of the Stolen Generations testcases conducted by Kingsford Legal Centre.[86]

Other clinics have adopted community development models with a view to involving their clients and others in addressing issues of community concern. Such models utilise non-casework approaches and yet are obviously informed by the casework conducted by the clinical program and the agency housing the clinic. Examples of such approaches are those developed at Monash and Griffith. Adrian Evans refers to the process of community development identified in the 1970s by

84 *Eastman v The Queen [2000] HCA 29 (25 May 2000)*

85 *R. Watterson, R. Cavanagh & J. Boersig, Above, Note 60, 7–37*

86 *Williams v The Minister Aboriginal Land Rights Act 1983 and The State of New South Wales [2000] NSWCA 255*

the Brazilian educator, Paulo Friere and the need for clinicians to help students and clients to move beyond 'individual reflection to group reflection upon the underlying social injustices which diminish an equitable society.'[87]

The Griffith clinical program includes students working in groups on community development projects. Given the complex and ongoing nature of many community concerns, discrete projects are designed in relation to particular issues which can be completed by successive groups of students, each building on the work done by previous groups with continuity being provided by clinic and community legal centre staff acting as project supervisors. Project areas have included property rights of mobile home park residents and litigation funding arrangements (particularly 'no win, no fee').

Legal Education in Context

The emphasis placed by Australian clinic teachers on student learning has significantly increased in the past decade. In a series of interviews, many clinicians involved in early Australian programs told me that they had started their time as student supervisors without having considered the teaching side of the process in great detail. They tended to be more concerned with community service and law reform issues. Discussions with current clinic teachers reveal a more substantial understanding of the scope for improving service and law reform achievements through more effective teaching practices. There is also a greater awareness of the potential for clinic-based learning to complement the other learning in which law students are involved.

The work done by Simon Rice in his time at Kingsford Legal Centre from 1989 to 1995 represents the most substantial example of Australian clinical legal education scholarship produced to date. Rice was greatly assisted in this work by the UNSW Law School decision to allow the clinic to not take on students in Semester 2, 1990. In the absence of students, Kingsford Legal Centre conducted a comprehensive review of its operations. The UNSW Law School received support from the Law Foundation of NSW for Rice to visit clinical programs in the USA, England and Canada.

Rice's contribution has had a significant impact on the development of clinics in Australia during the 1990s. *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum*[88] was published in 1995 and provided a useful account of the issues facing people considering the establishment or refinement of a clinical program. The clinical programs established in the 1990s also benefited from the increased interest in legal education in Australia exemplified by the Australasian Law Teachers Association Law Teaching Workshop and the book *The Quiet [R]evolution: Improving Student Learning in Law* by Le Brun and Johnstone.[89]

The ethics focus of Australian clinical legal education has been more clearly articulated in recent years. The La Trobe initiative to develop a clinic-based offering of the ethics subject required for admission to legal practice is a significant development in several respects. As well as being the first Australian clinical program to involve students taking responsibility for clients within a legal aid office rather than a community legal centre, the ethics orientation of the subject lends itself to more extensive discussion of professional responsibility issues.

87 *A. Evans, 'Client Group Activism and Student Moral Development in Clinical Legal Education' (1999) 10 Legal Education Review 179.*

88 *S. Rice & G. Coss, A Guide to Implementing Clinical Teaching Method in the Law School Curriculum, January 1996, Centre for Legal Education*

89 *M Le Brun & R Johnstone, The Quiet Revolution: Improving Student Learning in Law, Law Book Company, 1994*

Judith Dickson and Mary Anne Noone rightly identify that the clinical setting 'constantly gives rise to spontaneous and various ethical questions which challenge and test students'.[90] Given that written ethical conduct rules are 'signposts at the crossroads not a fence along the entire length of the highway'[91], clinics provide students with opportunities to develop the ability to identify and address ethical issues in relation to matters including conflict of interest, confidentiality and legal professional privilege.

The Murdoch clinical program (SCALES) has identified the importance of involving students in providing legal assistance to asylum seekers. In 2000, Mary Anne Kenny and Anna Copeland persuasively argued that such cases are effective in 'encouraging students to recognise systemic injustice'.[92] These cases 'have a profound effect on the students as they are faced with the broader social and political issues that these cases present.'[93] The intensification of the Australian public debate on asylum seeker issues in 2001 and 2002 reinforces their argument. Kenny and Copeland state that what they 'hope to achieve as clinical supervisors is to foster a ''rights based'' methodology that students will apply across all their legal work. This involves students gaining an understanding of, and a commitment to, fundamental human rights as an important principle of any legal practice.'[94]

At Monash, Adrian Evans is now engaged in work seeking to more clearly articulate the links between community development processes and the development of values in law students. Evans has recently written of the need for clinical supervisors to stimulate respectful argument amongst their students in relation to competing moral viewpoints identified through the process of community development.[95] He is also involved in a project designed to determine the values which appear to characterise the mass of Australian lawyers in their early careers.

Practical Legal Scholarship

During 1984, the Director of Research in the Monash Law Faculty, Professor Richard Fox, wrote to the Dean articulating a concern often expressed by clinical teachers:

'It is apparent that academic staff who devote their time whole-heartedly to the clinical programme may later find themselves at a disadvantage in securing promotion because of their reduced productivity during their time in the programme. Their contribution to the teaching, community service and administrative sides of the legal service are not seen by those who place prime value on research as compensating for an apparent weakness in their publication record... The acceptance of the clinical programme and the work of its staff as part of mainstream academic life will be enhanced if it has a built-in research element.'[96]

90 *J. Dickson & M. A. Noone, 'The Challenge of Teaching Professional Ethics', paper presented at the Australasian Professional Legal Education Council International Conference, Skills Development for Tomorrow's Lawyers: Needs and Strategies, Sydney, September 1996, published in Conference Papers Volume 2, 847.*

91 *F. Oatway, 'Motivation and Responsibility in Tax Practice: The Need for Definition' cited by Y. Ross, Ethics in Law: Lawyers Professional Responsibility and Accountability in Australia, 3rd.ed. , 2001, 45*

92 *M. A. Kenny & A. Copeland, 'Clinical Legal Education and Refugee Cases: Teaching Law Students About Human Rights' (2000) 25 (5) Alternative Law Journal 252*

93 *Ibid, 253*

94 *Ibid.*

95 *Evans, above, note , 181.*

96 *Memorandum to Professor R. Baxt from Professor R. Fox re. Research and the Clinical Legal Education Programme dated 30 July 1984.*

While Australian clinical teachers have struggled for acceptance as mainstream academics, many have made substantial contributions to developing a body of practice-related legal scholarship. Perhaps the best example of such scholarship is the *Lawyers Practice Manual*, published in New South Wales in 1983, Victoria in 1985 and Queensland in 1993. Clinicians made very substantial contributions to the development of the New South Wales and Victorian manuals in particular. The *Lawyers Practice Manual (New South Wales)* was developed with a very substantial contribution from Neil Rees, then responsible for the UNSW clinical program. The 4 founding editors of the *Lawyers Practice Manual (Victoria)* were all clinic teachers from Monash[97] and Springvale Legal Service is listed as the author on the spine of the manual.

The need for such a manual was 'first discussed at a seminar arranged for legal aid lawyers by the Australian Legal Workers Group' which identified 'a glaring gap in legal literature and training: too much hard practical knowledge inaccessibly stored in the heads of those who have gained it by long experience.'[98]

Clinical teachers have been and continue to be substantial contributors to the *Alternative Law Journal*, which from 1974 until 1991 was known as the *Legal Service Bulletin*. There have also been major reports written by clinical teachers on matters related to their casework, often in conjunction with other community legal centre staff. The *Urgent Repairs Needed* report, published by the Federation of Community Legal Centres in 1988, highlighted the urgent need for reform of the law concerning motor vehicle property damage.[99] Springvale Legal Service Co-ordinator, Simon Smith was a driving force behind this important publication. Clinicians have also been prominent in policy formulation in relation to justice issues with Mary Anne Noone serving as a member of the National Legal Aid Advisory Committee and as a director of Victoria Legal Aid. Simon Rice served a term as a legal aid commissioner in New South Wales while the author served 2 terms as a legal aid commissioner in Victoria.

Academics from the University of Newcastle Legal Centre have published a series of reports as part of the public interest litigation in which they have engaged.[100] Such reports 'have sought redress of individual injustice, exposed failures in legal fact gathering and analysis and laid ground for more general reforms.'[101] In my view, such reports represent an important form of practical legal scholarship which should be developed further by academics involved in other Australian clinical programs.

Clinics are now increasingly being seen as potential legal research sites, providing opportunities for clinicians to obtain prestigious research grants. With student supervision loads lighter than they were for Australian clinicians in the 1970s and 1980s, research opportunities are more likely to be pursued. Monash clinician, Adrian Evans is the Second Chief Investigator for a research project on the development of values in new lawyers which received Australian Research Council funding

97 *Simon Smith, Maureen Tehan, Sue Campbell & Guy Powles*

98 *N. Rees, C. Ronalds & R. West, 'Preface', Lawyers Practice Manual (New South Wales), Law Book Company, Sydney, October 1993.*

99 *S. Bailey, S. Liden & S. Smith, Urgent Repairs Needed: Motor Vehicle Property Damage in Victoria, (October 1988). For commentary, see J. Giddings, 'Casework, Bloody Casework' (1992) 17 (6) Alternative Law Journal 261, 263–264*

100 *For example, see R. Cavanagh, J. Boersig & R. Watterson, The Murder of Leigh Leigh November 1989 – A Forensic Report (1996), R. Cavanagh & R. Pitty, Too Much Wrong – Report on the Death of Edward James Murray (1997) and R. Watterson et al, A Very Public Death: The Police Shooting of Roni Levi.*

101 *R. Watterson, R. Cavanagh & J. Boersig, Above, Note 60, 19*

for 2001–2003. It will obviously be a challenge for clinicians to balance their involvement in a time-consuming but highly rewarding teaching process with engagement in research and other scholarship.

Client-centred Lawyering

Australian clinical programs have strongly emphasised the importance of students using multi-disciplinary approaches to address the issues facing their clients. Both Springvale Legal Service and West Heidelberg Community Legal Service shared premises right from their inception with major community-based service providers.[102] UNSW pioneered the offering of a combined degree in law and social work incorporating a substantial placement component at Kingsford Legal Centre.

The work of both clinicians and students has been enhanced by this relatively easy access to other professionals. In 1984, Simon Smith wrote that 'Work in the centre provides students in most cases with their first real introduction to the operation and the impact of the legal system. The lasting impression on these future lawyers of this introduction cannot be overestimated.'[103] The commitment to multi-disciplinary approaches continues with, for example, the University Newcastle Legal Centre co-locating with other services[104] and the Griffith clinical program working closely with social workers employed at Caxton Legal Centre. The specialist clinical program established by Monash to assist victims of sexual assault involves participating students in close work with a range of professionals.[105]

Clinical programs have also focussed strongly on developing the client interviewing and advising skills of students. When Adrian Evans devised a clinical course at La Trobe in 1976, it was run with the La Trobe Counselling Service and was designed to introduce client-centred interviewing to the SRC Legal Service.[106] Extensive use was made of *Legal Interviewing and Counselling: A Client-Centered Approach*, the pioneering book on by UCLA academics, David Binder and Susan Price.[107] The earliest seminar programs attached to the Monash and UNSW clinical programs emphasised the development of interviewing skills.

Visions of Professionalism

In an article in the inaugural issue of the *International Journal of Clinical Legal Education*, Judith Dickson raises the need for clinic teachers to reconsider the legal professional model which underpins the community service focus of their work. Dickson expresses concern that the organized legal profession makes use of notions of community service in a negative way, 'as a justification for privilege'.[108] The concern here is that acceptance of this traditional vision of the lawyer as a professional 'is tied to other aspects of the profession which entrench privilege and

102 Springvale Community Aid and Advice Bureau and West Heidelberg Community Health Centre.

103 S. Smith, Above, Note 4, 52

104 Many Rivers Aboriginal Legal Service and the Hunter Regional Office of the New South Wales Legal Aid Commission

105 A. Evans, "Specialised Clinical Legal Education Begins in Australia" (1996) 21 Alt LJ 79

106 Adrian Evans, interview, 17 October 1997

107 D. Binder & S. Price, Legal Interviewing and Counselling: A Client-Centered Approach, (1977) West Publishing, St Paul.

108 J. Dickson, 'Clinical Legal Education in the 21st Century: Still Educating for Service?' (2000) 1 International Journal of Clinical Legal Education 33, 36.

injustice – such as monopoly over delivery of services, self-regulation etc.'.[109] Dickson further suggests that clinical legal educators must 'articulate a new vision of the role and function of lawyers in society. This new vision should expressly challenge a notion of "professionalism" that appears self-serving and self-interested.'[110]

I would challenge Dickson's characterisation of clinicians as relying on a vision of professionalism which contains characteristics which entrench privilege and injustice. It is the abuse of those characteristics which entrenches privilege and injustice. Australian clinicians have long emphasised to their students those aspects of the legal professional ideal which focus on the importance of the work of lawyers to the effective operation of democratic institutions. Lawyers who are independent of government and able to act impartially have an important contribution to make to safeguarding the fairness of administrative processes and the accountability of powerful interests.

