

Editorial

The 'No Apology' Apology

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Dear Colleagues,

It has been a very busy year so far and at the recent Association of Law Teachers conference I attended many sessions on wellbeing – for law students, practicing lawyers and for legal academics. This led me to think about my own wellbeing, the many strands of my work and how I position myself in relation to each strand. I love being the editor of this journal, discussing ideas, reading early drafts and managing the review process. It is an 'iceberg' process – there is much more going on under the surface than shows up in the issue and that's fine, except that in the final moments I have to construct an editorial and in those final moments I find I have little to say. The pieces speak for themselves, with their own eloquent voices and the process of introducing and linking them seems, to me, redundant. So this time, at least, I'm not going to do it. Please let me know if this significantly detracts from your enjoyment of the journal and I will reconsider it. Meanwhile, welcome to your late-blossoming Spring Edition.

Research Opportunity

Promoting Wellbeing through Clinical Legal Education

Calling all Legal Academics and Clinical Legal Educators!

Are you actively involved in teaching a clinical subject?

Have you taught a clinical subject in the past?

Have you contributed to teaching a clinical subject?

A research team at Monash Law Faculty would like to invite you to complete brief questionnaire which provides an indication of your motivational orientation. Your involvement will contribute to clinical legal education scholarship, and it will help the research team to explore ways in which clinical legal education might be associated with law student wellbeing. You may also benefit from reflecting on your own motivations for teaching!

For further information please contact:

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Clinical events

The Association for Canadian Clinical Legal Education (ACCLE) will be returning to Western University, Faculty of Law, for their 10th Annual Conference,

“Looking Back, Moving Forward: Future Challenges for Clinical Legal Education in Canada”.

June 12-14, 2019.

ENCLE – IJCLE 2019

Comenius University, Bratislava, Slovakia

3-5thJuly

Improving the Future: using Clinical Legal Education to educate Lawyers for a Just Society

In this year’s conference we look at a core goal of Clinical Legal Education – Justice. As the world faces unprecedented challenges in terms of climate, challenge to the rule of law and political and social upheaval, the conference provides an opportunity to consider and plan for the role of Clinical Legal Education in this new environment.

As always papers are welcomed from the broad spectrum of Clinical Legal Education and particularly on the following themes:

- The role of Clinic in maintaining liberty rights and advancing the rule of law
- Climate change and environmental justice through Clinical Legal Education
- Educating future lawyers – in what ways can clinic shape future lawyers’ aspirations and contributions to a just society?
- Researching the impact of clinic
- Interdisciplinary approaches to advancing justice and educating for a just society

- Technological innovation in the pursuit of a just society: access and information for all in the law

Conference Registration still Open

GAJE Worldwide Conference to be held in Indonesia 4-10 December 2019

Here are the particulars (full details, including the online registration form, can be found on the GAJE website at: www.gaje.org/2019_conference_home).

Location and format: The conference will take place on the campus of Pasundan University in Bandung, Indonesia (approximately 100 miles southeast of the Jakarta International Airport). The conference will consist of two parts: 1) a General Conference with plenaries and concurrent sessions on various themes and topics (4-8 December); and 2) a Training-of-Trainers (TOT) workshop on practical aspects for implementing justice education, including clinical teaching methods (9-10 December).

Conference theme and streams: The overall conference topic is “The Inspiration and Diversification of Justice Education”; sessions will be organized into fourteen thematic streams:

- o Achieving Greater Rule of Law and Access to Rights and Justice for Marginalized, Excluded or Vulnerable Clients/Communities (such as persons with HIV, disabilities, migrants etc.) through Justice Education
- o The Science of Learning: Latest Developments and Challenges - multiple and multidisciplinary approaches from neuroscience, psychology, medicine, pedagogy, etc.

- o Legal Empowerment and Justice Education (this includes Community Legal Education/Legal Literacy/Street Law)
- o Pro Bono and Justice Education
- o Academic Writing/Scholarship and Justice Education (research design, interdisciplinary research, measuring impact of justice education, etc.)
- o How To – Sharing Best Teaching Methods, Information Technology and Innovative Ideas for Justice Education
- o The Development and Sustainability of Justice Education Initiatives
- o Justice Education Collaboration (networking, multidisciplinary collaborations, international and cross-border projects, etc.)
- o Professional Responsibility, Legal Ethics, and Professional Identity Formation
- o Through Justice Education
- o Justice Education from the Students’ Perspectives
- o Well-being and Reflective Legal Practice
- o Cross-cultural Lawyering and Justice Education
- o Achieving the Sustainable Development Goals through Justice Education
- o The Justice Education Inspiration Hub: (Justice Education Posters/Banners)

Fees, waivers and grants: The registration fee is \$US 350 for the General Conference and \$US 425 for both the General Conference and the Training-of-Trainers (TOT) workshop. (Starting on September 15 there will be late fees of \$US 425 for the General Conference and \$US 500 for both the General Conference and the TOT workshop.) Persons who cannot pay the full conference fee can request a fee waiver or a fee reduction by completing a special section of the registration form. GAJE also provides a limited number of grants for travel and accommodations.

PLEASE NOTE THE FOLLOWING DEADLINES: **The registration deadline is 1 November.** HOWEVER: The deadline for applications for travel/accommodation grants (including those requesting both a grant and fee waiver/reduction) **is 1 June;** the deadline for submission of proposals is also **1 June;** the deadline for applications

requesting only a fee waiver/reduction (that is, without also requesting a grant) is **1 August**.

If you have any questions about the registration process or seek clarification of any conference policies or instructions, you may send an email to registration@gaje.org.

Further information about GAJE's past eight worldwide conferences is available on the GAJE website at www.gaje.org/conferences/past-conferences.

ENHANCING EMPLOYABILITY THROUGH STUDENT ENGAGEMENT IN PRO BONO PROJECTS

Sarah Blandy, University of Sheffield, UK*¹

Abstract

This paper discusses the findings of a survey carried out by the School of Law at the University of Sheffield, placing it in the context of international research on links between student participation in pro bono projects, and employability. The aim of this survey was to establish whether students' pro bono experiences assist them in obtaining training and employment. Over the summer of 2016 a survey was sent to current students and to alumni who were (or had been) volunteering at one of the two longest-established pro bono projects run by the School of Law. The paper explains how the survey was designed, conducted and analysed, and discusses the methodological issues which arose. Although the original aims of the research were not achieved, and perhaps could never have been, the responses to the surveys yielded very useful and rich data. No direct questions were asked about skills development, but the respondents' unanticipated and unsolicited qualitative comments can be positively mapped onto the key skills and attributes that constitute 'employability'. The findings set out here therefore add to the small amount of existing literature about student perceptions of how their experiences as pro bono volunteers assist them through placement, training and employment application processes.

*Sarah Blandy is Professor of Law in the School of Law, University of Sheffield. The author would like to offer thanks for the funding provided by the University of Sheffield; to Amy Murphy and Emilie Sylvester, the final year students who administered the surveys and made a preliminary analysis of the results; to all the members of staff in the School of Law who assisted in compiling lists and encouraging survey responses; and not least to the students and alumni who completed the survey.

INTRODUCTION

An increasing amount of time, effort and resources is invested in university law clinics. In 2014 a survey carried out for LawWorks² showed that over 70% of UK law schools were then running some form of pro bono legal clinic involving around 10,000 students; and 35% offered more than one type of clinic (Dignan et al, 2017, pp. 3 and 4). This activity was broadly defined as ‘a structure that delivers pro bono work that is organised (but not necessarily delivered) by a law school’ (ibid; p. 3). Although university law clinics in the UK are unregulated (Thomas, 2017), they aspire to the highest professional standards. The work of 79% of these clinics is supervised by ‘a qualified barrister or solicitor with a full practising certificate – be it a member of academic staff or a lawyer external to the law school’ (Dignan et al, 2017, p. 8).

The School of Law at the University of Sheffield, a Russell Group³ university in the UK, is no exception to this trend. Its student pro bono opportunities have been expanded and enhanced over recent years, at least partly because of an underlying assumption that these opportunities enhance students’ career prospects. This paper reports on a survey carried out in 2016 which aimed to explore the links between student experiences of pro bono volunteering and their employability. The term ‘employability’ has been defined as a ‘set of achievements, understandings and personal attributes that make individuals more likely to gain employment and to be

² LawWorks is a UK charity that aims ‘to connect people in need of legal advice with the skills and expertise of lawyers willing to meet those needs for free, by supporting a network of local independent pro bono clinics’. <https://www.lawworks.org.uk/> [accessed 29 August 2018].

³ The Russell Group comprises 24 leading, research-intensive UK universities; see <https://russellgroup.ac.uk/> [accessed 10 February 2019].

successful in their chosen occupations' (Yorke, 2006: 8). Although, as explained later, Sheffield law school offers a wide pro bono programme, the survey only included those current students and alumni who were volunteering, or had done so, at the two longest-established pro bono projects. This was in order to capture any differences amongst those with similar experiences, over ten years.