Many Australian clinical teachers have actively used their work to undermine abuses of professional ideals and have called for change in a range of respects to existing regulatory frameworks. Foremost in this regard has been the work done in the Monash clinical program by Simon Smith and then Adrian Evans. Smith worked with students to highlight inadequacies in the regulatory work of the Law Institute of Victoria, particularly in the practices of certain local lawyers. In Smith's view, it was the series of cases run by Springvale Legal Service against a lawyer named Peter C. Neil that exposed important inadequacies in the disciplinary functions and operations of the Law Institute of Victoria and which gave rise to legislative reforms in the early 1990s.[111]

Smith's work was continued by Evans who also raised important concerns regarding sources of funding used by the Law Institute of Victoria for their disciplinary functions.[112] Working on these cases persuaded Evans that there was another dimension to developing socially responsible lawyers and that was dealing with lawyers who were unethical. 'You can't just operate at the level of education of good lawyers. You also have to be prepared at some level as a community to deal with lawyers who are rogues.' Evans said 'We couldn't be coherent as a clinical programme unless we were addressing both ends of the problem.'[113]

Dickson refers to various official committees convened in Australia during the 1990s which addressed issues related to the regulation of the legal profession.[114] Community legal centres made substantial submissions to many of these committees. In a number of instances, the community legal centre submissions were heavily influenced by clinicians. For example, the Federation of Community Legal Centres in Victoria made a series of submissions to the Costs of Justice Inquiry and then to the Access to Justice Advisory Committee which were strongly influenced by clinicians

109 Ibid, 40.

110 Ibid, 43.

111 Simon Smith, personal interview, 14 September 2002

112 See A. Evans, 'Professional Ethics North and South: Interest on Clients' Trust Funds and Lawyer Fraud. An Opportunity to Redeem Professionalism' (1996) 3 (3) International Journal of the Legal Profession 281

113 Evans interview, above, note

114 Dickson, above, note 92, 34. These included the Costs of Justice Inquiry conducted in the early 1990s by the Senate Standing Committee on Legal and Constitutional Affairs, the Law Reform Commission of Victoria reference on Access to the Law in 1992, the Access to Justice Advisory Committee which reported to the Commonwealth Attorney-General in 1994, the Working Party on the Legal Profession which reported to the Victorian Attorney-General in 1995 and the Trade Practices Commission 1994 review of the legal profession.

including Mary Anne Noone (La Trobe), Adrian Evans (Monash) and myself (La Trobe).[115] Similar contributions were made by clinicians to the Trade Practices Commission Inquiry into the Legal Profession in 1993 and the Access to Justice Advisory Committee in 1994.

A common theme of such submissions has been that if lawyers do not effectively regulate themselves and if they abuse their professional status, there is a need for reform. I contend that the notion of professionalism articulated in such submissions was not a chimerical ideal but rather one that identified the importance of lawyers in the work of our democratic institutions, in ensuring procedural fairness and monitoring the actions of governments in an era of privatisation as well as the need for lawyers to remain independent of governments, clients and employers. Such submissions can be characterised as recognising the value of the work of lawyers as well as the importance of effective accountability for legal professionals.

Conclusion

Various factors are contributing to increasing interest in clinical legal education in Australia. Many students are drawn to clinics by a range of factors including the opportunity to be part of much needed community services, to find a practical context for their other law studies and to develop legal practice skills. Law schools and universities have viewed clinics as valuable student learning environments as well as sites for significant community service contributions. Law schools have also used clinics to distinguish themselves from neighbouring law schools in terms of the learning opportunities provided to students. Community legal centres are increasingly interested in potential benefits from links with clinical programs, such as harnessing the enthusiasm and research skills of students as well as developing their base of student volunteers. Further, governments are increasingly interested in the contributions clinics can make to the delivery of legal services.

Australian legal clinicians have worked collaboratively and collectively within their clinics, their law schools and across universities. Many students have been enthused by an enhanced appreciation of the importance of the law to our democracy. Students are able to gain a sense that their efforts can assist people to assert their rights. Many members of the community have received valuable legal assistance. Practices of the legal and other professions, government institutions, the media and the corporate sector have all been subjected to close scrutiny and challenge.

It remains important that clinicians emphasise the need to take a broad approach to their work, an approach that goes well beyond a focus on legal skills development and concentrates on social justice issues. Australian clinicians have taken the broad view in the past and appear likely to continue to do so.

115 See Federation of Community Legal Centres (Vic) Inc, Submission to the National Legal Aid Advisory Committee Review of Legal Aid, July 1989, & Submission to the Senate Inquiry into Costs of Justice, Part 2 The Court System, December 1989 & in particular Part 3 The Legal Profession, June 1990.

Bridging the Gap? The Effect of Pro Bono[1] Initiatives on Clinical Legal Education in the UK

*Cath Sylvester**

Legal education in the UK has undergone significant changes over the last decade and is once again under review[2]. Whilst there is now wide spread acceptance of the benefits of experiential learning in educational terms and a focus on the distinction between deep and surface learning, clinical legal education in the UK has remained firmly on the sidelines.

Its first introduction into UK legal education emerged in the mid 1970s with the University of Kent at Canterbury's real client clinic shortly followed by the University of Warwick's programme in 1975[3]. By the 1980s only four clinics remained in existence at Birmingham, Warwick, South Bank and Northumbria, a contrast to developments in the USA where by 1973 clinical programmes had been established in 125 out of the 147 accredited law schools. Such programmes, whilst welcomed almost universally by the participating students, have been harder to establish as offering a valid contribution to legal education by academics and to some extent by the legal profession itself. Clinical programmes have come and gone and are often first to feel the effect of resource crises. However, recent years have seen the establishment of a number of pro bono schemes based within law schools and operated with student voluntary participation. Whilst offering a different experience to the in house, real client programmes which are incorporated and

* *Cath Sylvester, Principal Lecturer, Solicitor and Director of the Student Law Office at the University of Northumbria, UK.*

1 *Pro bono publico – literally for the public good – the term commonly used in the UK to denote the giving of legal advice and services without charge.*

2 *The Training Framework Review Group Consultation Paper 2001 – The Law Society.*

3 *Learning Law by doing Law in the UK by Richard Grimes. International Journal of Clinical Legal Education, November 2000, Edition 1.*

assessed as part of a course of legal study, they have commanded the attention of the legal academy and profession alike. This article examines the reasons for the UK's apparent reluctance to accept clinical legal education as an essential element of legal education and argues for its inclusion as an addition to, not a distraction from, rigorous and specialist legal education. It will then consider current developments in legal education and trends in the profession which have led to the rise of pro bono work in law schools and to what extent these pave the way for the wider acceptance of curriculum based clinical programmes in the UK.

Whilst there can be no doubt that more law students are involved in schemes bringing them into contact with practical legal work, the in-house real client clinic based in the law school and operating as a solicitor's office is still relatively rare. Sheffield Hallam, Queens Belfast and Kent Universities all provide optional, assessed clinical legal education programmes which are integrated into their undergraduate degree programmes. At Northumbria the clinical course is a compulsory element of the exempting degree with all 120 fourth year LLB exempting degree students participating in an assessed clinical course of study[4]. Such programmes have huge resource implications for schools but the expansion of pro bono work shows that law schools have been resourceful in finding ways of introducing schemes offering practical involvement to their students.

A survey conducted by Sara Browne in 1999[5] found that out of 73 law schools offering undergraduate qualifying degrees and/or postgraduate education 43% stated that some pro bono activity existed within the law school and a further 17% stated that pro bono activity was planned. 16 law schools had schemes in which students worked in conjunction with providers of free legal services, such as Citizens Advice Bureaux, to provide pro bono work. 12 providers had clinics operating within the law school and three others had schemes based within the law school but not described as clinics. The students from the London schools of law participated in the long established Free Representation Scheme[6] and the University of Westminster continues to run its death row clinic providing advice to assist death row inmates with their legal appeals in the USA. In recent years the College of Law has set up advice centres at all its colleges. Such schemes are clearly very popular with students although the study does not give figures for the proportion of students participating in these schemes. The 1999 study confirmed that out of the 29 law schools who participated in pro bono activity nine schemes were assessed and one was compulsory as opposed to voluntary.

Clinical Legal Education as Part of Legal Education in the UK

In the UK, the undergraduate law degree, has always remained distinct from professional training in law. At undergraduate level the profession is not compartmentalised between barristers and solicitors or indeed between legal scholars and those intending to become legal professionals.

4 *The University of Northumbria is unique in that it runs a 4 year exempting degree which meets both the undergraduate degree requirements and the post graduate Legal Practice Course requirements. On graduating with this exempting degree students are able to enter immediately into the required 2 year period of apprenticeship with a solicitor's firms known as a training contract.*

5 *A Survey of Pro Bono Activity by Students in Law Schools in England and Wales by Sara Browne The Law Teacher.*

6 *The Free Representation Unit was set up in 1972 to provide free representation for those who cannot afford to pay for representation at tribunals in the Greater London Area. Volunteers at FRU are 3rd year law students, trainee solicitors and pupil barristers.*

The professional training for solicitors takes place through a one year post graduate course (the Legal Practice Course) followed by a two year training contract.

The dichotomy between legal and professional legal education has continued to engage academics and professionals alike despite a number of moves to blur the distinction and move towards more integration in legal education. In 1971 the ACLEC report[7] emphasised that the academic and vocational stages of legal education are joined by 'common threads'. The Law Society introduced requirements for ongoing professional education for solicitors and barristers making an element of continuing professional development compulsory for all solicitors since November 1998[8]. It appeared that some moves were being made to view legal education as a continuum with an ongoing role permeating the professional life of a lawyer.

Undergraduate Legal Education:

For academics the provision of legal education focuses on the undergraduate degree in law. The contents of which are determined with reference to the Joint Announcement on Full Time Qualifying Law Degrees issued by the Law Society and the General Council of the Bar.[9] This document identifies seven foundation areas of legal knowledge to be covered by a qualifying law degree. The seven foundation areas include obligations I (contract), obligations II (tort), criminal law, equity and trusts, european law, property law and public law; areas traditionally covered by a lecture/seminar approach. Fundamentally these cores have not changed throughout the last 10 years. Nevertheless the announcement is not proscriptive on how such information is to be imparted 'we would not want to see the intellectual richness of law school teaching diluted or these different scholarly approaches inhibited; nor do we want to see curricular developments obstructed or discouraged'[10].

Within the undergraduate law degree there is ample opportunity for a clinical approach but this has not been adopted wholesale by academics and law schools for a number of reasons. Firstly, clinical legal education is often interpreted as primarily skills training with a more appropriate role to play in professional legal education.

Secondly, large numbers of undergraduate law students do not enter the legal profession and many never have any intention of doing so. To impose a clinical element is seen as diluting the academic study of law with skills only relevant to the legal professional. In 2000 the Lord Chancellor's Department, at the request of David Lock MP, proposed in a discussion paper that all qualifying law degrees in the UK should include an element of compulsory practical work. Whilst the practical work envisaged was never specified, the proposal provoked angry responses from academics; 'This practical training will do students no good. Working in the CAB[11] is not like

7 *The Lord Chancellor's Advisory Committee on Legal Education produced its first report on Legal Education and Training in April 1996.*

8 *Research carried out on behalf of the Law Society in 1998 by Jon Hales and Nina Stratford of Social and Community Planning Research found that the majority of courses attended by solicitors as part of the continuing professional development requirements concerned areas of substantive law.*

9 *Announcement of full time qualifying law degrees issued jointly by the General Council for the Bar in 1995 and amended in 1999.*

10 *Ibid.*

11 *Citizens Advice Bureau – A national free advice service open to all members of the public.*

being a lawyer, being a lawyer is not the same thing as studying law and being a lawyer is what only a minority of law students will be'[12].

Thirdly, many academics do not accept that clinical legal education has a valid role to play in undergraduate legal education, or indeed a role which brings to legal education anything that is an improvement on what can be achieved by more traditional study within the more focussed environment of a specialist subject.

Focusing on the intellectual skills (as opposed to practical skills) of the lawyer William Twining[13] identified a number of intellectual qualities required by the good lawyer:

a) an ability to express oneself clearly both orally and in writing

b) an ability to distinguish the relevant from the irrelevant

c) an ability to construct and present a valid, cogent and appropriate argument

d) an ability to identify issues and to ask questions in a sequence appropriate to a particular context

e) general problem solving skills

f) library research skills

g) an ability to spot ethical dilemmas and issues

The list would not be out of place as objectives for virtually any undergraduate degree programme including law. Clinical legal education also holds the above aims as central. Perhaps the emphasis on the more practical legal skills experienced in law clinics detracts from the fact that clinic has, at its heart, the aim of developing many of the same disciplines with the same rigour as in the study of academic law. The skills that it develops are transferable not only between the academy and the profession, but also between law and other disciplines. Indeed clinicians would say that the problem based learning approach of clinical legal education focuses much more intensively on developing these skills and the interaction between them.

In trying to identify 'the core' a the heart of legal education Twining concludes 'There is little unique or special about 'the legal mind' except the ability to apply some general intellectual skills in some specific kinds of context....if there is anything unique or special that academic lawyers have to offer at a general level to colleagues from other disciplines it is local knowledge of an important area'.

Despite Twining's observations, the academy has always been resistant to what it interprets as interference by the profession. In recent years the changing profile of the profession, discussed later in this article, has unashamedly impacted on the second stage of legal training the Legal Practice Course. It is of concern that these pressures must feed through to undergraduate education forcing it to respond to the economic vagaries of the profession. Toddington comments that 'some degree of educational and curricular integration is undoubtedly desirable but let us not feel compelled to suggest that the world of law and professional practice on the one hand , and on

12 *Tony Bradney, Faculty of Law University of Leicester is the editor of the Reporter, the newsletter of The Society of Public Teachers of Law. This article was published in the Winter 2000 edition.*

13 *William Twining – In Blackstone's Tower – The English Law School 1994 Hamblyn Lecture.*

the other, the academic study of the philosophical, cultural, ideological and economic complexities of this world are one and the same thing'[14].

However, the inaction between the two cannot be denied. Law has always developed piecemeal. There are no boundaries between the academic and the professional; both inform and develop the other. Whilst we may complain of professional lawyers performing mechanistic tasks as a means to an end, it is clear that not all legal practice is like this or we would not get the daily developments fed by the decisions of the court and the legislative changes of parliament. Some professional lawyers are making law whilst some academic lawyers are interpreting law and feeding it back into the circle.

What is essential is that law students make the link. Whether it be through studying precedent and case law or whether it be through clinic, when that piece of research doesn't just supply the answer to the question but also highlights the gaps in the law.

Nigel Savage and Gary Watt[15] identified the link and urged that 'if law is to remain the learned profession the law school should assert its role as guardian of that special body of learning and skills which constitutes lawyerliness. If the law school fails to become the House of Intellect[16] for the profession it is certain that the profession will build other houses to serve its needs.'

Postgraduate Legal Education: The Legal Practice Course

The introduction of the postgraduate Legal Practice Course for the training of solicitors in the early 1990s increased the focus on skills. It was a move away from the didactic and mechanistic teaching of legal practice and acknowledged, for the first time, that professional education should also include training in practical legal skills. The course identified five key skills relevant to legal practice; drafting, research, advocacy, interviewing and negotiation (commonly know as the DRAIN[17] skills) which were to be examined in the one year course. The skills were taught in the context of one of the other practical subject areas (e.g civil litigation or conveyancing). The approach is highly formulistic and teaches the skills in isolation to each other. Its aim is to bring students to a level of competency required for entry to the profession as a trainee. This approach to skills teaching on the LPC has received its fair share of criticism not least from the profession who felt that whilst the DRAIN skills were important in legal practice they were more effectively developed at the training contract stage. The main area of change in the LPC course was in its delivery. It moved away from the traditional lecture based approach to a more interactive workshop based approach.

The compartmentalisation of legal education in the UK into the academic and the practical and into ever expanding numbers of specialist subject areas militates against the integration of clinical legal education. The above consideration of undergraduate and postgraduate legal education in the UK demonstrates a clear role for clinical legal education as a developer of both the intellectual and practical skills of the lawyer. Whilst specialisation in itself is synonymous with expertise and

14 *Stuart Toddington The Emperors New Skills: The Academy, The Profession and the Idea of Legal Education. Pressing Problems in the Law Vol 2 Edited by Peter Birks.*

15 *A 'House of Intellect 'for the Profession Nigel Savage and Gary Watts – Pressing Problems in the Law Vol 2 ed Peter Birks.*

16 *The law school as a 'House of Intellect' was identified by Twining in his 1994 Hamblyn lecture.*

17 *The skill of Negotiation has subsequently been dropped as an assessed skill on the LPC.*

expertise is increasingly the future of the profession, some would argue that by developing the intellectual, academic and practical skills through clinic we prepare students for the ever-changing specialised profession. We prepare students for a the multi dimensional approach to the law needed for problem solving in both practical and academic settings.

The Requirements of the Profession

The legal profession in the UK continues to change rapidly. In recent years the number of solicitors in the UK has increased dramatically; in 1990 there were just under 55,000 solicitors and by July 2000 there were 83,000. Solicitors in private practice have become increasingly specialised particularly in areas such as corporate work. The size of firms has increased so that by the year 2000 there was 447 firms with over 11 partners. Out of these, 23 firms had 81 or more partners and 104 had between 26 and 80 partners. The income patterns of firms has also changed considerably. In 1989 residential conveyancing was the main stay in terms of gross fee income for solicitors. By the late 1990s it contributed only 10% of gross fees compared to a rapid rise in fees from commercial and business work (28%) and overseas earnings (8%). The emergence of the large, specialist, corporate firm and the decline of smaller, high street, general practice has inevitably fed into the debate on legal education.

In addition to changes in the private sector, the publicly funded (legal aid) sector was also curtailed with the introduction of the Community Legal Service[18] which restricted the provision of legal aid work to solicitors entering contracts with the LSC. The first contracts for civil work were entered into in January 2000 and for criminal legal aid in April 2002. In its consultation document; The Future of Funded Legal Services,[19] the Law Society drew attention to a clear drop in the numbers of solicitors prepared to provide services to the legal aid sector because of heavy regulation by the Legal Services Commission and relatively poor rates of remuneration. In its Annual 2001/2002 report the Legal Services Commission confirmed that 6% of suppliers of publicly funded work had left the system with a further 50% of firms seriously considering leaving. In immediate terms there has already been a significant drop in the provision of publicly funded advice particularly in areas such as employment law (a 12% drop), consumer law (8% drop) and welfare benefits (8% drop).

Not surprisingly, the profession's demands of its new recruits changed correspondingly. Firms complained that the whole pre admission training process was insufficiently rigorous and was producing students with a lower standard of knowledge and analytical skills than was previously the case. Many complained that legal education was not sufficiently preparing students for the specialist work of the specialist practice and, as a direct consequence, the City Legal Practice Course came into existence suggesting a move towards the niche LPCs.

From the publicly funded profession complaints came that the LPC course was too business orientated and the course was slanted towards the business end of the profession.

18 *Introduced under the Access to Justice Act 1999.*

19 *The Future of Publicly funded Legal Services; A Consultation published by the Law Society February 2003.*

Indeed the profession seemed to be rejecting legal education entirely in favour of choosing its entrants from graduates of non law degrees[20]. Figures published in 1993 showed that in the top 100 law firms 30% of training places went to non law graduates and in thirty of these firms more than 50% went to non law graduate entrants. An analysis of responses from 57 solicitors practices and 53 barristers chambers recruiting over 290 entrants in 1998 found that what the employer was looking for first and foremost was 'Good students from good universities'[21]. A good degree was seen as an upper second in a single or joint honours in a respectable (humanities) subject area. A good university was seen as Oxbridge or a redbrick university. A depressingly unimaginative approach to recruitment. However, looking at the analysis some indication can be found as to what attributes the respondents valued. When asked to rank attributes, the most highly ranked quality was that of synthesis /analysis, followed by communication /literacy then evaluation and problem solving . The DRAIN skills ranked in the mid range. The respondents also indicated strong support for the propositions that those entering the profession should know the law before they enter the profession; that finding the law was more important than knowing the law and that however much a new lawyer knew he is likely to meet an unfamiliar area of law.

It could be argued that the whims of the profession and its ever changing demands to meet economic expediencies is reason in itself to maintain the independence of legal education. However, it must also be clear that if a law degree ceases to be the primary route for preparation for the profession and the profession takes to filling what it perceives as the gaps for itself, both the profession and the academy are likely to be diminished.

Developments in UK Legal Education

In 1996 the Lord Chancellor's Advisory Committee on Legal Education and Conduct produced its First Report on Legal Education and Training. The report identified as serious weaknesses 'the artificially rigid divisions between the academic and professional stages of legal education and the perception by some of the academic stage as a preparation primarily for vocational training as a barrister or solicitor'. The Committee identified 'unnecessary compartmentalisation of the 'vocational' and the 'academic' aspects of legal education'. The legitimate tensions between academic lawyers and skills trainers can and should be the basis for creative partnership rather than a cause of hostility'.[22] The report put skills training firmly on the agenda for legal education identifying a particular deficiency in relation to legal research skills.

The Law Society's Training Framework Review

In response to the criticism from the profession and the law schools, as well as a concern over the divisions appearing within legal education, the Law Society published a 'Training Framework Review Group Consultation Paper' in 2001. This document purported to tackle the training of lawyers from 'cradle to grave'. It presupposed that a consensus could be reached on the competencies a modern solicitor required in order to practice. It then proposed the development

20 *In the UK a graduate of any discipline can enter the profession by taking a one year course of study (the CPE) followed by the Legal Practice Course.*

21 *Desiderata: What Lawyers Want From Their Recruits by Vera Birmingham and John Hodgson.*

22 *A New Vision of Legal Education chapt 2 of the report.*

of a framework or grid of competencies 'around which it will be possible to identify what should be required of the training process at every stage of a solicitors career'[23]. It divided the competencies into the following three areas: knowledge, skills and ethics.

The idea of the framework is that it will set a benchmark for standards and will also identify the outcomes of the training process thereby making it easier to make decisions on the individual parts of the process. Presumably allowing for training programmes tailor made to specific practices and furthering the scope for the niche training programme.

The focus on competencies has the benefit of identifying the huge areas of common ground in academic and professional education and practice and may lead to a more rounded approach to legal education from pre to post qualification and beyond. The overwhelming difficulty remains in the huge task of identifying the outcomes at each stage of the process. The devil, as they say, is in the detail.

Establishing Clinical Legal Education in the Curriculum

In the light of the above turmoil in legal education and the profession, does clinical legal education have a role to play?

From an educational point of view, clinical education has a sound basis; Kolb's learning cycle[24] and the findings surrounding problem based learning make clear the advantages of experiential learning.

From a student's perspective their motivation and involvement in real client work is always received enthusiastically (each year of feedback from the Law Office Programme reminds me of this).

However, we need to establish clinical legal education as an integral part of legal education not just as a taste of the profession or an exciting way of gaining students attention to the practice of law, but as a relevant discipline. Indeed, I believe it can plug the hole of the damaging criticisms of legal education. It can be used as a tool not only for learning law and the skills identified as traditional lawyering skills (interviewing, advocacy etc). It can go further to develop those skills of synthesis and analysis that appear to be a common goal for both the profession and the academy.

The UK, although slow in adopting the clinical approach, has an excellent basis upon which to build. The established clinical programmes have not been demand led by a need for free legal services, nor were they established with the emphasis on provision of practical experience for students (as in countries where the training opportunities for law students are limited). The existing programmes have always had, at their forefront, educational priorities. The increase in pro bono initiatives and greater involvement of students in legal practical work may compromise this. Not all pro bono initiatives make any claim to providing clinical legal education, but of those that do a new set of priorities come into play.

23 *Training Framework Review Group Consultation paper 2001 Law Society.*

24 *Kolb's Learning Cycle 1984 identified four stages in a natural learning cycle; Experiencing, Reflection, Conceptualisation and planning.*

Why the climate is right for clinical legal education to develop

Clinical legal education in the UK has never been driven by demand. In the USA the provision of legal services through post graduate law students is a major player in the provision of free legal advice[25] and this has clearly provided impetus from many different interested bodies for the development of clinical programmes.

The UK first introduced a system of public funding for legal work in 1945 initially to deal with matrimonial cases, by 1970 this had spread to cover a substantial amount of criminal work. Criminal work has always been covered generously by the UK Legal aid system but rising costs in this area threaten to push out funding for other civil welfare legal areas. From 1970 onwards expenditure and coverage of legal aid expanded dramatically and by 1991–1993 the legal aid budget was increasing by 20% per year[26]. In order to keep control on costs, areas of work were removed from the system (e.g. personal injury litigation), eligibility rates were cut and rates of remuneration under the scheme did not increase.

Complementing the work of the legal aid lawyers, the UK has a strongly developed advice sector. In the late 1960s Law Centres had begun to emerge and through the 1970s and 1980s the numbers of free advice agencies and Citizens Advice Bureaux continued to increase.

In an attempt to curtail the ever expanding legal aid budget the government introduced a franchising system and established the Legal Services Commission (LSC) in April 2000. Through these schemes both solicitors who have contracts with the LSC for providing legally aided work and advice agencies who are dependent on the LSC for funding have their case numbers monitored and legal aid income restricted. Coupled with demanding quality standards which are audited on a regular basis, many firms are abandoning publicly funded work.