The paper is structured as follows: further details are given about Sheffield university's pro bono programme and the opportunities it offers to law students, setting this programme within UK and international contexts. Then the existing research literature on links between CLE or pro bono and employment is reviewed, followed by an outline of research and guidance about skills and attributes linked to employability. The paper then discusses the methodological issues raised when designing research into the impact of pro bono involvement on student employability, before turning to the Sheffield survey and a presentation of its research methods, challenges and findings. In the final section of the paper some conclusions are reached.

PRO BONO OPPORTUNITIES AT SHEFFIELD

Although a large majority of UK law schools offer their students the opportunity of involvement with practical law projects, the form that these projects take is varied. All university law pro bono projects must strike a balance between offering an acceptable standard of service to clients, and enhancing the learning opportunities for their students. However, there is no consensus amongst university law clinics as to whether students' CLE activities should be part of their assessed degree programme, or

whether involvement should be voluntary. Similarly, practice and opinions are divided as to whether any module associated with pro bono work should be compulsory or elective. The terms used are also varied. University-run projects are often referred to as 'clinical legal education' (henceforth 'CLE'), because they are embedded in the curriculum, and fully assessed. For a full discussion of the differences between CLE and pro bono, see Corker (2005) and Cantatore (2015). However, the Sheffield pro bono programme does not conform to all the characteristics identified by these authors, in particular, the emphasis on 'community service'. At Sheffield the term 'pro bono' has always been used, rather than CLE.

In 2008 the two first Sheffield pro bono projects were established: the FreeLaw clinic, which offers advice on civil legal matters, and the Miscarriages of Justice Review Centre (the 'MJRC', formerly known as the Innocence Project). The School now allocates around two hundred places a year at ten pro bono projects through a very competitive selection process for student volunteers (both undergraduate and postgraduate). Four projects are run in-house and the School has established formal links with six externally-run projects, which include the Citizens Advice Bureaux and the Sheffield Refugee Law and Justice project.

All the School's pro bono projects are extra-curricular. However, an optional assessed module has been run for final year undergraduate students volunteering at FreeLaw or MJRC. From 2016-17 this module has been made available to students volunteering at other pro bono projects run by or associated with the School of Law. The module is assessed in part through portfolios in which students reflect critically on the skills

developed through their pro bono experiences, a widely accepted form of assessment amongst university law schools that offer pro bono projects or CLE (Hyams, 2010).⁴

It may be useful to provide some further detail about how FreeLaw and the MJRC operate, to make sense of the survey responses from current or former student volunteers at these two projects. The Sheffield model of pro bono differs from that of many other universities because it is student-run. At both MJRC and FreeLaw, two student managers have overall responsibility for the work of the other student volunteers under the guidance of the part-time Co-ordinators of each project, who are members of the Law School staff. The students are organised into groups, with more experienced pro bono volunteers acting as group leaders who are responsible for the management of their group's cases.

The criminal cases taken on by the MJRC concern convictions for serious crimes (mostly murder). Students work on their group's case, reviewing the large amount of accompanying documentation, with the ultimate aim of persuading the Court of Appeal to review the case and consider overturning the client's conviction. The MJRC project director attends weekly meetings of the student teams, and guides their research. In comparison with the MJRC, the Freelaw clinic deals with a large number of civil cases, but these tend to be much less complex. The clinic does not offer advice

⁴ Students also have to make a presentation to their seminar group about the development of one of those skills; and write an academic essay about the context in which legal advice and support is provided.

on financial issues, welfare benefits and immigration problems, but takes on a wide range of other non-urgent civil matters.

Most UK university law clinics adopt one of two alternative models. The first model can be described as running a 'drop-in' clinic, in which clients attend without appointment and are interviewed by students who usually do not know the nature of the client's problem in advance. In the second model, the clinic's cases are 'pre-vetted': potential clients telephone or email in advance, often during a restricted period of time immediately before each semester, and a member of academic staff decides which cases are suitable to take on. In both of these models, students interviewing clients are often supervised by university staff or by external lawyers who assist the project on a volunteer basis.

FreeLaw has adopted the 'drop-in' clinic model. However, no supervision is provided for student interviews with clients, either by members of staff or by external lawyers involved with the project. Students are instructed never to offer advice at the interview. They take down factual information from the client, and obtain further relevant details and documentation. The students then research the legal issues and may seek guidance from the Co-ordinator or other members of law school staff. Letters of advice drafted by students are uploaded to the Case Management System. One of the FreeLaw Directors, both of whom have practising certificates and are covered by professional negligence indemnity insurance, provide comments on accuracy, content, structure and clarity before giving final approval for the advice letter to be sent to the client. The aim is for this advice to be provided within fourteen days.

RESEARCH INTO LINKS BETWEEN CLE / PRO BONO AND EMPLOYMENT

One of the aims of university CLE and pro bono projects is to facilitate students' development of 'lawyering skills' and professional responsibility (see for example Foley et al, 2012). However, surprisingly little research has been published on the issue of whether involvement in CLE or pro bono experience assists with developing students' employability in reality, despite 'the increasing importance seemingly attached to the ... ever-present employability agenda' by university law schools in the UK (Carney et al, 2014, p. 33). One explanation for this might be that, when asked about the relative importance of the reasons for running pro bono projects, nearly all (94%) of the law schools which took part in the 2104 LawWorks survey rated 'educational value' as a very important aim, as compared with 75% who rated 'employability' similarly highly (Dignan et al, 2017, p. 4).

A systematic search of the past ten years' issues of the *International Journal of Clinical Legal Education* found no articles on this topic which related to the UK, although articles had been published on the link between employability and professional skills development by law students in Australia (Cantatore, 2018) and in Nigeria (Mokidi and Agbebaku, 2012). The recent article by Cantatore (2018) sets out the findings from the author's survey of two cohorts of law students at Bond University, Australia. The first group were involved for one semester in pro bono activities, and the second were not. This research provides interesting points of comparison with the Sheffield survey, as it uses the same definition of employability (Yorke, 2006) and measures responses against the skills listed in the Australian Graduate Employability Survey (Oliver et al,

2011) supplemented by work by Kuh (2001) in the US, and by Coates (2009) in Australia. Cantatore's skills list is similar to the graduate skills and attributes compiled by the Higher Education Authority in the UK (see Buckley, 2015), which provides one of the measures referred to in this article. This list is set out in a subsequent section, and more detailed methodological comparisons with Cantatore (2015) will also be discussed subsequently.

CLE is well-established in US universities⁵; over many years research has been published asserting the benefits of CLE for student employability. More recently, research by Yackee (2015) surprisingly suggested the opposite. However, Kuehn (2015) has comprehensively critiqued Yackee's statistical findings, pointing out a fundamental confusion between correlation [two factors appear to develop at the same time and follow the same trajectory] and causation [one factor has caused the other]. Kuehn then goes on to discuss other forms of evidence, including the fact that many employers in the US 'identify law clinic experience as a positive factor in hiring', and that new employees give weight to their clinic experience as a factor in successful job applications (ibid., p.660), which support the widely-held view that CLE enhances student employability. Kuehn's work will be referred to again in the discussion of methodological issues.

In the UK, currently there seems to be only anecdotal evidence that UK students' employability is enhanced through pro bono projects, and through the self-reflection

⁵ It should be borne in mind that in the USA, Law courses are open only to postgraduates.

about skills development which is required by the associated modules offered at many UK universities, including Sheffield. Only one systematic attempt in the UK to collect evidence of the link between pro bono experience and employability has been identified, the survey carried out by the Personal Support Unit (PSU)⁶. The PSU runs an ongoing national survey targeted at its 'student alumni' who have been volunteers. Analysis of responses to the PSU's 2015 survey, which is the most recent available, found that 87% of the respondents were in employment. Of the 69% of former PSU volunteers now employed in the legal sector, all felt that their experience as a PSU volunteer had helped them to secure either pupillage, or a training contract or employment (PSU, 2015).