Certain areas of work; housing, employment law, welfare benefits and consumer problems have all been hit by these restrictions. All areas in which law clinics can operate effectively.[27] The Legal Services Commission have identified this potential which has multiple benefits. By funding or supporting clinics the LSC can encourage students to take up areas of law which are being deserted by the legal profession at the same time as providing a service which is not being provided for adequately at a level which meets the LSC's stringent quality requirements. For the first time clinics may be identified as a possible plug for shortfall caused by the reducing legal aid sector.

In the UK, universities have fought to retain their academic freedom. However, there is a funding crisis in Higher Education[28] and much talk of alternative sources of funding and increasing student numbers. Increasingly universities are required to demonstrate that they contribute to their local

25 *In 1969 case of Gideon v Wainwright the Supreme Court confirmed the requirement for free legal representation in serious criminal charges where there was a possibility of a substantial prison sentence.*

26 *Figures taken from The Future of Publicly Funded Legal Services A consultation paper by the Law Society February 2003.*

27 *At Northumbria the Law Clinic has entered into contracts for providing publicly funded work in employment and housing work having met the specialist quality requirements in these areas.*

28 *White Paper on The Future of Higher Education published 22.1.03.*

communities and economies. In many African universities, this is of such importance that it has been incorporated into their mission statements,[29] but in the UK the contribution clinics can make to their communities has rarely been acknowledged.

However, there is still no commitment, in the form of guidance or direction in professional rules, from the professional bodies to encourage student involvement in clinical work. In the USA the American Bar Association, as part of its pro bono commitment under model rule 6.1[30], encourages student involvement[31]. In 1996 the ABA amended its accreditation standards to provide that law schools should 'encourage students to participate in pro bono activities and provide opportunities for them to do so[32].

Nevertheless in the UK a pro bono imperative is emerging. In 1999 the Solicitors Pro Bono group in the UK launched an initiative with law firm Clyde and Co to encourage widespread involvement of law students in pro bono work. The aim of the project was to encourage them to undertake pro bono work which would lead to an ongoing involvement and commitment to pro bono activities throughout their career[33]. Such a move was part of a general acknowledgement of pro bono by the profession; 'it may just be a passing thing.... But there is a prevailing sense of a kinder age dawning in the nice 90s as a backlash to the elephantine excesses of the 1980s when the eat what you kill ethic was practicised so religiously that the less fit and fortunate went without'[34]. The justification for pro bono work has always been that it is an intrinsic part of being a professional ''pro bono should also be seen as a professional responsibility and as part of the professional culture, rather than as an ad hoc philanthropic exercise'[35]. The media coverage of fat cat lawyers and a general public mistrust of lawyers has forced firms to consider the benefits of publicising its good works. What effect this has on the quality of work provided by pro bono schemes is the subject of another debate. Nevertheless, there has been a marked shift towards pro bono commitments with the larger national firms directing staff to become involved in pro bono projects some of which are linked to law schools or involve law students.

The above factors and the clear direction given by ACLEC towards a more unified approach to legal education suggests that the climate exists, both in the law school and the profession, to make practical involvement in legal work an expanding area. Amongst this proliferation of new and exciting projects it is important to recognise that the factors that are lending support to these developments may not be in the best interests of clinical legal education. Not all practical experience is clinical legal education 'raw undigested experience does not require a law school, is not educational and is not clinical'[36].

29 *The Law Faculty of Makere University states in its mission statement that it is to 'provide other university students and member of the public with the quality and quantity of legal knowledge and service required in their various callings or pursuits both within and outside the country of their residence'. Philip F Iya Fighting Africa's Poverty. IJCLE November 2000.*

30 *Which requires lawyers to take a responsibility to those unable to pay and calls on them to perform at least 50 hours of service each year on a pro bono basis.*

31 *http://www.abanet.org/legaled/probono*

32 *Report of the AALS Pro Bono Project – Learning to serve http://www.aals.org/probono/report2*

33 *Solicitors Pro Bono Group http;//www.students.probonogroup.org.uk/about.htm*

34 *The Law Society's Gazette 11.7.90 The Politics of Pro Bono by Evlynne Gilvarry.*

35 *Why Pro Bono Makes For Better Lawyers – Pete Sweet New Law Journal 29.Oct 1999.*

36 *Hugh Brayne – A case for getting law students engaged in the real thing – the challenge of the sabre tooth curriculum. The Law Teacher 2000 vol 34 No1.*

What does Clinical Legal Education have to offer that pro bono may not?

Pro Bono initiatives in law schools are, as established by Browne's research, many and various. Whilst it is difficult to imagine that any would not provide some learning for a student, much of it could not be described as clinical legal education. What then is the essence of clinical legal education?

Boon defines clinical legal education as 'a curriculum-based learning experience, requiring students in role, interacting with others in role, to take responsibility for the resolution of a potentially dynamic problem'.

Much is made of the learning environment for clinical education Grimes[37] describes clinic as offering 'a supportive environment which empowers and encourages a student to move towards a deeper learning approach, based on the understanding and not just the acquisition of knowledge'.

An emphasis on the deeper learning approach provides clinic with its opportunity to really make strides in terms of the holy grail of analysis /synthesis and problem solving and other intellectual legal skills as well as developing the more easily quantifiable legal skills of drafting etc.

Both Grimes and Boon identify the need for clinic to be part of the curriculum 'with a rationale behind its development'. Given the voluntary, non assessed nature of much of the pro bono work it is clear that such a rationale may follow the development of the project and not lead it.

One of the widely acknowledged prerequisites for clinical legal education requires students to reflect on what they do. The concept of the reflective practitioner as described by Schon[38] has been widely acknowledged. Jones[39] describes the approach as one in which 'professionals learn to 'frame' problems, impose a kind of coherence on 'messy' situations and through which they discover the consequences and implications of their chosen frames'. It encourages critical self assessment, contemplation and insight. Savage and Watts refer to an 'elite of reflective practitioners, who 'bridge the academic – practical divide'.

Clinic also provides an opportunity to consider law in context. Grimes describes the defining characteristic as being a holistic approach which allows the 'theoretical, practical and ethical to be studied side by side'. This begs the question of whether a clinical programme has to have all these dimensions to it. Whilst it is possible for pro bono initiatives to inclde the above elements, it may be that they are squeezed out by other priorities.

Boon[40] identified a conflict between the educational objectives of clinical work and the aim of client empowerment through pro bono work. 'in conflicts between student's educational needs and client needs, the former must triumph'.

In reality such priorities are hard to establish. In the clinic at Northumbria we do have a clause in our terms and conditions for clients that states that if the case ceases to be of educational value we have an option to cease acting. We do not have any means test or merits test in selecting cases and as far as I know this is the norm for other clinical programmes in the UK. Nevertheless we do

37 *Richard Grimes – The Theory and Practice of Clinical Legal Education. Teaching Lawyers Skills.*

38 *Donald Schon – Educating the Reflective Practitioner 1987.*

39 *Philip Jones – We're all Reflective Practitioners Now: Reflections on Professional Education. Teaching Lawyers Skills.*

40 *Andy Boon University of Westminster Making Good Lawyers: Challenges to Vocational Legal Education 26.9.01.*

encourage students to take a critical approach to the work they do in clinic and to consider good practice. The very nature of the work we do in clinic lends itself to a consideration of acting in the public interest.[41]

Judith Dickson[42] identifies three potential routes for clinics in the era of a new professionalism. She suggests clinics could abandon any 'social or reformist purpose' 'It can be seen as a sophisticated method of professional training with an intellectual base' or it could become 'cause lawyering in the legal/social activist model' or finally it could become a mixed model of both approaches. In the UK clinical legal education has always had its basis in the training approach. It is clear that this is now broadening out and it may well be that different models emerge with different emphases.

The most interesting developments in clinical legal education are yet to come. As long as resourcing clinical programmes remains an issue it is clear that the profession's new found commitment to pro bono initiatives can give CLE a huge impetus in the UK. This, combined with the moves towards a more unified approach to legal education could finally move CLE onto the firmer footing it deserves and more extensively into the curriculum. What remains to be assessed is the influence of the multitude of interested parties behind the scenes; the LSC, the firms financing the initiatives, the participating advice centres, the law schools, the Law Society and the Government with its plans for legal education.

41 *At Northumbria students attend possession days to represent tenants in danger of losing their homes and learn very quickly the limitation of the public funding schemes.*

42 *Clinical Legal Education in the 21st Century :Still Educating for Service? IJCLE Edition 1 page 33.*

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

*Prof. Philip F Iya**

Introduction

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

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

* *Professor of Law and Executive Dean of Research and Development (University of Fort Hare)*

1 *Gold, N: "The Role of University Law School in Professional Formation in Law: 1986 Journal of Professional Legal Education Vol. 4 No. 2 (December) p. 15.*

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

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

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

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

2 *For details of these criticisms refer to the minutes of the Regional Liaison Committee meetings (held on 5and 17 March and 20 April 1999) and those of the National Liaison Committee Meeting held on 4 June 1999 respectively and subsequently. For other aspects of criticisms against academics ("intellectuals" as they are often called) read: T W Setlhwane, "Are Black Intellectuals as Mediocre as Mbeki says?" The Sowetan of 31 August 2000 p. 18. Read also an article entitled "Silent Black Intellectuals" by Prof. Jonathan D Jansen in the City Press of 8 December 2002 p.25.*

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

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

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

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

I. Setting The Context

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

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

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

5 *QA Letsika: The Future of Clinical Legal Education in Lesotho. A Dissertation submitted in Partial Fulfilment of the Requirements for the LL.M Degree of the University of Natal (Durban) p. (iii)*

6 *Ibid.*

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

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

- Legislation[10]
- Judicial decisions
- Rules of law societies[11] and canons of bar associations
- International conventions and codes[12]
- Common law
- Traditions and practices

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

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

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

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

9 *For further details read Iya, PF "Ethics of the Legal Profession: Problems and Possible Reforms in Uganda': 1974 Unpublished dissertation submitted in partial fulfillment of the LL.M degree, at Yale University Law School pp. 2–5. Read also Randel and Bax; The South African Attorneys Handbook (3rd ed) pp. 1–29 and Lewis, Op. cit pp. 1–6.*

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

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

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

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

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

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

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

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

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

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

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

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

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

16 *Ibid*

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

2. Why Fostering Closer Cooperation and Interaction is Crucial

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

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

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

18 *Cold, N: "Pursuing Excellence in Law: Comments on Professional Legal Education in Zimbabwe" Unpublished paper submitted to the Government of Zimbabwe on 11 December 1986.*

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

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

3.1 Nature and Characteristics of Failure to Interact

3.1.1 Conceptual problems with the terms "academics" and "practitioners"

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

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

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

19 *See footnote 16 above.*

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

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

22 *For details read Iya, PF: "Addressing the Challenges of Research into Clinical Legal Education within the Context of the New South Africa" 1995 South African Law Journal Vol. 112 part II especially the topic involving academics in clinical legal education pp. 272–274.*

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

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

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

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

3.1.2 Problems over the Control of Legal Education

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

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

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

25 *Ibid. It is interesting to note that the new legal Practice Bill, 2000 of SA does not give any definition of a "Legal Practitioner" although it defines rather obscurely "a legal practice" to mean a structure or arrangement in terms of which two or more legal practitioners practice in partnership with one another or practice as a corporation of the nature described in Section 23(1)(a) of this Act.*

26 *The 1971 Ormrod Report on Legal Education in England.*

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

3.1.3 Problem with Content and Delivery of Legal Education

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

3.1.4 Problems with Research

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

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

28 *Twining, WL: "Legal Skills and Legal Education" in: The Law Teacher: A Journal of the Association of Law Teachers (1988) Vol 22 No. 1 pp.9–10*

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

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

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

3.2 Causes of the Problems

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

3.2.1 Historical Legacies

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

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

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

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

3.2.2 Attitude of Commercialism

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

3.2.3 Insufficient Knowledge of Ethics of the Profession

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

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

3.2.4 Failure to Discipline for Misconduct

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

3.3 Analysis of the Impact

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

33 *Ibid. pp. 5 –6.*

34 *For additional information read: Benson, R: "Catching Crooked Lawyers" in the Mail and Guardian of January 5 to 11, 2001 p. 17.*

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

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

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

4. Towards Fostering Closer Interaction in the Legal Profession

4.1 Acknowledgment of existing Programmes of Cooperation

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

(i) There is some constructive co-operation between the university sector and private practitioners and the profession in general appreciates the work that is done by the universities in preparing law students for the profession, although more emphasis could be placed on the development of the relevant skills;

(ii) Structured liaison systems exist in terms of which three regional meetings and one national meeting are held annually between the branches of the profession and tertiary legal education institutions;

35 *Gold, N: "The Role of the University Law Schools in Professional Formation in Law" Op. Cit p. 15.*

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

(iii) The profession, through the Attorney's Fidelity Fund is, to quite a large extent, involved in the funding of law faculties. Grants are made with regard to expenditure generally to assist universities with capacity building. Bursaries are made available to law students and special grants are made with regard to affirmative action programmes. The Fund further gives a substantial subvention to Legal Aid Clinics to pay salaries of directors;

(iv) Various universities have offered premises to vocational training and some universities are making available venues for short courses for private practitioners while others have made available venue for full-time training schools of six months. In these cases, universities further provide administrative staff and other support;

(v) Several members of the attorney's profession are serving on faculty boards. The Law Society of South Africa (LSSA) directors of the Schools for Legal Practice are all serving on one or more faculty boards in the country;

(vi) The full-time School for Legal Practice is governed locally by a Board of Control and Universities in the region and the attorneys' profession have equal representation on the board. Both sectors therefore contribute to the development of the programme, selection and awarding of certificates;

(vii) In two cases where the School is not situated on a university campus, the programme is accredited by law faculties. For example, the East London School is accredited by the Fort Hare University;

(viii) Individual members of faculties are often appointed as instructors at the Schools for Legal Practice, Practical Legal Training courses or Continuing Legal Education (CLE) seminars;

(ix) The CLE division of the Law Society of South Africa has established post-graduate diplomas in conjunction with certain universities; and

(x) The attorneys profession acknowledges the expertise that is available at universities. Committees of the profession from time to time approach members of university staff to advise on specific aspects.

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

4.2 Towards Fostering Closer Interaction: A Systematic and Holistic Approach

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

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

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

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

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

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

a) Institutional analysis; The objective of an analysis is to assess the specific capacities which exist; their strengths and weaknesses; and how institutional capacity requirements can be met. This could then be followed by an analysis of how the knowledge and skills of the staff in different institutions can be used collectively;

b) Formulation of a clear collective vision and target. The end vision should be kept in mind all the time;

c) Formulation of principles to guide the partners in achievement of targets;

d) Formulation of key processes and systems: such systems should be flexible enough to allow variations where necessary without the need to comply with complex procedures;

e) Selection of areas for initial collaboration: it may not be practical to start a partnership with too many issues to be addressed. It is important for partners to select priority areas on the basis of explicit agreed criteria;

f) Creation of incentives: since the objective of a partnership is not only to develop but also to nurture sustainably an active group of people, incentives may be used to acquire the services of committed coordinators, facilitators and administrators necessary for the survival of the partnership;

g) Formal legal instruments: the above variables under 4.2.1 should be formalised legal instruments such as cooperation agreements or at least Memoranda of Understanding.

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

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

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

b) Information dissemination through newsletters and websites.

Websites can be used as teaching aides. Students and staff from partner institutions can access lecture notes and other information through websites. The possibility of downloading texts and graphics from computers in partner institutions make this a useful mechanism for sharing resources;

c) Publication of joint educational journals: a journal is an ideal avenue for reflective and critical analysis of issues. It is also an important source of knowledge and information;

d) Management of an information exchange system: it should be a system for continual accrual of up to date information. The information base should be designed in a way which allows the accumulation of detailed information. Such a base should require a continuous effort keep it current, relevant, appropriately structured and accessible to all partners. The latest developments in information technologies can be used to create such a base. Networks which allow users to access files and other applications on other computers are possible;

e) Collaborative research projects and outreach programs involving the pooling of skills and resources;

f) Developing teaching materials;

g) Joint short courses and postgraduate programs;

h) Collaboration with institutions outside the partnerships

5. Emerging Lessons with new Agenda for Further Debate

5.1 Emerging Lessons

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

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

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

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

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

5.2 The new Agenda for Further Debate

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

5.3 Quality Assurance in Clinical Legal Education

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

39 Ibid. *40 Ibid.*

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

5.3.1 Team Building to Achieve Shared Vision

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

5.3.2 Professing professionalism

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

6. Conclusion

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

ABA/CEELI's Law Clinic Programs in Croatia*

*Steven Austermiller***

I. Introduction

In 1991, Croatia seceded from Yugoslavia and was soon involved in a long, painful civil war that would last four years. When the fighting ended, Croatia was an independent nation, but it had inherited its governmental institutions, judiciary and centers of learning from the previous regimes, Yugoslavia and the Austro-Hungarian Empire. These systems were not equipped to deal with the needs of a modern, democratic, free market-oriented society. As a result, Croatia has spent the past decade attempting to transform its economy and governmental systems, with varying degrees of success. The introduction of practical skills training through the ABA/CEELI[1] clinical programs is a small but largely successful example of this slow transformation.

A. The Croatian Legal System

The legal system is a victim of Croatia's transition from a communist to a democratic society. While the main structures of the Yugoslav judicial system remain, they are now being asked to perform more effectively. For example, under the communist regime, judicial efficiency was not significant. However, today, parties demand quick resolutions to their disputes. Foreign and domestic economic investment depends upon the ability to have disputes resolved quickly and transparently. Additionally, the failure to provide a fair and public trial within a reasonable time violates Article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[2]

Despite these pressures, the judiciary now has a 1.4 million case backlog and over one million new cases are filed every year. This is an extraordinary number of cases, given the fact that Croatia's population is only 4.4 million. Clearly, something is not working.

* *This article relies on the observations and findings made by Professor Terry Wright in her capacity as consultant to ABA/CEELI in the February–April 2002.*

** *Steven Austermiller is currently the Country Director for the ABA/CEELI program in Croatia. He graduated from Northwestern University School of Law in 1992 and, prior to joining ABA/CEELI, was a partner at Pedersen & Houpt, a 50-lawyer business firm in Chicago, IL.*

1 *ABA/CEELI (American Bar Association/Central European and Eurasian Law Initiative) is a non-profit NGO working in over 25 countries around the world. It uses American and local lawyers to provide technical legal assistance to developing countries in an effort to promote the rule of law. ABA/CEELI has had a program in Croatia since 1993. For more information about ABA/CEELI and its various programs, see www.abaceeli.org.*

2 *Croatia is a signatory to this convention.*

One reason the system is failing is that the rules of procedure are inefficient. For instance, subpoenas for testimony are routinely ignored so cases must be frequently continued. Attorney often fail to appear at hearings[3], with no consequences, and new evidence can be introduced at the appeals stage, causing re-trials. It is not uncommon to hear of cases over ten years old. Croatia has lost a number of cases in the European Court of Human Rights because its judicial system is so slow.[4]

However, another significant problem stems from the fact that many of the participants lack the appropriate basic skills. Many of the judges lack basic research and writing skills. They also often lack the ability to 'stand up' to attorneys who abuse the system or violate the rules.[5] Many attorneys and prosecutors lack advocacy skills. The problem is further compounded by the fact that individuals usually choose which legal career to enter (judiciary, private attorney, prosecutor, etc.) without any experience or information as to which path would be most appropriate for them.

B. Legal Education in Croatia

There are four Law Faculties in Croatia-Zagreb, Split, Rijeka and Osijek. Zagreb is the capital and largest city in Croatia while the other three are regional capitals. In some sense, each law faculty reflects the character of the very different regions. However, on paper at least, much of the system is standardized throughout the country.

Students enter the law faculties as undergraduates, as in most of the rest of Europe. Students matriculate after passing a standard entrance exam. While there is some migration to Zagreb, most students attend the faculty closest to home. The Ministry of Justice pays for most full time students' tuition. Although the first year class usually totals more than 400 students, graduating classes generally have only 100 to 150 students.[6] Attrition rates are high for a variety of reasons. Because the official unemployment rate is over 20%, students often leave school if they find a employment – even if it is outside of the legal world. In addition, many students leave due to boredom or lack of interest, as most classes are just long lectures, without any student participation. Still others don't drop out but rather extend for many years the standard four-year program by taking less than a full load of classes and delaying final exams. It is not uncommon for students to delay graduation for two, three and even more than five years. While this may seem bizarre to an American or English lawyer, students find no advantage in graduating quickly when there are no good jobs waiting.

Classes usually consist of the professor giving lectures from pre-written notes. Students take handwritten notes on what is said and few textbooks or other books are used during class. Casebooks are almost unheard of and the Socratic method is not used. In addition, there is very little student participation. Questions are rarely raised and open debates are virtually forbidden. Until recently, there has been no attempt to incorporate technology into the learning process.

3 *Lawyers at the Zagreb Municipal have a 30% no show rate for hearings.*

4 *See, e.g., Rajcevic v. Croatia, 07/23/02*

5 *This is partially due to lack of experience. Approximately two thirds of Croatian judges have less than eight years of professional experience. Most advance directly from law faculty to the bench. On the other hand, attorneys who are members of the Croatian Bar Association (the only permitted court barristers) enjoy a great deal of privilege and power. They tend to control the court process to a far greater extent than do attorneys in, for instance, the United States.*

6 *Zagreb is far larger than the other three and has roughly 1,000 first year students and roughly 300 graduates each year.*

The content tends to be theoretical, often historical in nature. Finally, there is little effort to link the content to everyday circumstances or practical use.[7] Exams are orally administered, usually in a private, one on one meeting with the professor.[8] The system is good at imparting certain kinds of information to students and accurately measuring their understanding of it, however, most students find their legal education to be of little practical use after graduation.[9] Most students graduate with ineffective writing, reasoning and advocacy skills.

As mentioned above, many students choose their particular legal career path without any helpful information or assistance, as the law faculties provide almost no career planning resources. Unfortunately, most professors have little practice experience. In addition, there is no "on campus recruitment" by lawyers or other employers, as can be found in North America. There are no publications given to students, explaining the pros and cons of the various professions. And, equally important, there are no publications or other resources explaining to students how to apply for jobs in particular areas, such as the State's Attorney's Office or the local Municipal Court. Most students (outside of the clinical programs discussed herein) have never seen the inside of a courtroom or witnessed a trial or hearing. One the great ironies of Croatia's newfound media freedom is that most Croatians know more about the American justice system (such as the ubiquitous Miranda warnings) through American TV shows than their own justice system.

II. The Osijek Law Faculty Clinic

Osijek is the traditional capital of the region known as Slavonia. It lies in the northeast portion of the country. It borders Serbia (along the Danube River) to its east, Hungary (mostly along the Drava River) to the north, and Bosnia (along the Sava River) to the south. It is traditionally a rich agricultural region. Until the middle of the 20th century, Slavonia was more prosperous than most of the rest of Croatia. It also has a mixed Croat-Serb population, with a smaller Hungarian minority. In the early 1990s, after Croatia declared independence, the Yugoslav army and ethnic Serb irregular forces invaded Slavonia. Much of eastern and southern Slavonia was occupied for several years, and Osijek was surrounded on three sides by Yugoslav forces and subject to regular artillery bombardment. After the war ended, a UN peacekeeping force took over parts of the region and remained until 1997.

As a result of this fighting, Osijek was transformed into a bombed-out, refugee-filled city. The economy has yet to recover and one can still see bullet holes and shrapnel marks on the elegant nineteenth century façades, including those of the Osijek Law Faculty Building. The community may be short of resources, but the will to improve remains.

Igor Bojanic and Vjekoslav Puljko are co-directors of the Criminal Law Clinic in Osijek, which was established with ABA/CEELI's assistance in 1995. When ABA/CEELI discontinued funding after the second year, the clinic closed. In 2001, ABA/CEELI was able to reestablish its funding and restart the clinic. The Clinic's new iteration has a different organizational structure and curriculum from the initial one. Bojanic and Puljko decided early in the planning process they that wanted as

7 *While they are undoubtedly intelligent, well published and informed, most Croatian professors have no practice experience so it is not surprising that they favor a theory-based approach to education.*

8 *The Ministry of Science and Technology requires that students be examined orally. Some professors augment the oral exams with written ones.*

9 *See Report of Professor Terry Wright, April 14, 2002, Zagreb, Croatia.*

many students as possible to experience the clinic's opportunities. So, all fourth year students have an opportunity to participate in the clinic. In each of the past two years, over 100 fourth year students have participated.[10]

Since the directors opted for breadth over depth, each student participates in clinic activities for a limited period of time – about one month with a minimum 35 hours total. The class is divided into two groups of about twenty students who participate in the clinic activities simultaneously. The participants are then subdivided into four groups of about five students. The subgroups spend a week in each of three different offices – a prosecutor's office, a private law office and a county court judge's office. Then, the students spend a week on a simulation, one subgroup acting as the prosecutor, one as the defense counsel and the third group playing the judge.

At these different offices, "mentors" assist students with exercises. The students do not work with actual pending files, but rather are given typical assignments with real case files. While not revolutionary in some systems, this is usually the students' first exposure to legal papers and a professional environment. During each week, the students spend about one half of their time working directly with the mentors and the other half working on their assignments. The mentors are local prosecutors, defense attorneys and a county court judge.