A valuable recent UK research project focused on the perceptions of legal employers about CLE, rather than on student experiences (Thomas, 2018). The graduate recruitment webpages of the top 50 UK law firms were analysed. None of these included CLE (or pro bono) as an example of experience sought in future trainee solicitors, although 'nearly three-quarters' of those firms mentioned 'their own pro bono and/or corporate social responsibility activity' (ibid. p.138). Telephone interviews were also carried out with recruiters from two barristers' chambers, a law centre, six of the top 25 UK solicitors firms, seven international firms, ten regional firms, and five legal aid organisations. These revealed that employers 'certainly were

⁶ See <https://www.thepsu.org/volunteer/student-alumni-survey> [accessed 10 February 2018]. The PSU is a national charity which provides assistance at family and civil courts to litigants in person, witnesses, and other inexperienced court users. The PSU in Sheffield is one of the external pro bono projects which selects students from the School of Law as volunteers.

not familiar with the term “clinical legal education” (ibid., p.137). However, once provided with some information about CLE, the recruiters could easily identify skills and attributes likely to be developed in students taking part. The majority of interviewees seemed to understand CLE as similar to a placement at a law firm or chambers, but considered that taking part in CLE would provide a more valuable experience as students had direct contact with clients. Thomas concludes that the term ‘pro bono’ should be adopted instead of CLE, and that universities should do more to educate legal employers about their clinics and the professional standards adopted in them. She also suggests that students should be helped to reflect on their skills development through involvement in pro bono, and how to present this most effectively to prospective employers (Thomas, 2018).

This overview of the research literature on the development of employability by students involved in CLE and pro bono indicates that there is scope for more research in this area, particularly in the UK. It is in this context that the Sheffield survey and findings are discussed in this paper. First, the definition of employability itself is considered.

EMPLOYABILITY AND SKILLS DEVELOPMENT

A general survey of UK employers found a gap between their expectations of trainees and employees and the reality, for both ‘hard’ and ‘soft’ skills:

‘Skills related to operational aspects of the role, as well as complex analytical skills, were the main technical and practical skills lacking. The

main people and personal skills lacking pertained to time management, management and leadership, and sales and customer skills’.

(UK Commission for Employment and Skills, 2016, p.4).

Although presented at a more abstract level, a similar emphasis is apparent in the ranked ‘top ten skills’ which global employers will be seeking in 2020:

1. Complex problem solving
2. Critical thinking
3. Creativity
4. People management
5. Coordinating with others
6. Emotional intelligence
7. Judgement and decision-making
8. Service orientation
9. Negotiation
10. Cognitive flexibility

(World Economic Forum, 2016; henceforth ‘WEF’).

It is noticeable that in this list attributes such as creativity, and ‘people skills’ such as emotional intelligence and the ability to co-ordinate with others, take priority over hard skills. Indeed, in relation to cognitive skills, the most desired attribute is apparently flexibility rather than detailed subject knowledge. These observations of employers in general are important, particularly as law graduates do not all seek, or are able to obtain, employment in the legal sector. According to the UK Higher Education Academy, all university graduates should have acquired the following skills during the course of their degree:

- Thinking critically and analytically
- Writing clearly and effectively
- Speaking clearly and effectively
- Analysing numerical and statistical information
- Independent learning
- Innovation and creativity
- Working effectively with others
- Developing and clarifying personal values
- Understanding people of other backgrounds
- Exploring complex real-world problems

(Buckley, 2015).

Interestingly, although all the above skills can be seen as contributing to employability, the Higher Education Academy's UK Engagement Survey treats 'acquiring employability or career skills' as an additional, stand-alone skill. Analysis of responses from more than 35,000 undergraduates to the 2017 survey found that: 'The one exception to the [upward] trends on skills development is the **decline in the proportion of students who are acquiring career skills**, which has fallen from 51% last year to 49% this year' (Neves, 2017, p.14; emphasis added).

The HEA survey established that employability skills, as well as engagement in real-world problems, were better developed in students who participated in extra-curricular activities (Buckley, 2015, p.21). A similar effect was found in students who volunteer, leading to a particularly marked positive difference in 'being an informed and active citizen, developing personal values, and acquiring employability skills'

(*ibid.*, p.23). It seems therefore that volunteering at pro bono projects as an extra-curricular activity should enhance students' acquisition of key skills.

Further, according to the HEA survey (*ibid.*), students' positive perceptions of their skills development were closely related to four other factors:

- collaboration with other students;
- interaction with teaching staff;
- engagement in research; and
- reflection on what they had learned.

These are all features of pro bono volunteering at Sheffield. The way that FreeLaw and MJRC are organised requires collaboration with other students to work on the cases in groups. Student interaction with staff is an essential aspect of these pro bono projects, whereas the 2017 HEA survey found that only 19% of all students had worked with staff outside the requirements of their degree course, a reduction from previous years (Neves, 2017, p.26). Engaging in research, as student volunteers do when working on pro bono cases, is a particularly important activity which has 'the strongest relationship with developing the skill of being innovative and creative' (Buckley, 2015, p.17). Creativity is one of the top three skills identified by global employers, as listed above (WEF, 2016). The optional pro bono module offered at Sheffield requires critical self-reflection, and the students also benefit from individual supervision sessions with their tutor, which is an integral aspect of the teaching methods for that module.

Employers in the legal sector are looking for 'hard' skills such as subject-specific knowledge, as well as the more general, transferable or 'soft' skills already mentioned.

For example, Hammad Akhtar, a graduate recruitment and corporate partner at Ashurst solicitors, told *The Guardian UK 300* (the group of top 300 graduate employers, as voted for by students) that he looked for 'technical legal ability, commercial instinct and analytical ability... communication and team working skills ... and motivation, determination and drive' (TARGETJobs, 2018), an interesting combination of hard and soft skills and attributes.

The UK's Solicitors Regulation Authority reflects this combination in their *Statement of Solicitor Competence*, which is organised under the broad headings of 'Ethics, professionalism and judgement; Technical legal practice; Working with other people; Managing themselves and their own work' (Solicitors Regulation Authority, 2015).

For many law students, engagement with the legal profession starts at university when they apply for (and undertake, if selected) vacation placements and mini-pupillages. Most law schools in the UK provide tailored careers advice, but information is not available about the content of this advice, nor about the proportion of law students who take advantage of it. Anecdotally, however, it is well-known that many students make use of the online advice that is available for those seeking training and employment in the legal sector. The following skills and attributes, presented as those sought by commercial law firms, appear in many similar online sources:

- commercial awareness
- attention to detail
- time management

- resilience and self confidence
- organisational skills
- genuine interest in and broad knowledge of the law
- sensitivity and integrity
- articulacy
- discretion and trustworthiness

(list compiled from Smith (2017); and <https://www.monster.co.uk/>).

The literature on the benefits of CLE claims that it provides students with the opportunity to develop most of the skills and attributes discussed in this section (see for example Thanaraj, 2016). The aim of the Sheffield survey was to see if a link could be established between involvement in a pro bono project, development of these skills and future employment. The next section of the paper provides an overview of the methodological issues raised by this type of research.

RESEARCH DESIGN AND METHODOLOGICAL ISSUES

Kuehn (2015) discusses the methodological difficulties of designing research which might establish a statistically significant correlation between a student's involvement in any given US university law clinic and their subsequent employment. He identifies problems of 'conjecture about cause and effect, uncertainty about the underlying data, variability from year-to-year, conflicting control variables, and differences among schools and their employment markets' (ibid.; 663). He suggests that instead of

'attempting to create a nationwide predictive model, studies could best be done on a school-by-school basis by, for example, surveying

likely employers to find out what educational experiences of students are most valued. Schools also could retrospectively look at various employment outcomes for graduates and any relationship to their experiences while students.' (ibid., 664)

As noted above, Thomas (2018) has carried out a survey of prospective UK employers. The Sheffield survey was designed to meet Kuehn's second point about graduate employment and the link between these outcomes and experiences as students. In addition we wished to find out more about the experiences of current students who apply for vacation placements and training contracts while still at university, and the outcomes of those applications. Therefore there were two cohorts whom we wished to reach in the Sheffield survey: the first consisting of all students currently volunteering at FreeLaw or MCRJ; the second of alumni who had volunteered at either project during the previous ten years.

Once ethical approval had been obtained, two students were recruited to assist with administering the survey. SurveyMonkey⁷ was chosen for the survey instrument as it provides a free online survey with built-in tools for analysing the data and for creating graphic representations of the quantitative results. Contact details were compiled from various sources, resulting in 105 names on the list for the first cohort (current students), and 136 for the second cohort of alumni. A standard form of words was prepared, introducing the project and asking respondents to complete the survey, with links to SurveyMonkey and to the information sheet for the project. This message

⁷ See <https://www.surveymonkey.com/> [accessed 10 February 2019].

was emailed to the first cohort, and sent through LinkedIn to the second cohort, during summer 2016. The surveys remained open for three months, from May to July. The survey's substantive questions asked each participant whether they (had) volunteered at Freelaw or at MJRC, and if so for how many years. The respondents were asked for their views on whether *'volunteering at the pro bono project [or taking the pro bono optional module] while at the School of Law was a help in gaining training /employment in your chosen field [and/or] in securing any training / employment'*. Respondents were invited to explain each of their answers in a 'free-text box' on the survey form.