A typical experience would be as follows:[11] At the initial meeting for the students' week with the prosecutor's office, the mentor would give a presentation on what goes into a case file and the steps taken by the office prior to filing a suit. Then the mentor distributes real case files to the five students and walks them through each document. Students have a chance to ask questions about issues on process, documentation, rules of procedure and the prosecutor's role. The mentor also provides information on where and how students can perform legal research. After this introduction, students are given an assignment with a partial file from an old case and are instructed to draft an indictment based on the documents in the file. After completion, the mentor discusses the students' indictment, line by line.

The students have this kind of experience at each of the three offices during their term. The skills they learn include basic drafting skills, critical and strategic thinking as well as criminal procedure rules from different perspectives. They will also have engaged in open discussions about ideas, tactics, style, etc. The students' work is then forwarded to the directors, and the mentors discuss the students' progress.

In the fourth and final week of the clinic program, students participate in a simulation exercise. There, students are given a simulated case file, including police reports, expert witness statements, court investigation reports and other documents. One subgroup plays the role of the prosecutor, one group plays the role of the defense attorney and the last group serves as the trial court judge. After the groups draft and exchange court papers, they hold a mock closing argument. The mentors and the directors observe and then direct a final discussion session. This exercise gives students the opportunity to actually compete with each other in a 'moot court ' setting. The mentors and directors provide essential observations and critical feedback. Students are also required to maintain a journal of their activities throughout the month, which is then submitted after the completion of the simulation.

---

10 In contrast, the previous Osijek Clinic had admitted only the top few students.

11 See Wright Report, at 25.

At the end of the term, students are given either a pass or fail grade. If they fail, students must reenroll because they cannot graduate from the law faculty without a pass from the clinic. One problem encountered is that some students must wait almost two years after taking the basic criminal procedure course to participate in the clinic. So, many students must re-learn portions of the criminal procedure code in their fourth year, to participate effectively in the clinic's placements. To mitigate this problem, there is discussion about closer integration of the theory and practice components of students' criminal law education.

The clinic recently found office space at the law faculty and some of the ABA/CEELI funding in the 2002 year went towards the purchase of furniture and equipment for the office. Prior to that, the clinic was essentially run out of the co-directors' offices.

The program works well given the community's limitations. Osijek has a limited number of lawyers or judges who are willing to spend the required time serving as mentors. Therefore, the program must rely on a few dedicated professionals who receive only partial compensation for their efforts, which requires that many students rotate through these few professional offices. Although students have only one month to experience this program, they do learn some important practical skills and information, which was unavailable to their predecessors.

III. The Split Law Faculty Clinic

The city of Split lies midway along the Dalmatian coast, almost directly south of Zagreb. It is the capital of Dalmatia and second largest city in Croatia. Split is the site of the ancient Roman Emporer Diocletian's Palace, still intact today in the center of the old town.[12] In contrast with Osijek and Zagreb, Split has a distinctly Mediterranean feel, with palm trees and white marble facades. Split, like Osijek, suffered from the wars of the 1990s when irregular Serb forces took over large portions of inland Dalmatia and the Yugoslav navy blockaded Split from the sea. Although Split was bombed during the war, it does not have the visible scares that mark Osijek. Split's economy suffered in the 1990s, as tourists largely stayed away from the Croatian coast. After several years of peace, the situation is improving.

The Split Law Faculty is the second largest in Croatia. The Split Criminal Law Clinic received ABA/CEELI funding in 1995–7 and partially survived the period of discontinuation of funds with a limited fourth year program that provided practical skills for around ten students. Criminal Law Professor Goran Tomasevic may be the reason that the program survived at all. He continued the limited clinical program by donating his time and efforts so that a few students could continue to enjoy the benefits. When the ABA/CEELI funding was restarted, the clinic was expanded and improved. Now, the program has a third year and a fourth year component.

The third year component has about 115 students this year. The first semester consists of students analyzing cases. They are given a set of new fact patterns each week, on a different topic. They then have the opportunity to think about how to apply the facts to the law they have learned in the previous two years. While not "clinical" in the strictest sense, this work does give students the opportunity to apply the content learned in other classes to real life situations. Students learn how to think critically and practically and at the end of the semester, they are tested on their ability to apply the facts to the law.

12 *Interestingly, Diocletious was from Split and is known in history as the Roman emperor who "split" the Empire into East and West.*

The second semester is devoted to court simulation. The class is divided into three groups. Each group is then subdivided into five activity groups of roughly ten students. The activity groups represent a mock prosecutor's office, defense attorney's office, court, appeals court and "other". Students in the last group serve as journalists, scribners, witnesses, etc. The students pick which activity group they want to be in, based on an order developed by a complex formula using grades from the first semester, other criminal law classes and other considerations.

All of the students work on the same fact pattern, which is developed by the director, Goran Tomasevic, and Judge Josip Cule, the President of the Criminal Division of the Split County Court. The facts are based on a criminal case that is pending in front of Judge Cule. During the second semester, the students work on the case, using a file developed from the actual court file. They meet with each other and their mentors. While the mentors assist the students with questions and strategies, students are encouraged to find the answers themselves.

Initially, the prosecutor activity group drafts and presents its indictment. The defense group presents its response papers and the "other" group serves as a court panel, ruling on pre-trial issues. Then, the groups engage in a mock trial, with the "other" group serving as witnesses, journalists and court reporters. Finally, after the court group issues its decision, the groups prepare appeals and argue those matters in front of the appeal court group. While some groups do more work (prosecutors, defense attorneys) than other groups (appeal court, "others"), everybody has a chance to experience the difficulties, the frustrations and the challenges that real life criminal litigation presents.

After the final simulations, the entire third year class watches the actual trial, on which their simulation was based. The County Court has one large courtroom that can accommodate everybody and Judge Cule arranges for the trial to take place soon after the simulations are completed. This is usually the highlight of the year, as students can compare their trial with the real one. This year, the case was an attempted murder trial, which took place on April 29, 2003.

The fourth year component is limited to 12–15 students. These students are chosen pursuant to a complicated formula and only the best students are accepted. Some of the competition is due to the intense interest in the fourth year program's content. However, many students also recognize that acceptance into the fourth year program gives them a head start in their job searches.

The Split fourth year program is similar to the externship placement components at Osijek and Rijeka. Fourth year students receive about ten weeks of externship placement at various professional offices in the area. They are usually placed in groups of two students, for about two weeks at each office. The five office placements are at the County Court, the Misdemeanor Court, the Prosecutor's office and two private defense attorney offices. At these placements, the students receive some basic practical guidance and are then given practical assignments.

The program works in a fashion similar to the placement components at the other clinical programs. Students tend to work on basic research and basic drafting. The mentors tend to give some guidance but try to make sure that students learn the process by themselves as much as possible. At some placements, students are given current tasks that the mentor must complete in the mentor's practice. Unlike the placement program at Osijek, the students in Split also attend a two-hour classroom session each week of the semester. There, students discuss practical issues with the professors, largely relating to the students' assignments.

Students are required to keep a journal of their activities and must it turn in to the director, with all written work product, at the end of each placement. At the conclusion of the semester, there is a written exam relating to practical issues that students handled in their placements.

The Split criminal program reaches most of the third year students and is a very popular course. The fourth year program is also popular and well run, but is only for the elite students. The mentors' offices are aware that they are dealing with the top students at the Split Law faculty. While most enjoy the work with students, they also see the benefit of having an inside look at potential recruits, especially since there is no organized recruitment regime and most jobs come through personal connections. So, some fourth year students receive job offers from these offices in addition to practical skills training.

IV. Rijeka Law Clinic

Rijeka (Fiume in Italian) is Croatia's largest port and third largest city. It is located in the northwest corner of the country, where Italian influence is the strongest. In fact, between World War I and World War II, Rijeka was part of Italy and even today, Italian language can be heard on the streets and on local radio stations. Rijeka has the reputation of being more cosmopolitan and business oriented than its two regional rivals, Split and Osijek.

The Rijeka Law Clinic survived ABA/CEELI's discontinuation of funding in 1997. This was due to the fact that the clinic's directors, Dr. Vesna Crnic-Grotic, international law professor, and Dr. Aldo Radolovic, Istria County Court President, were able to convince the law faculty's hierarchy that the clinic should be continued with local law faculty funding. So, unlike Split, the Rijeka clinic did not have to rely upon extensive *pro bono* efforts by the directors and mentors. As a result, ABA/CEELI's funding in the past two years focused on improving and expanding the clinic's resources, instead of the more basic assistance that it provided to the other programs.

Unlike the other ABA/CEELI clinics, Rijeka is a civil law clinic. Fourth year students participate in this clinic after they have completed a series of basic law classes, including civil procedure. As with the fourth year program in Split, the Rijeka Clinic has a limited number of positions (18), and only about one out of three student applicants is accepted.

The program has three main components: externship placements, simulations and classroom seminars and a fourth experimental component, a limited live client clinic. In the externship placements, students spend about six hours per week for a total of ten weeks at a local professional office. Most of the placements are in private law firms, but there were some new placements in 2003 at the Rijeka Municipal Court and the Rijeka NGO (non-governmental organization) Center.

Unlike the rotation systems in Osijek and Split, the Rijeka placements tend to be fixed for the entire semester. While this obviously reduces students' opportunities to compare different professions, it gives them a more extensive experience with their mentors. It also allows for greater involvement in a legal file. It is difficult to assign anything other then a small, discrete task when the student has only a few weeks in the office. But in the Rijeka program, the mentors can get students much more involved in a particular case. It appears that many of the lawyer mentors are giving students actual, pending work assignments (like drafting an opinion letter or a motion) and are using them in the case. As with other clinics, Rijeka students are required to keep a daily log of their activities and then turn them in when the placement is completed.

The program's second component is the simulation work. Here, students participate in semester-long simulated civil trials, which are developed by judge Radolovic and based upon real life cases he has currently pending before his court. The students are divided into two main groups of nine and those groups are further subdivided into three activity groups – plaintiff, defendant and court. Each group drafts the court papers from initial filing through to the trial and decision. Along the way, the clinic's staff assists the students but the emphasis is on making sure that students solve their problems themselves. Outside experts are brought in to assist the students and this year, real medical and sports experts served as witnesses in the simulated case, which involved an athlete suing for damages resulting from a car accident.

The simulation component has been improved with the arrival of the new simulation courtroom in 2003(funded by ABA/CEELI). This is the first such facility in Croatia, where students can practice their skills in a courtroom like setting. Previously, students had to use a small office or classroom. ABA/CEELI funded the furniture and equipment and the law faculty donated the building space. This is an important step because it shows that the law faculty is willing to make a permanent, visible commitment to practical skills training.

The clinic's third component is the classroom seminar. Here, students receive basic information that is designed to help them with their work in the other components. The seminar consists of a weekly lecture series where guest professors, lawyers and judges speak about different aspects of a current legal case. The students are given extensive background information on that case at the beginning of the semester and the guest lecturers speak about aspects like legal ethics, examination, appeals, etc. At the conclusion, students engage in a mock trial.

The fourth and final component is an experimental one, called "live client clinic". Under Croatian law, students cannot represent parties in a lawsuit. They cannot sign pleadings or appear in court. This prohibition has made it difficult for Croatian clinics to offer legal services to live clients. However, in 2002, the Rijeka Clinic decided to try an experiment. The Clinic decided to offer quasi-legal services to other students. The services would be essentially researching and finding answers to students' questions on their rights and responsibilities arising from their student status, in areas such as insurance, class credits, graduation, grades, housing, etc. The 18 fourth year students in the clinic would staff the clinic's office and be available to receive questions. The theory was that students would have the opportunity, for the first time in Croatia, to experience being completely responsible for somebody's legal or administrative problem. They would learn how to handle a real client with a real problem.

In practice, the live client clinic proved to be too ambitious. The students felt that this was extra work and tended to ignore this part of the program. Apparently, the students were just too busy to handle the live client problems. In addition, since this part was apparently not incorporated into the grading scheme, students may have had less incentive to participate. As a result, the Rijeka Clinic is considering changes to the program that might make this component more effective in the future.

V. The Zagreb Law Faculty

Zagreb is the capital and largest city in Croatia. It is three to four times larger than Split, the next largest city. Zagreb hosts most of Croatia's largest companies and receives most of the foreign investment and international assistance. Zagreb also has the largest[13], oldest[14] and, arguably, most prestigious law faculty, the Zagreb Law Faculty. Until 2003, the Zagreb Law Faculty declined to participate in clinical assistance programs.

However, in 2003, Professor Ivo Josipovic agreed to incorporate elements of the ABA/CEELI clinic program into his second year criminal procedure class. The top 40 students (out of about 100) from the first semester of criminal procedure were accepted into the program. The students had a classroom seminar component similar to the one in Rijeka, which included guest speakers, moot court practice and discussion about practical elements of criminal practice. The program also had an externship placement component. There, students were to spend about six hours per week during the semester, working at a private law office, a prosecutor's office, a court or a prison. They were to be assigned mentors who were to brief them on the activities of the office and provide basic assignments relevant to pending cases.

At the time of this writing, the program had just begun and ABA/CEELI had yet to receive the results or details about the program's administration. However, Professor Josipovic is a highly skilled and reputable professor and ABA/CEELI has every confidence that this program will be a success.

VI. Conclusions

While the clinics have different organizational approaches, each has found a way to teach the same basic practical skills. Students are very pleased with the clinics and they continue to be among the most popular classes. Students realize that this is their first and only pre-graduation opportunity to see what it is like to work in a court or a law office. Students also learn basic drafting and other practical skills that they would not otherwise have. In addition, students have an opportunity to integrate (in some programs more than others) what they learn in theory with the real world. Equally important, the clinics are designed so that students learn most skills by trial and error, on their own or with other students, instead of having the information handed to them in a lecture format.

Of course, some aspects of the programs could be improved. The results from the live client clinic experiment at Rijeka were disappointing. In addition, the Osijek clinic needs to better integrate the classroom information with the field placements. However, on balance, all the clinics have been a resounding success. The biggest challenge in the immediate future is financial sustainability. Rijeka and Split appear to have achieved this. Osijek has not, but is considering some creative funding options. For Zagreb, it is too early to speculate since its first semester is still running.

13 *There were about 4,000 students enrolled in the Zagreb Law Faculty*

14 *The Zagreb Law Faculty was established in 1776.*

Specialist Clinical Legal Education: An Australian Model

Susan Campbell and Alan Ray***

Clinical legal education in Australia traditionally has been based in generalist clinics, where the client and caseload intake is limited primarily by the financial means of clients rather than by the legal subject matter of their problems. The breadth and variety of legal problems which confront clinic students provide insight into and understanding of the operation of the legal system at the grass roots and the legal issues raised rarely seem to reflect directly the law the students have learnt in the classroom.

In recent years, for both educational and political reasons, Australian Universities have begun to develop specialised clinics, serving clients with problems in a particular area of law.

This article describes the operation of Monash's specialised Family Law clinic and considers the factors which, in the Monash experience, have combined to ensure its stability and recognition, within the University and in the broader political context.

In 1996 Monash in conjunction with Springvale Legal Service (the community legal service which takes the majority of Monash clinical students) proposed the development of a series of specialised clinics[1]. The objective is to provide students who have completed the general clinical undergraduate subject with the opportunity to develop the skills they have learnt to a more sophisticated level and to gain a deeper understanding of the operation of the legal system through immersion in a particular area of law.

The first Monash/Springvale specialised clinic began in 1996, jointly with the South East Centre against Sexual Assault, providing legal advice and assistance to victims of sexual assault[2].

The second, the Forensic Psychology and Sentencing Clinic, operated jointly with students from the Monash Department of Forensic Psychology to provide psychological assessments and the preparation of detailed sentencing material for clients charged with relatively serious criminal offences.

* *Susan Campbell, Professorial Fellow in Legal Practice, Faculty of Law, Monash University, Australia.*

** *Alan Ray, Lecturer in Law, Faculty of Law, Monash University, Australia.*

1 *Evans, A. "Specialised Clinical Legal Education begins in Australia" (1996) 21(2) Alternative Law Journal 79*

2 *Evans, A, "Specialised Clinical Legal Education begins in Australia" (1996) 21(2) Alternative Law Journal 79*

The third, and so far the most "successful" (for reasons to be discussed below) is the Family Law Assistance Program, a clinic assisting unrepresented Family Law clients.

Background

In 1996 the newly elected conservative Federal government announced a program of reduction in legal aid funding. Community legal centres, including clinics, began to notice increasing numbers of family law litigants who had either exhausted their limited entitlement to legal aid or who had been denied aid from the outset[3]. The government, which has constitutional responsibility for family law, resisted growing calls for the restoration of legal aid funding but sought to institute a range of alternative measures which might be seen to solve the problem. One such measure was the discovery by the government of clinical legal education, with its use of students as "free labour" and its connection with Universities, which might be expected to contribute to the costs of programs.

In its 1998 budget the government allocated funding for new clinical legal education projects "to maximise service delivery to disadvantaged clients and co-operation with universities"[4]. Monash therefore applied under the new program to establish a clinic conducting self-help workshops to assist family law clients without representation either by a private practitioner or through legal aid[5]. The application focussed on the conduct of workshops to encourage in clients a philosophy of self-help and mutual support[6].

The proposal also envisaged a website to extend advice and assistance with the completion of Family Law documents to rural and regional clients[7].

The project was one of four to receive funding[8] and the clinic began operation in mid-1999. Staffing consists of one fulltime solicitor/supervisor position and one full time administrative position, supported by final year Law students. Currently the clinic is fortunate to have two extremely experienced family lawyers sharing the supervisor role. The administrative position has come to be held by students from the program, whose personal experience of day to day operations and of the needs of incoming students makes them ideal administrators.

The University contributes a range of infrastructure costs.

3 *For a discussion of the new legal aid arrangements and whether the increase in unrepresented litigants can be ascribed to them, see Family Law Council, Litigants in Person – A Report to the Attorney-General, August 2000, at 1.18 – 1.36, and reports referred to therein.*

4 *Commonwealth Attorney-General, Media Release, "Community Legal Services expanded" 3 May 1998. For a detailed discussion of the political context of the Government's decision, see Giddings, J & Hook, B "The Tyranny of Distance: Clinical Legal Education in 'The Bush'" (2002) International Journal of Clinical Legal Education 64.*

5 *Earlier in 1998 Monash had put a submission to the Legal Aid and Family Services Branch of the Attorney-General's Department for funding to develop self-help kits for unrepresented family law litigants.*

6 *Monash and Springvale Legal Service had for some years used the workshop format to assist clients with Child Support claims.*

7 *See Giddings, J & Hook, B, "The Tyranny of Distance: Clinical Legal Education in 'The Bush'" (2002) International Journal of Clinical Legal Education 64 for a detailed discussion of the social and political significance of rural and regional clients. However, with the additional demand on resources resulting from the Family Court Support Program the web-site proposal was abandoned.*

8 *Of the three other funded projects, two were specialised clinics: a Child Support/Family Law clinic at Griffith University, Queensland and an Employment Law clinic at University of New South Wales/Kingsford Legal Centre. The fourth was the establishment of a new generalist clinic at Murdoch University, Western Australia.*

The Family Law Assistance Program (FLAP)

The new clinic operates from Monash-Oakleigh Legal Service (MOLS), a community legal centre conducted by the University on campus[9]. While initially the concept of workshops, with up to four clients participating in each, was followed, it quickly became clear that clients' individual needs (including language needs) are so diverse, and their level of anxiety generally so high that workshops were simply not effective and were liable to frustrate clients rather than to empower them. The clinic therefore reverted to the individual interview model followed in the generalist clinics.

The educational model is also the same as that in Monash generalist clinics: a student interviews the client without the supervisor present, obtains instructions, then discusses the issues privately with the supervisor in his/her office. The student then returns to the client

with initial advice. If, as is often the case, the client needs documents to be prepared, the student may sit down with the client at a computer (which is equipped with the full range of Family Court document templates) and assist the client to complete the relevant documents. In cases where the client does not have the language or literacy skills to complete documents even with assistance, the student will complete them. In all cases the supervisor checks the final documents before the client signs and/or swears them.

The program does not act as solicitor on the record for clients; they continue to conduct their matter in their own name. Thus, once documents have been completed, the client is given detailed advice on filing and service and on the "litigation pathway" to be followed. Another appointment will be fixed at the appropriate stage of that pathway so that the client can obtain advice on the next steps, discuss any offer of settlement or prepare an appearance.

Statistics

FLAP sees on average 8 clients per session with 4 sessions per week. Allowing for University holidays and an occasional closure to allow staff to catch up on paperwork and Government reporting obligations, this means that the program sees approximately 1550 clients per year.

Evaluation

No formal evaluation of FLAP has been conducted. Client demand and referrals from the Court indicate that stakeholders regard it as providing an invaluable service.

9 *The decision was made to establish the new clinic at Monash-Oakleigh Legal Service, rather than at Springvale Legal Service, for reasons of space. A small amount of project funding was used to expand MOLS premises to add a dedicated workroom and a staff office for the new program.*

The Family Court Support Program (FCSP)

Shortly after its inception, FLAP became involved in an unexpected but significant extension of its work.

The local Registry of the Family Court[10] has the highest percentage of unrepresented litigants of any registry in Australia[11]. To discuss ways of addressing the inherent inequalities in this situation and assisting the Court to operate efficiently, Registry staff met with several community agencies, including FLAP, and the outcome was the Family Court Support Program (FCSP). This adopts a team-based approach to provide a range of services in the one location.

The court staff ensure, as far as the listing system will permit, that all matters involving unrepresented litigants are listed on a Monday. The FLAP solicitor attends with a number of students, as does a duty solicitor from Victoria Legal Aid and staff of the Court Network (a volunteer group which provides non-legal advice and support to unrepresented litigants). (In the early days of the FCSP the local community-based mediation centre also attended, with the intention that mediations could be conducted "on the spot". However this proved to be an inefficient use of limited mediation staff resources and the centre's participation in the program ceased.)

As each litigant arrives at court, they are asked by a court official if they need legal advice. If so, the litigant is interviewed by a student and, after consultation with the supervisor, provided with advice and, where needed, assistance with the preparation of documents.

Where the opposing party is also at court, the student will discuss possible resolution of the issues with the client, again after consultation with the supervisor, and with the client's instructions negotiate with the opposing party or their representative. Often the opposing party is also unrepresented and she/he can obtain advice from the Victoria Legal Aid duty solicitor, thus avoiding the situation which would otherwise occur of "first come/first served", where the party who happens to arrive at court first can effectively corner the provision of legal advice and prevent the opposing party from obtaining access to such advice.

If a settlement cannot be reached, the client goes away equipped with a more detailed understanding of the procedure to follow and with the reassurance that they can seek the advice of the Program on their next day in court.

If settlement between the parties can be agreed upon, the student will draft consent orders and appear before the relevant judicial officer to obtain approval of such orders. The fact that the matter can be finalised on the day is one of the reasons why the Program is valued so highly by both clients and the court; if clients were forced either to appear for themselves or to return to court on another occasion with representation, the sense of mutual achievement in reaching an agreement would be diminished. Indeed many parties might use the time spent waiting for the next court date to change their mind about settlement. However it might be thought highly unusual that students actually appear in court on behalf of clients.

10 *at Dandenong in the outer suburbs of Melbourne. Its catchment area includes higher than average levels of unemployment and language disadvantage*

11 *40% across the three main categories of applications filed – Family Court of Australia, Dandenong Registry, internal working paper, 1999.*

Students appearing in court

In all Australian jurisdictions, only admitted practitioners have the right to represent a litigant. But every court has an inherent discretion to control its own proceedings and, as part of that discretion, to permit unqualified persons to appear on behalf of a litigant[12]. In the higher courts such leave is rarely granted[13].

However for some years Monash has operated a "Student Appearance Program" as part of its generalist clinics. This program arose out of the increasing numbers of clients attending the clinics who on any view needed legal representation in minor criminal or family law matters but who did not qualify for legal aid to pay for such representation. Monash therefore put a proposal, initially to the Magistrates Court (the lowest court in the hierarchy in Victoria) and subsequently to the Family Court, that clinic students should be permitted to represent their clients in certain categories of matters before these courts. It is indicative of the concern felt by both courts about the numbers of unrepresented litigants that members of both courts generally welcomed the proposal.

As a result, in the ten years since this program began, Monash students have represented more than 100 clients per year, largely in pleas of guilty in summary criminal matters and in divorces and uncontested family law applications, particularly where the client is of non-English-speaking background.

When the Family Court Support Program was established, therefore, there was simply no debate about the role of students in representing clients before the Family Court.

Statistics

The FCSP sees on average 20 clients per day for approximately 49 weeks per year.

Evaluation

A preliminary evaluation of the FCSP was conducted jointly by the Court and Monash after the first 8 months of operation[14].

Broadly, the objectives of the project were to evaluate: whether matters in which litigants were assisted by the FCSP were resolved in a more timely and cost effective way than those not involving FCSP assistance; whether clients were generally satisfied with the services provided by the FCSP; and whether the judicial officers at the registry were likewise generally satisfied.

The quantitative sections of the research, designed to assess whether the FCSP contributed to the "efficiency" of the Court process, were inconclusive. While FCSP clients made fewer appearances in court and took a shorter time to conclude their matter from filing to resolution, the difference between FCSP clients and others was not statistically significant.

However the results of the qualitative research, based on questionnaires completed by clients and interviews with judicial officers, showed overwhelming support by both groups.