Problems with the research design for some participants in the first cohort became apparent when analysing the responses. For example, some respondents replied 'no' to the question about training, but said in answer to the question about employment that volunteering with FreeLaw had helped them to obtain a vacation scheme place. There was obviously some ambiguity about whether vacation schemes were perceived as training or as employment, which had not been foreseen when drafting the questions. With hindsight, the substantive questions for the first cohort should have asked separately about vacation placements and training contracts, and asked separate questions about training and employment outside the legal sector. Further, some current students seemed to have answered the question *'Has pro bono volunteering helped in securing employment?'* on the basis of what they believed *would* be the case in future, rather than on the basis of their actual experience. Similarly, some participants in the first cohort gave positive responses to the question about whether

the module had assisted them in securing training or employment, when it was clear from a previous answer that they had not yet taken the module.

The final response rates were 22% for the first cohort (23 full responses) and 21% for the second cohort (29 full responses). The response rate for the first cohort was disappointing, as these were current students who received two further emails prompting them to complete the survey before its closing date. However, the survey was not well-timed for this cohort as it coincided with revision and assessment periods followed by the vacation. The low response rate for the second cohort was anticipated, as they were alumni who had left university some time ago. It might have been possible, with considerable time and effort, to obtain responses to the Sheffield survey from almost all the listed individuals in both the first and second cohorts. However, given the resources available, this was not feasible.

The research design allowed for the results to be analysed by various variables: according to whether each respondent had been involved in the MJRC or in FreeLaw; the length of time they had been a volunteer; and (for the second cohort) their year of graduation. However, as the overall numbers were so low, this depth of analysis was not considered worthwhile. In both cohorts there were more survey participants from FreeLaw than from MJRC; there are over twice as many student places available each year at FreeLaw (currently 80 places) as at MJRC (currently 45 places). In the survey's first cohort there were 16 participants who were FreeLaw volunteers and 7 MJRC volunteers. As this cohort's experiences are more recent we thought it may be of interest to distinguish their responses between FreeLaw and MJRC, but it seemed

irrelevant to distinguish between the second cohort respondents by project, as so few of them had volunteered at the MJRC.

The most significant contrast with the surveys carried out by the PSU (2015) and by Cantatore (2018), was that the Sheffield survey did not include any direct questions about development of skills or attributes. The PSU survey asks '*What benefits did volunteering with the PSU have on your life?*', to be answered on a yes/no basis against eight pre-set responses. These are set out below, with the percentage of respondents who agreed that their experience of volunteering with PSU had:

- Improved client skills (82%)
- Raised awareness of the diverse range of people who require legal advice (76%)
- Improved listening skills (71%)
- Improved understanding of the legal system (71%)
- Practical application of what I learnt on my law course (68%)
- Raised awareness of how important it is to get legal advice (66%)
- Provided good first-hand examples of real life experience for job applications and/or interviews (62 %)
- Provided direct exposure to a range of court cases (59%)

(PSU, 2015).

The PSU survey report does not disclose response rates, making it difficult to assess the significance of, for example, 82% of the total when this could represent 100 or 1,000 respondents. Further, surveys from the years subsequent to 2015 have not been made publicly available although the survey is still ongoing, so no conclusions can be drawn about any trajectory over time.

It is also instructive to compare the research design of the project described by Cantatore (2018). Her survey was administered twice, in weeks four and 12 of the semester in which students were taking part in pro bono projects, to capture an increase or decrease in each respondent's perception of their level of competence in relation to specified key skills (the list discussed earlier). There were 33 respondents, participating in four different pro bono projects. The same survey was administered to a control group of 34 students who were not taking part in pro bono projects. These two comparisons, over time and between groups, enable Cantatore to demonstrate that the pro bono group of students showed a far higher average increase in self-assessed competence than the control group, over the same period of time. The students involved with the Commercial Law Clinic are reported as showing a higher average increase over time than volunteers at the other projects. However, this last finding cannot be considered robust due to the low numbers (either four or five) participating in each of the other projects.

The use of a control group is excellent research practice, but in reality it would be very difficult to set up a genuine control group for such research. The students who participate in CLE or pro bono projects which are not a compulsory element of their degree programme, tend to be more motivated than their peers. If there is in addition a selective recruitment process, as at Sheffield, the chosen students will already have acquired more impressive and relevant skills, including the ability to learn quickly when given the opportunity. These factors may at least partly explain the difference

in average increases in self-assessed competence, between the pro bono students and members of the self-selected control group in Cantatore's research (2015).

A genuine control group could only be achieved at Sheffield by recruiting twice as many students as needed for the pro bono programme over a period of several years, without allowing this to become public knowledge. Each year the group of selected students would then be randomly divided into two. The first half would be allocated to their chosen pro bono project, and the second half would be denied that opportunity. This would of course be wholly unethical. All students, from both groups in each year, would be followed for the next ten years to research the comparative impact on their employability of (non-)involvement in pro bono programmes at university.

Cantatore (2018) incorporated a more qualitative element in her research. Once students had completed their semester at a pro bono clinic, they were invited to complete an anonymous SurveyMonkey survey about their experiences 'and to provide detailed feedback if they choose to do so' (ibid., 164). Although neither the response rate to the survey nor how many students chose to provide feedback in this way is made explicit in the paper, the survey provides useful information about student perceptions of their own skills development. Several illustrative extracts from students' responses are included in the article, and cross-referenced to skills such as 'knowledge, writing, speaking and problem-solving' (ibid., 167-168).

All the Sheffield survey respondents were also self-selected – as indeed were the PSU survey respondents (PSU, 2015). Self-selected research participants are often those

who are motivated to complete the survey because they hold strong views on the topic, and/or because they feel indebted in some way to the people or institution conducting the survey; the research outcomes may therefore be biased (Sterba and Foster, 2008). Thus the Sheffield survey captured the views of a minority of students who have volunteered at the law school's pro bono projects over the past ten years. The survey respondents were likely to be students and alumni who felt they had gained from the experience of pro bono volunteering. This does not mean that their views are not valuable, rather that they are not necessarily representative of all past and current student volunteers at FreeLaw and MJRC. In particular it should be noted that the views expressed in respondents' own words and quoted in this report have been taken primarily from those who felt that pro bono volunteering had assisted them in their progression towards a career, or in obtaining promotion within that career. It could therefore be assumed that these students and alumni are the success stories.

Bearing that caveat in mind, a number of important findings can nevertheless be drawn from the survey results about the link between pro bono volunteering at Sheffield, and employability.

ANALYSIS OF THE SHEFFIELD SURVEY RESPONSES

For the methodological reasons discussed above, reliable quantitative data could not be derived from this survey. Instead, its value derives from the very rich data collected on respondents' views about their pro bono experiences. In the absence of direct

questions about skills and attributes associated with employability, it was very striking that most respondents, from both cohorts, chose to expand on this aspect of pro bono volunteering in their explanations. They used their own words without any suggestions or prompting, in contrast to the PSU survey where participants must agree or disagree with set statements, and to the quantitative element of Cantatore's research in which students were asked to assess their competence against a stated list of skills and attributes.

The comments reproduced here come from the survey participants who specifically gave their consent for their words to be published, anonymously. The quotes can be identified by the following abbreviations:

'FL1': current FreeLaw volunteer, in the first cohort of the survey;

'MJRC1': current MJRC volunteer, in the first cohort of the survey;

'PB2': previous volunteer at either of the two pro bono projects, now graduated; in the second cohort of the survey.

It was clear from many of the survey responses that pro bono volunteering allows students to discover and experience for themselves the long-established difference between 'law in books' and 'law in action' (Pound, 1910). Current students are very appreciative of the opportunity to get involved in 'authentic legal cases' (FL1). One respondent wrote: 'This is serious work, working with proper documents, dealing with actual people's lives' (MJRC1). Another commented positively that 'it [MJRC] creates quite an "employment" atmosphere', explicitly making the link between pro bono experience and employability. These views mirror those expressed by Cantatore's research participants (Cantatore, 2015 and 2018).

The pro bono projects at Sheffield provide a rare opportunity for those students selected as student managers and group leaders to develop skills in managing people: 'I've learnt to delegate appropriately and take control in situations when necessary, but still have awareness for the voices and opinions around me' (MJRC1). An emphasis on teamwork and organisational skills was particularly noticeable in respondents from the first cohort who were MJRC volunteers. One respondent commented on having grasped the importance of 'relying on others and working with others to ensure a task is done. You need to learn to value the opinions of others and listen to what they have to say, accepting that your way may not always be the best (increasing trust).' (MJRC1).