12 *O'Toole v Scott [1965] AC 939 (Privy Council)*

13 *Damjanovic v Maley [2002] NSWCA 230*

14 *Campbell, Susan & Shaw, Sally, "An Evaluation of the Family Court Support Program at the Dandenong Registry of the Family Court of Australia" Report to the Attorney-General of Australia, April 2001, unpublished.*

Clients commented both on the fact of receiving advice in terms they could understand and on the personal support and confidence they obtained from the FCSP. Typical comments were:

> "I found the advice extremely helpful, easy to understand and correct."
>
> "I received step by step help with the documents I had to supply to the court. The legal terms were put simply for me to understand."
>
> "I was feeling very intimidated by having to represent myself. The [FCSP] staff made me feel good about myself."
>
> "This has given me confidence that paperwork and procedures can be successfully completed by myself, this takes a lot of stress and the feelings of hopelessness out of what for me has been an ongoing dilemma."[15]

As to the opinion of judicial officers, most commented on their perceptions of the increased confidence of litigants, the improvement in quality of documents presented and, regardless of the statistical results, a higher rate of settlement. Several stated that the FCSP should be extended to more days of the week and that similar programs should be established at other registries.

Despite the inconclusive results of the quantitative research, the Court continues to believe that the FCSP is of value to it and other registries around Australia have discussed ways of establishing their own version of the program. It is hoped to conduct a more substantial evaluation project in the future.

The Student Experience

The students in the program are drawn from three sources:

a. Students taking the final year subject *Advanced Professional Practice*[16] who have completed the generalist clinical subject are with the program for the whole semester. Their workload is two sessions per fortnight – the first week is a session at the Family Court and the second week a half-day at MOLS. There is usually follow-up work required on their ongoing files.

b. Students taking one of two *Family Law* electives as an optional subject in the undergraduate degree may elect to participate in FLAP for five half-day sessions. This will represent 40% of their final assessment for the subject. Four of these sessions are at MOLS and one is as an observer at the Dandenong Family Court. Students who have completed a placement as part of one *Family Law* elective and wish to take another in the second subject are permitted to do so but they are required to spend two days at Court, thus building on their experience in the first placement.

c. Volunteers, who are usually ex-students of FLAP, offer their services on an *ad hoc* basis. Occasionally law students from other universities, and even practitioners from overseas seeking to gain experience of the Australian legal system, volunteer.

15 *Quotations are taken from the Report.*

16 *Advanced Professional Practice has been created as a subject 'home' for all Monash specialized clinics. It is formally a one semester elective subject in the undergraduate degree.*

At the start of the semester students receive an orientation tutorial which provides them with material on interviewing and drafting skills, annotated instruction sheets, glossary with index to precedents, overview of library resources and a general introduction to office procedures. More experienced students are paired with a junior student for their first interview to provide a mentoring role.

Assessment

For *Advanced Professional Practice* students who have had the conduct of some ongoing files, there is a "file review" at regular intervals, with the final assessment based on their performance over the semester (80%) and a written assignment (20%). This assignment is to discuss in detail two issues or problems encountered in the program with appropriate reference to legislation and case law and a reflection on the perceived need for changes to law and practice.

Students participating in FLAP as part of a *Family Law* subject are assessed on the quality of their participation in the program (25%) and a reflective piece on the program (15%). Many students do elect to take a second *Family Law* subject and to do a second placement and they comment on the fact that the skills learnt in the first placement are reinforced in the second, partly because they take a mentoring role with new students.

What do the students learn?

Clinical legal education which is integrated into the curriculum engenders enthusiasm for legal practice in the students because they can better appreciate the relevance of theoretical lecture material. In addition, it teaches them the portable skills of interviewing, drafting, negotiating and elementary advocacy in an environment in which they can feel comfortable and able to learn. Students are challenged to consider whether the law in practice differs from the law in theory and whether legislation or practice should be changed to ensure a more "just" result for all members of society.

Although the educational aims of the FLAP/FCSP program are the same as for any other form of clinical legal education, the more specific aims are slightly different for each category of student.

The *Advanced Professional Practice* students have learnt and applied fundamental interviewing skills in the generalist clinic and they are expected to develop these further in their FLAP experience. In the generalist clinic each student would almost certainly have conducted interviews in Family Law matters but they will not have had the depth of experience involved in providing detailed advice in contested matters, as the generalist clinics only handle uncontested/consent matters.

Furthermore while the unending variety of problems seen at the generalist clinics teaches students to be able to identify and analyse issues across almost every conceivable area of law, by definition they are rarely able to develop a depth of knowledge in any area.

Those students who took part in advocacy in the generalist clinic had the luxury of being able to prepare the matter thoroughly and were not called upon to appear in the pressure of the Family Court at relatively short notice.

For the *Family Law* students, it is clear from their written work that their learning extends across a gratifying range of understandings.

Integration of theory and practice

"It was at [FLAP] that family law leapt from the pages of my lecture notes to become a much needed legal recourse to real people in problematic situations."

"FLAP quickly demonstrated that the study and practice of Family Law can involve vastly different types of knowledge. On my first morning I learnt that a divorce costs $575, that nearly every application will require at least 3 forms and that a Family Court will reproduce a copy of previous orders for no charge."

"The reality of cases required my own identification of the important facts, drawing a sharp contrast with the textbook cases where the facts are apparent."

Professional skills

"Interviewing clients has refined my ability to listen and ask questions that elicit the relevant information. A client may be distressed or simply as a non-legal professional unaware of the information the court is interested in, such that they may pour out the whole story including a lot of information that is irrelevant or contentious. I realized that it was my responsibility to direct their thoughts and answers towards getting the outcome they were after."

"I was interested in whether, and how, I could achieve a balance between listening to the client in a sympathetic way and getting down the facts and finishing the interview on time."

"For much of the day I attempted to negotiate with the mother's barrister...Although this was daunting I gradually become more comfortable and confident. I was initially concerned that my knowledge and experience deficit would mean that the barrister could effectively tell me anything. In general he was understanding of my limited knowledge but towards the end of the day he began to exaggerate his arguments...[eventually] I made a brief appearance, confirming the content of the [interim] orders and the return date. The opportunity to sit at the Bar Table and address the Court gave me great confidence. The barrister then loudly commented that I had been very professional and a pleasure to work with"

Thinking like a lawyer

"On a conceptual level, I found that there is fundamental difference between the way in which a law student and a client think about the law. Law students understand that the law provides a series of very limited avenues to obtain specific outcomes. My clients just wanted their problems solved.....I also found that there is an equally fundamental difference in the way that a student and a solicitor survey a client. It took several weeks for me to stop focusing exclusively on obtaining valuable information from the interview and be able to step back and critically assess the prospects of my client's application."

The requirements of professionalism

> "The second interview I conducted was related to a dispute over contact of a child. We were acting for the husband who the wife was alleging had sexually abused the daughter.....Looking back I realised that I wasn't as compassionate or [attentive] towards this client as I should have been. The main reason I want to practice Family Law is because I want to protect children and when you have allegations of abuse of some sort you start to wonder who it is you are representing. It wasn't until I was in the room with him and interviewing him that I realized that practising law requires such objectivity and I wasn't sure in this situation if I could do that. But as the interview progressed I sort of switched off my emotions and listened to what he had to say. ...I found that interview quite hard. I was judging this client because of allegations and our criminal justice system presumes innocence until proven otherwise, yet there I was looking at this man and feeling quite scared and awful in myself for helping him to get access to his child. Yet he could very well be innocent of the allegations. This was the hardest interview I took at FLAP...for the first time I realized that whatever area you wish to practice in, you can't choose your clients.."
>
> "I also became aware of how much trust a client has in legal professionals and the privilege a legal professional has in receiving such personal information from clients. At the briefing before the placement we were reminded of our duty of confidentiality."
>
> "In my interaction with this client, I thought I had been friendly and empathetic, making the occasional joke to relax the client and make his Court experience less intimidating. However, [the supervisor] felt that the client had been 'too friendly' and had enjoyed my company 'too much'. While he emphasized that this was not my fault, he warned me to be careful in my future career. This came as a shock as I had not felt uncomfortable. [My supervisor] pointed out that particularly in Family Law, the lawyer is often the 'knight in shining armour', the person with stability and firm answers when all else in the client's life is deteriorating. Whilst a surprising assessment of the client, the comments were a confronting but important lesson to learn at this early stage."

The failings of the legal system

> "The advanced placement reiterated the inadequacy of a legal system that is stretched to the point where undergraduate students are the best source of legal advice on offer to many people."

And finally

> " From the first day of placement til the last day at the Dandenong Registry of the Family Court it's been hectic, interesting, educational and strangely fun. It's probably not the best thing to admit enjoying yourself considering that most people who come to [FLAP] are often fighting a battle where there will never be a winner or loser and what they're fighting for often involves their own children."

As all clinical teachers know, it is the intensity of the students' learning experience which makes being a teacher so rewarding.

What Makes a Successful Clinic?

The Monash experience with specialised clinics suggests that there are three factors (or 'inputs') necessary to ensure that a new clinic functions effectively, provides appropriate experience for students, meets client demands and operates for a significant period. These factors are:

- client demand;
- student demand; and
- funding.

These may seem so obvious as to be not worth mentioning but when planning a new generalist clinic, the first two factors can usually be taken for granted. Clients will come from near and far to obtain advice and students will enthusiastically support any opportunity to obtain practical experience.

With a specialised clinic, the very fact that it will be handling cases only in a specified area raises more complex issues. With the Monash Forensic Psychology and Sentencing clinic, the issue was client numbers. Because the clinic was seeking clients charged with relatively serious criminal offences, referrals from the Monash generalist clinics could not supply sufficient clients. Victoria Legal Aid, which funds the great majority of criminal trials, was willing to refer clients for psychological assessment by the clinic, but would not refer any part of the preparatory legal work. That left the Law students with insufficient work to retain their interest (or to justify the award of academic credit).

With the Sexual Assault clinic, there is no lack of clients (unfortunately) because they are referred by the Centre against Sexual Assault. The issue here is student demand. Of those students who have completed the generalist undergraduate subject, very few choose to take a subject specializing in legal issues relating to sexual assault. (It has been suggested that they may be wary of the reaction from employers.) Thus this clinic has enough clients but very few students and in some semesters has to rely on students staying on as volunteers.

Funding the cost of supervising staff, premises etc, is an issue never taken for granted. But it is itself usually dependent upon a satisfactory level of client demand, for government funding, or student demand, for University funding.

It is for these reasons that the Family Law clinic has been the most "successful" of the three Monash specialised clinics. As indicated earlier, the client demand is inexhaustible. Initial student demand, when the clinic was taking only those students who had completed the generalist clinical subject, was problematic; student may have felt that they had experienced sufficient family law already. The breakthrough came when it was decided to open the clinic to students taking the *Family Law* academic subjects. These students by definition have made the decision to take a *Family Law* subject and it may be that the four week placement is more attractive than the concept of working at the clinic for the whole semester. In any case these students are very keen to gain practical experience and each semester between 50 and 70 students elect to enrol in the placement. This therefore guarantees more than enough students to meet the client demand.

The third factor, funding, also differentiates the Family Law clinic from the others. With the grant of government funding, staff salaries are provided for and the University's contribution is relatively small in proportion to the popularity of the clinic with students and its significance as a form of University community service.

CONCLUSION

There is one remaining issue which most clinicians will be conscious of and which seems particularly pointed in the context of specialised clinics. Should we be filling the gap in public legal aid and thereby letting governments off the hook?

There is no easy answer to this question. At Monash our decision usually is the pragmatic one – it is extremely hard to turn clients away when their problems are real and pressing and we have the capacity to help them.

But it is slightly easier to live with this compromise in the context of the Monash philosophy that the educational needs and the legal needs of clients are equally important. As Adrian Evans has pointed out[17], 'students are encouraged to see that their own education and the empowerment of their clients are mutually dependent. The ethos here is that clients who acquire legal power from interactions with students legitimise the learning process for those students. The element of potential exploitation by students of their clients in the interests of the future income-earning potential of the students is to this extent diminished or eliminated.'

Bibliography

1. Specialised Clinical Legal Education begins in Australia (1996) 21(2) Alternative Law Journal 79, Evans, A
2. Litigants in Person – A Report to the Attorney-General (August 2000), Family Law Council
3. Community Legal Services expanded (3 May 1998) Media Release, Commonwealth Attorney-General
4. The Tyranny of Distance: Clinical Legal Education in 'The Bush' (2002) International Journal of Clinical Legal Education 64, Giddings, J & Hook, B
5. Internal working paper (1999), Family Court of Australia (Dandenong Registry)
6. O'Toole v Scott [1965] AC 939 (Privy Council)
7. Damjanovic v Maley [2002] NSWCA 230
8. An Evaluation of the Family Court Support Program at the Dandenong Registry of the Family Court of Australia (April 2001), Report to the Attorney-General of Australia (unpublished), Campbell, Susan & Shaw, Sally
9. Adrian Evans: an Australian perspective, Clinical Legal Education – Active Learning in your Law School , Brayne, Duncan & Grimes

17 *Adrian Evans: an Australian perspective in Brayne, Duncan & Grimes, Clinical Legal Education – Active Learning in your Law School pp.269–270.*