Many in the second cohort of respondents are now in employment and can look back with some perspective on the skills they developed through pro bono volunteering. One described these as 'very transferable' (PB2), while another participant commented that 'I took these skills with me to my following roles after university' (PB2). The value of the 'opportunity to get advice from practitioners' (PB2) as a pro bono volunteer was cited by a second cohort respondent, but not by any of the first cohort participants who may not yet appreciate the benefits, which the HEA survey results indicate are particularly significant in developing employability skills (Buckley, 2015). Some second cohort participants compared their pro bono experience positively with low-level posts in the legal sector; for example, one respondent commented on the value of having 'experience in case management which you don't get as a legal

secretary or junior paralegal' (PB2). Such posts can be an important stepping stone towards obtaining a training contract.

Analysis of the free-text answers made it possible to map the skills and attributes which were mentioned onto the lists previously discussed (WEF, 2016; Buckley, 2015; Smith (2017). The participants in the Sheffield survey may not have used exactly the same term for each particular skill, so some interpretation has been necessary in the mapping process, and of course there is no suggestion that any one participant mentioned all the listed skills.

Table 1: Comparison of skills mentioned by participants in the Sheffield survey, with skills listed by the World Economic Forum (WEF), Online legal careers advice, and the UK Higher Education Authority (HEA)

WEF	Survey	Online careers advice	Survey	HEA	Survey
Complex problem solving	✓	Commercial awareness	x	Thinking critically and analytically	✓
Critical thinking	✓	Attention to detail	✓	Writing clearly and effectively	✓
Creativity	✓	Time management	✓	Speaking clearly and effectively	✓
People management	✓ (for some)	Resilience and self-confidence	✓	Analysing numerical and statistical information	x
Coordinating with others	✓	Organisational skills	✓	Independent learning	✓
Emotional intelligence	✓	Genuine interest in, and broad knowledge of the law	✓	Innovation and creativity	✓
Judgement and decision-making	✓	Sensitivity and integrity	✓	Working effectively with others	✓
Service orientation	✓	Articulacy	✓	Developing and clarifying personal values	Unclear

WEF	Survey	Online careers advice	Survey	HEA	Survey
Negotiation	Unclear	Discretion and trustworthiness	✓	Understanding people of other backgrounds	Unclear but probably
Cognitive flexibility	✓			Exploring complex real-world problems	✓
				Becoming an informed and active citizen	Unclear but probably
Definite evidence from survey responses	9/10		8/9		7/11
Probabable	1/10				3/11
Total	10/10		8/9		10/11

‘Analysing numerical and statistical information’ and ‘Commercial awareness’ were the only two skills and attributes listed above which were *not* specifically mentioned in survey responses. This is understandable given that student volunteers at the Commercial law clinic run at Sheffield were not asked to take part in the survey. However, the respondents from FreeLaw and MJRC were aware that they were acquiring ‘important skills that can be transferred into a commercial law environment, e.g. filing, teamwork, leadership and working to a deadline’ (MJRC1). In terms of developing self-confidence, cognitive flexibility and problem-solving skills, one respondent noted that ‘FreeLaw opens you up to various areas of law and pushes you to work outside your comfort zone’ (FL1). In addition to the skills listed, the survey

respondents also identified a range of 'hard' skills relevant to legal careers, such as legal research, dealing with clients, interviewing, drafting letters and legal documents.

LINKING SKILLS TO EMPLOYABILITY

As explained above, it was not possible - given the low response rates and the sometimes contradictory responses from participants in the first cohort - to derive any statistically reliable correlation between volunteering at either pro bono project and the respondents' subsequent training or employment. However, quantitative results from the first cohort survey results show that 91% (21 out of 23) considered that pro bono volunteering had assisted them in securing placements, training, employment or promotion. For the second cohort the comparable rate was 86% (25 out of 29). This difference could be explained by improvements in the organisation and delivery of the pro bono projects by the law school year on year, or it might be a result of the optimistic expectations of current students in the first cohort who had not read the question accurately.

Survey respondents were asked about their future, current and past placements, training and employment, although a significant proportion chose not to answer this question. In the first cohort, several top UK and international law firms were mentioned. Respondents in the second cohort reported on a range of employment. Three were working as qualified solicitors; thirteen as trainee solicitors, and five in a paralegal capacity - of whom two would be shortly moving on to training contracts. Another respondent from this cohort was a postgraduate researcher; one was working

as a policy adviser, and another as a teacher. The law firms mentioned by participants from the second cohort included four of the five law firms with London headquarters, informally known as the Magic Circle: the top performers in terms of profitability, revenues and international work.

Several survey participants felt that their pro bono experiences had been the key to their success, stating for example that volunteering had 'helped me with my professional development in securing and being successful in criminal law placements' (MJRC1); 'it's got me a vacation scheme at my dream firm. It helped with the assessment centre' (FL1); and 'volunteering at the FreeLaw clinic was invaluable in securing a training contract' (PB2).

Participants' perceptions of how employers view pro bono volunteering

Sheffield, like many law schools, has good links with employers. Regular discussions are held to identify what employers are looking for in the recruitment process. The survey respondents provided first-hand accounts of assessment processes and interviews for placements and/or for positions as trainees and employees, from 'the other side of the table'. Many participants in the survey offered their views on how much employers appear to value pro bono experience; for example:

'I have had many training contract interviews recently and the interviewers all asked me about my time volunteering at the FreeLaw clinic and were very interested in the sorts of things I did. My general feeling was that they found it very impressive' (PB2).

More specifically, it seems that 'employers love people with client experience' (FL1), treating this as a proxy for having acquired relevant hard skills. Further, 'employers are always interested in these soft skills' which are associated with involvement in pro bono projects (MJRC1). The comment that 'voluntary work is usually looked at positively' (PB2) chimes with other explanations that pro bono volunteering 'demonstrates interest and passion to employers'(MJRC1), and that it 'will always stand out on a CV as it shows not only a genuine interest but willingness to help others with no financial gain. This selflessness is really attractive to employers' (MJRC1). Survey participants also thought that the type of legal work undertaken at FreeLaw and MJRC would be of interest to employers: 'Most firms carry out an element of pro bono work (albeit usually small) so it is good to show that you would be interested in this' (MJRC1). These accounts accord with the findings of the employers' survey discussed earlier, even though none of the recruiters interviewed 'mentioned that participating in clinical legal education on a voluntary basis might be indicative of personal values that would be attractive in potential recruits' (Thomas, 2018, p.140). The employers' enthusiasm and interest which the survey participants reported must therefore be dependent on effective presentation of the applicant's pro bono experience, as it is apparent that CLE is generally poorly understood by employers. For example, Thomas' interviewees quickly identified that interpersonal skills and communication (with clients) would be developed through CLE, but none of them identified teamwork (ibid.,) which is an essential skill in pro bono project volunteering.

How pro bono experience is used in securing placements, training, employment and promotions

This section of the paper focuses on participants' accounts of how they made use of their experiences at FreeLaw and MJRC at the various stages of the recruitment process. It was difficult to make a selection of these qualitative responses, as there were so many which made excellent points. Those reproduced here are representative of similar views expressed by several respondents.

Applying for vacation schemes, or for a training contract, are the commonest first points of entry into the legal profession. Many participants from the first cohort reported that pro bono volunteering helped them to 'perform in assessment centres and apply skills in problem scenarios' (FL1). One respondent wrote that their pro bono experience had supplied 'examples in my answers to evidence my skills and my commitment to the legal profession' (FL1). In terms of broader employability, another respondent wrote that 'having evidence to support your soft skills is great and the MJRC gives me this' (MJRC1). Second cohort participants also had experience of applying for training contracts, for post-qualification posts, and for promotions. One respondent from this cohort, who had been a student manager, explained that 'I have used the leadership and management experience gained through working with Free Law at every external and internal interview since University' (PB2).

Another participant wrote that 'I have also applied for teaching work, and my pro bono experiences were just as beneficial here' (FL1), although most survey respondents were focused on a legal career. Recruitment processes in this sector often

require candidates to address the Solicitors Regulation Authority's *Statement of Solicitor Competence* (SRA, 2015). One respondent described the skills and experiences gained through pro bono volunteering as:

'essential for both legal job interviews and graduate scheme interviews. In each process you are required to undergo a competency interview or answer competency-based questions on application forms. I am confident that at least 50% of all the competency questions I have ever answered have been from situations during my time at Freelaw' (PB2)

A widely-held view, that volunteering at FreeLaw or MJRC helped respondents to stand out from the many other good graduates who are their competitors for positions in the legal profession, was expressed by many respondents. One participant said that volunteering at the MJRC 'helped me demonstrate an ability beyond that provided by the traditional law degree ... showing that I was a good candidate for my job' (PB2). Another respondent commented that 'when applying for training contracts it is very difficult to distinguish yourself, it is also difficult to answer problem-based questions without any experience. Therefore having the opportunity to talk about real life situations really helps' (PB2). Pro bono volunteering was also seen as confidence-building, which helps alumni succeed in a crowded job market. In the words of this respondent, 'I was able to talk with more legitimacy about what I enjoyed about the law in practice and what I was good at / weaker at. My whole application had more gravitas' (PB2).

These very positive experiences described by the law school survey's respondents seem significantly different from those taking part in the PSU survey, in which less than two-thirds (62%) of respondents felt that volunteering at PSU had provided them with 'good first-hand examples of real life experience for job applications and/or interviews' (PSU, 2015). In contrast, for example, this participant to the law school's survey was typical in reporting that 'I was able to give comprehensive answers to all the questions asked in interview [for a training contract] just by using FreeLaw' (PB2).

Value added by taking the Pro Bono module

Sixteen respondents from the first cohort (70% of the total) and twenty-three (80%) of the respondents in the second cohort had taken the optional module, which is only available to final year pro bono volunteers. When these respondents were asked if taking the module had assisted them in obtaining training or employment, 61% of the second cohort agreed. For the first cohort, this figure was 75%. This difference in the positive link between the module and employability may be due to changes introduced in the teaching and assessment of the module over the last few years, which include a greater focus on critical assessment of skills development and self-reflection. On the other hand (as previously discussed) the difference might be a result of the optimistic expectations of current students in the first cohort who had not read the survey question accurately. Nevertheless, the detailed views which participants volunteered, about the benefits of taking the module, proved extremely interesting.

Nearly all respondents who expressed an opinion included an explanation that the module's requirement for critical self-reflection had proved particularly helpful. This participant, for example, considered that the module provided:

'an opportunity to show future employers that I was able to critically evaluate myself. Personal reflection is an important skill that employers are increasingly looking for, therefore I think the module was useful in securing a training contract' (PB2).

Many of the respondents considered that the module had been useful because students were required to identify and discuss, in their assessed portfolios, the competencies and skills developed through pro bono involvement. This exercise was reported to have assisted in many aspects of the recruitment process. One participant wrote that 'self-reflection has made me realize how much work I have done and what I am capable of and what I need to work on. I am now more confident in writing cover letters about myself' (MJRC1). Another survey participant explained that, without having to complete the portfolio, 'I probably wouldn't have thought to write down all the great examples of leadership and learning that I experienced' (PB2). The practical impact of the portfolio assessment was expressed by this respondent, who felt that it had made the interview process less stressful, because 'by completing the module I had information at the forefront of my mind to answer questions' (PB2).

Interestingly, although the low numbers mean it is not possible to place any statistical reliance on this result, those respondents in the first cohort who were taking the module expressed more positive views about the general value of pro bono volunteering in enhancing employability, in comparison with their peers who were

not taking the module. This may be due to the individual contact with tutors which, as explained above, is a feature of the module, and is a key indicator of student engagement and perception of skills enhancement (Buckley, 2015). Some survey participants did not feel that the module had assisted their employability, but none of these offered any further explanation in their survey responses. The following comment speaks for most survey respondents: 'taking the module demonstrated my commitment to developing practical legal skills as opposed to just learning black-letter law' (FL1). The views and experiences of participants in both cohorts who have taken the optional module give a very useful insight into why and how they felt it enhanced their employability.

CONCLUSIONS

This research project was not able to demonstrate statistically a direct correlation between pro bono volunteering and students' employability, or their subsequent employment. The problems of achieving a robust research design to address those issues appear insurmountable, not least the difficulties of establishing a comparable control group. However, given the resources which universities now commit to CLE or pro bono programmes, and the assumptions that students' employability skills and attributes are enhanced through participation in them, it is important to research connections with employability. There have been few studies in this field so far, and those (including the Sheffield survey) have been small-scale and inexpensive to

conduct (see Cantatore, 2018, and Thomas, 2018) but have nevertheless established many valuable points.

The additional value of the Sheffield study lies in the unprompted qualitative data included in the survey responses. Without being provided with a list of skills, survey respondents said they had developed particular skills and attributes through pro bono volunteering, which can be matched against the lists developed by the World Economic Forum, careers advisers for the commercial law sector, and the HEA UK Engagement Survey. These serendipitous findings (Foster and Ford, 2003) from the survey comments make it clear that pro bono volunteering offers students the opportunity to develop both hard and soft skills, beyond the academic curriculum. The majority of respondents felt that the experience of pro bono volunteering had enhanced their employability, in the accepted sense of a 'set of achievements, understandings and personal attributes that make individuals more likely to gain employment and to be successful in their chosen occupations' (Yorke, 2006: 8).

The survey respondents' accounts of applying for vacation schemes, training contracts and employment in the legal sector, indicates that their experience of engaging with 'real world' legal issues is recognised by employers, marking out pro bono volunteers from their peers. Further, students who have developed skills and attributes through engagement with pro bono projects understand how to use and present these in recruitment processes, both in the legal sector and more widely, with a considerable degree of success. This seems particularly marked for the Sheffield students who took the optional module, which requires critical self-awareness of skills development. The

survey also confirms the benefits, in terms of developing employability skills, of the student-run pro bono model developed at Sheffield which gives volunteers greater responsibility and opportunities to develop both hard and soft skills. This may help them to stand out from their peers at other UK law schools which also run pro bono clinics and similar CLE projects, albeit on a 'pre-vetted' basis or with more staff involvement.

Echoing Cantatore (2018), there is a need for more research into the various aspects of developing employability skills in Law students. However, caution is needed when presenting research findings. The methods used must be carefully explained, so that the data can be distinguished from other research carried out or which is being planned. Findings from one small-scale survey should not be taken to be applicable to other contexts. Each university running a law clinic has its own version of CLE or pro bono programme, and jurisdictional differences must also be taken into account.

Some points of general applicability can nevertheless be derived from this research project. Students should be made more aware of the close connection between CLE or pro bono involvement and employability, which is particularly apparent from the data provided by second cohort respondents in the Sheffield survey. If the module associated with these activities is optional, more students should be encouraged to take it, as the survey data indicates it supports them in identifying and presenting the employability skills, both hard and soft, which they are acquiring. This is reportedly useful in the recruitment process, particularly in dealing with competency-based

questions. Law schools should therefore be encouraged to continue, or increase, devoting resources to CLE and pro bono projects.

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EVOLVING JURISPRUDENCE IN CLINICAL LEGAL EDUCATION – A CONTEMPORARY STUDY IN THEORY AND PRACTICE

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*Tell me, and I will forget. Show me, and I may remember. Involve me,
and I will understand.* – Confucius, circa 450 BC¹

1. INTRODUCTION

In concept and practice, clinical legal education is widely affirmed by its global success.² As R.J. Wilson puts it, clinical legal education is an “...ongoing and growing revolution that is assaulting the deepest traditions of the legal academy.”³ It is also asserted by others that “the trend across the globe has shifted from traditional legal education to justice education which is inspired by justice

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¹ The author cannot be completely sure of the provenance of this famous adage widely attributed to Confucius. However, a slightly different rendition is quoted in *A Student Guide to Clinical Legal Education and Pro Bono*, K. Kerrigan and V. Murray (editors), Palgrave Macmillan (2011) P. 5 – “I hear and I forget. I see and I remember. I do and I understand.”

² See generally F. Bloch, ‘Access to Justice and the Global Clinical Movement’ (2008) *Wash UJL & Policy*. Also,

F. Bloch, (ed.) *The Global Clinical Movement: Educating Lawyers for Social Justice*, OUP (2011) See also, However, it is also the case that this success is not complete, given the tenacity of entrenched nature of traditional law teaching and learning methods in many law schools where the clinical legal practitioner is the exception.

³ R.J. Wilson, *The Global Evolution of Clinical Legal Education: More than Method*, Cambridge Univ. Press (2018) p.1

education campaigns.”⁴ This success is however marked by the absence of a coherent and articulate jurisprudence that unifies the essence of clinical legal education. This may be largely due to the sheer diversity of forms, conceptualisations and justifications of what has become a movement in recent decades. This globalised movement presents as a complexity of diverse thinking and practice.⁵ Nevertheless, upon careful examination, it becomes evident that there are many unifying strands of thinking underpinning clinical legal education that make it possible to theorise clinical legal education whether as pedagogy or legal philosophy. The ambition of this article therefore is to seek to give jurisprudential expression to clinical legal education as an articulate but integral category of legal philosophy. The author will draw on a unique clinical project based in the London Borough of Ealing that has successfully partnered the local law school and the principal human rights and equalities body in the borough to create the Community Advice Programme (CAP) as a substantial expression of the essence of clinical legal education in a modern globalised world. The essay will firstly offer a brief contemporary contextual framework of analysis which reveals a significant level of intersectionality in many parts of the world between clinical legal education and practice and other social, economic, political and cultural

⁴ O.S. Adedokun-Odeyemi, ‘Role of Clinical Legal Education in Social Justice in Nigeria’ in *Asian Journal of Clinical Legal Education* 5 (1) 88-98 (2017) p.88

⁵ For a comprehensive study of diverse global experiences of clinical legal education see R. J. Wilson, *op. cit.* Part II, p. 154

developments that challenge traditional models of clinical legal education.⁶ The article will then examine clinical legal education in theory and practice and conclude with reflections on an evolving clinical jurisprudence. In undertaking this task, it is important to acknowledge at the outset the particularity of clinical experience as conditioned by the realities of its environment and the objective character of the society even within certain shared global realities. Thus, the global reader is encouraged to accommodate diverse experience of clinical practice in the developing world for example, where poverty and conflict are the necessary backdrop for most clinicians and where clinical legal education is unlikely to be about simply improving legal skills training. Thus, an inner city experience in West London, for example, defined as it is by the comingling of migration and refugee issues, poverty and affluence and significant established minority communities, is confronted by issues relating to community cohesion and integration, extremist ideology and violence, hate and honour crimes, etc., that are not present elsewhere.⁷

2. THE CONTEXT

Contemporary global developments have had severe impacts on social cohesion in the modern diverse European state.⁸ Community cohesion and integration have

⁶ See generally, S. Gurpur & R. Rautdesai, *Revisiting Legal Education for Human Development: Best Practices in South Asia*, 157 *Procedia Soc. Behav. Sci.* pp. 254 and 255 (2014).

⁷ See the following sample of London Borough profiles:

⁸ Europe has experienced an unprecedented refugee crisis originating from wars, political repression and poverty mainly in North Africa and the Middle East. This crisis has had a

been strained by extremist violence, ideology and reactions to these.⁹ Profound social, economic and political consequences have convulsed much of Europe in recent times, including the referendum decision on June 23rd 2016 by the United Kingdom to leave the European Union and the terrorist suicide bombing at a pop concert for mainly children and young people that killed 22 people on 22nd May 2017 in Manchester, as well as other equally dastardly acts of extremist violence across Europe.¹⁰ These developments are themselves linked to the broader global turbulence and civil strife in parts of the Middle East, North Africa and Asia¹¹. In turn, there has also been a blowback expressed by the general anti-migration/refugee sentiment across Europe and consequent political shift to the right. Clinical legal practice in many places finds itself, perhaps unexpectedly, at the heart of the legal and social consequences of these developments in many European practices¹² especially in areas such as immigration, its backlash and hate

profound impact on Europe. See a BBC analysis at <http://www.bbc.co.uk/news/world-europe-34131911> See also, a social cohesion impact of the refugee influx to Germany in recent years by USAID titled: 'Refugees – Germany: A Quest for Social Cohesion' , <https://eccnetwork.net/refugees-germany-quest-social-cohesion/>

⁹ See, for example, the European Union Agency for Fundamental Rights (FRA) fact sheet on the rise in hate crime incidents in Europe: <https://fra.europa.eu/sites/default/files/fra-factsheet>

¹⁰ Such as the latest mass attack on London Bridge by a rampaging van and indiscriminate stabbings on 3rd June 2017 in which, at the time of writing, 8 people had been killed.

¹¹ For example, the influx of over 1 million mainly Syrian refugees into Germany between 2015 and 2016 is now acknowledged to be the main reason for the loss of Chancellor Angela Merkel's once dominant political status in the German parliamentary election of 2018. See ABC News at <http://www.abc.net.au/news/2018-03-14/angela-merkel-elected-for-fourth-term-as-german-chancellor/9548896>

¹² Ealing Equality Council, now West London Equality Centre (and partner of CAP) has recently received significant funding from the UK Lottery Fund to undertake hate crime prevention work. The project is recruiting 30 students per year on CAP/EEC placement to participate in the delivery of the project which involves working with and advising victims of hate crime. This is an example of the experience of intersectionality that this particular clinical legal education project is connected to.

crime, in addition to the traditional challenge of identifying unmet legal need and supporting rights and social provision for some of the most vulnerable individuals and marginalised communities through student practice.¹³ In this role, it is contended that the law clinic has become, objectively, politicised and is making a significant but largely unarticulated contribution to the evolving jurisprudence of clinical legal education against the backdrop of the consequential effects on rights and citizenship of the troubles indicated above.¹⁴ This essay seeks to explore the central role that clinical legal education and practice have assumed in some communities in dealing with community legal need in the context of the United Kingdom government's policy of austerity that includes the drastic reduction in resources for the provision of legal services and access to justice¹⁵, in addition to their educational impacts. Clinical legal education as a socio-educational response to extant reality cannot, by definition, be politically neutral as clinical programmes are designed and therefore purposeful beyond skills training. Thus, as Brayne *et al* point out in the American context, "the take-off point for the US clinical movement was the anti-poverty and civil rights campaigns of the early 1960s...(and observe of contemporary times that)...many US clinics have taken up a welfare brief serving the needs of the local minority groups and the indigent

¹³ In the London Borough of Ealing where CAP is based, socio-economic inequality is so stark that the borough has been branded as a 'poverty hotspot' by the UK-based New Policy Institute in a report of a study a few years ago: <https://www.getwestlondon.co.uk/incoming/ealing-one-worst-boroughs-poverty-10524563>

¹⁴ These matters will be illustrated by some examples from the work of CAP later in this article.

¹⁵ See generally, Chapter 15, Quinn and Elliot, *English Legal System*, Pearson (2017) p.306. Also, Access to Justice Act 1993.

population.”¹⁶ Indeed, according to Jon Dubin, clinical legal education promotes the essentials of social justice primarily in three ways: 1. by promoting access to justice for the underprivileged through representing them in various forums; 2. by exposing law students to the responsibility for public service or pro bono work; and 3. by creating an understanding of the relationship between law and social justice among the law students.¹⁷ “All three ways have some effect on the learning of a law student about social justice values because the unique experience that is gained cannot be properly explained by the student’s prior understanding of law and legal procedure.⁴¹ The student is required to properly follow up on a process that can help him to think critically beyond any beliefs, values and norms.”¹⁸

The article exposes the work of a unique collaborative clinical project based at the University of West London and delivered through a community partnership between Ealing Equality Council and the Community Advice Programme in Ealing. The bringing together of equality and human rights, diversity and community cohesion in the practice of the law clinic has energised and challenged clinical legal practice, the clinician, the academic and student alike, as well as local stakeholders in West London such as local authorities, the Quakers and the police. This evolution at the same time, provides the opportunity for, and the basis to, found an underlying clinical jurisprudence upon.

¹⁶ H. Brayne, N. Duncan and R. Grimes, *Clinical Legal Education: Active Learning in your Law School*, Blackstone Press (1998) pp.10-11

¹⁷ See Jon C. Dubin, *Clinical Design for Social Justice Imperatives* 51 S.M.U. L. Rev. 1461, 1476 (1997–98).

¹⁸ Lasky and Sarker, *Asian Journal of Clinical Legal Education* 5(1) 76-87, (2017) p 80

3. CLINICAL LEGAL EDUCATION: PROVENANCE AND PURPOSE

Clinical legal education as an idea, emerged as a pedagogical challenge to the teaching and learning of law in the United States reaching as far back as the 1930s, if not earlier.¹⁹ According to McCrimmon *et al*, “an early iteration of clinical legal education was that conceptualised by the American academic and legal philosopher and jurist, Jerome Frank in the 1930s.”²⁰ As the authors note, although Frank was not the first to agitate for change in the method of teaching law in American law schools and taking inspiration from the clinical method of medical school, he was certainly an early advocate of clinical legal education and perhaps of equal significance, he was also a leading light in the American legal realist philosophical movement.²¹ Implicit in the contribution of Frank therefore lies an unexpressed realist jurisprudence which, it is submitted, contradicts the usual presentation of clinical legal education simply as methodology or legal service provision. The research evidence shows that there was a revolutionary impetus through the 1960s that saw the “establishment of law clinics in a number of law schools.”²² These early clinics “...focused on legal service delivery, usually to disadvantaged members of the community.”²³ It is also suggested that the

¹⁹ For a comprehensive account see R.J. Wilson, *op. cit.* pp. 1-8

²⁰ L. McCrimmon, R. Vickers and K. Parish, ‘Online Clinical Legal Education: Challenging the Traditional Model’ in *International Journal of Clinical Legal Education*, 2016. See also, J. Frank, “Why not a Clinical Law School?” in 81 *The Univ. of Pennsylvania Law Rev.* (1933) On this early history, see also, Martin, Dublin and Joy in *Journal of Legal Education* (1974) vol. 26 p. 162.

²¹ *Ibid.* p.35

²² M.M. Barry, J. Dublin, P. Joy, ‘Clinical Education for this Millennium: The Third Wave’ in *Clinical Law Review* 2001 vol. 7, p. 12

²³ L. McCrimmon *et al*, *op. cit.* p. 36

objective of law clinics at the time was not educational but community service provision (although the *raison d'être* of the American law clinic appears to have altered considerably over time to embrace fundamental issues of social justice such as racial discrimination, poverty and civil rights generally.

As a pedagogical method, “educating students through experiential learning and by using a hands-on approach is nothing new.”²⁴ Indeed, as the same authors acknowledge, “...clinical methods have long been used in the education and training of a range of students from doctors and nurses to engineers, linguists, teachers and computer programmers. At a practical level, who would want to consult a medic who had not yet met a patient or did not have practical experience to complement his or her theoretical knowledge?”²⁵ In short, experiential learning is asserted to be the most effective way to study skills-based disciplines and to demonstrate and apply requisite competencies²⁶. As Wilson describes it, clinical legal education ‘...involves law students learning law by guided practice during law school. Ideally, that setting involves real cases, clients or other project-based work with client communities, usually with the poor or other marginalized populations without access to counsel.’²⁷ However, experiential learning is more

²⁴ H. Brayne, N. Duncan and R. Grimes, *Clinical Legal Education*, Blackstone Press (1998) p.3

²⁵ *Ibid.*

²⁶ In his Keynote Address at the 2017 *International Journal of Clinical Legal Education* Conference (Northumbria Univ. 2-5 July 2017), Professor Kevin Kerrigan related several examples of non-legal clinical education schemes replete at institutions throughout the US and elsewhere, from medical science projects to Business School schemes (including a pet behaviour project!) Also, R.J. Wilson, *op. cit.* p.7 ‘...experience can be the most powerful teacher of all...’

²⁷ *Op. cit.* p.1

than didactic learning or simply a mode of skill acquisition. As analysed by one of the leading exponents,²⁸ experiential learning engages the learner as active subject who *reflects* and has a measure of control over their learning. As Patrick Felicia puts it, it is “...learning through reflection on doing.”²⁹

Reflection is thus postulated as the point of departure for clinical legal education – the point that distinguishes legal skills training of the vocational stage of legal education for entry into the legal professions in the United Kingdom (where law school is an undergraduate endeavour.) Clinical legal education is, as indicated earlier, not simply doing, but “*learning from doing*.”³⁰ Further, it is suggested that even in a milieu of the increasing commodification of higher education where the law school product must justify itself in the modern market place and is therefore expressed in the contemporary jargon of ‘employability skills’, these skills are typically cast in qualitative terms which embrace the idea of the law student as a reflective subject rather than the mere possessor of a set of marketable skills. Thus, even in the following two different definitions of employability skills, one detects an acknowledgment of attributes that relate to the community and the wider world which can only be achieved through reflection:

“A set of attributes, skills and knowledge that all labour market participants should possess to ensure they have the capacity of being effective in the

²⁸ See generally, D. A. Kolb, *Experiential Learning: Experience as the Source of Learning and Development*, Prentice Hall, (1984) p. 8

²⁹ *Handbook of Research on Improving Learning and Motivation*, IGI Global (2011) p.1003

³⁰ K. Kerrigan and V. Murray (editors), *A Student Guide to Clinical Legal Education and Pro Bono*, Palgrave Macmillan (2011) p. 8. See note 13 above.

workplace to the benefit of themselves, their employer and the wider economy”³¹

and,

“A set of achievements – skills, understanding and personal attributes – that makes graduates more likely to gain employment and be successful in their chosen occupations, which benefits themselves, the workforce, the community and the economy.”³²

It is instructive also that in the particularisation of such employability skills by Finch and Fafinski³³, the elements of active engagement and reflection on the part of the subject are quite implicit:

- self-management
- team working
- problem solving
- application of information technology
- communication
- application of numeracy
- business/commercial and customer awareness

To these we may also add the following:

- sound judgment/decision making

Carefully considered, it would be fair to say that in their nature, most of these skills involve reflective thinking.

³¹ Confederation of British Industry and National Union of Students, ‘Working towards your future; Making the most of your time in Higher Education’ (May 2011)

http://www.nus.org.uk/Global/CBI_NUS_Employability%20report_May%202011.pdf

³² M Yorke, ‘Employability in Higher Education: What it is – what it is not.’ (Learning and Employability Series One, ESECT and HEA, 2006)

³³ E. Finch and S. Fafinski, *Employability Skills for Law Students*, OUP (2014) P. 5

Beyond skills acquisition, larger claims are made for clinical legal education: “It has been argued that clinical learning offers the potential to provide much more than enhanced skills – it enables a richer understanding of legal rules, legal processes, the role of the legal professional and the impact of the legal system on people and organisations.”³⁴ Indeed, so fundamental is the role of reflection in clinical legal education that some authorities have felt it necessary to state that “...to count as clinical legal education, a programme must include reflection. If there is no opportunity or expectation to reflect then an activity is likely to be a valuable pro bono experience but it will not amount to clinic.”³⁵ The educational aspect of clinical legal education which is indicated here is the key to theorising clinical legal education and deserves particular emphasis because the law clinic “is the vehicle through which (the) educational process can be advanced in a way to which students readily relate and by which they are stimulated.”³⁶ The evolving jurisprudence of clinical legal education advanced by this article will be considered in the final section.

It may be useful at this point to outline the many claims that are made as the beneficial outcomes of clinical legal education. These outcomes are also the evidence of the putative global triumph of clinical legal education indicated at the

³⁴ Ibid. p 7

³⁵ Supra, note 14

³⁶ H. Brayne *et al*, op. cit. p.10

beginning of this article. Accordingly, Kerrigan and Murray³⁷ attribute the beneficial outcomes to the following: students

- learn through interacting in-role as a lawyer or other participant in the legal system;
- learn by reflecting on their experience;
- address real or realistic legal issues.

Also, Giddings refers to another pedagogical attribute of clinical legal education as “...a clinical continuum which relates to the degree of control exercised over the teaching setting. The emphasis on critique and reflection is a constant while control over the environment varies.”³⁸

Additionally, the global proliferation of clinical legal education may be presented as a contemporary attribute, not just as a signifier of its success. Thus, it can be asserted that clinical legal education has triumphed on the world stage. This global success is, *inter alia*, evidenced by “the large number of transnational collaborations among clinicians from all over the world; the existence of truly global organisations such as the Global Alliance for Justice Education (GAJE) which at its eighth world conference held in Eskişehir, Turkey in July 2015, attracted 350 delegates (most of whom were clinicians) from all regions of the world; the ever-increasing incorporation of clinical teaching methodology in law school curricula worldwide; and legal publications dedicated to fostering

³⁷ Op. cit. pp. 6-9

³⁸ J. Giddings, ‘A Circle Game: Issues in Australian Legal Education’ (1999) in *10 Legal Education Rev.* p.35

international clinical legal education, perhaps the most prominent being in the *International Journal of Clinical Legal Education* published in the United Kingdom, and the book, *The Global Clinical Movement: Educating Lawyers for Social Justice* edited by Professor Frank Bloch (OUP, 2011).³⁹

Of course, the fact of global success in itself would not be the qualitative measure of usefulness or goodness. The political left, for example, recognise the ubiquity and entrenchment of global capitalism or globalisation but are antithetical to it because they consider the phenomenon to be inimical to global social justice. In the case of clinical legal education however, the benefits of experiential learning and the law clinic are well recognised and documented.⁴⁰ But perhaps the seminal distillation of what succeeds in clinical legal education is captured by the following observation:

“...the study of law is of limited value unless it is directed at understanding the law which is practised, the law which affects the lives of real people. This is the hard evidence from which legal theory can be constructed and hypotheses tested. To study the theory without the evidence in that sense is unscientific. An understanding of law and an ability to apply that understanding requires the study of law in its operational context...this applies equally to those students who wish to practise law *and* to those who do not. Law studied out of the context of practice is an artificial concept. The law clinic is a vehicle through which this educational process can be

³⁹ L. McCrimmon *et al*, *op. cit.* pp. 40-41

⁴⁰ See generally, Brayne *et al*, *op. cit.* and Kerrigan & Murray, *op. cit.* See also, F. Bloc, *op. cit.*

advanced in a way to which students readily relate and by which they are stimulated.”⁴¹

In the final part of this section some consideration must be given to the relationship and relative perspective of the teacher clinician and the student. In this context, it is helpful to recall that one of the attributes of clinical legal education acknowledged in the earlier part of this section is the relative degree of autonomy that a successful clinical experience invests in the student as a reflective learner. Equally, the teacher clinician is liberated by a different relationship engendered by the guided independence of the clinical student. Thus, it is perhaps best to characterise the new model relationship as one in which teaching and learning become a necessary partnership which is most effective if students are guided to own their own learning by motivation based on an understanding of the link between effort and outcomes.

The student is not an intellectual object who receives instruction and knowledge but an active learner who reflects on information and is able to understand and evaluate such information in real or realistic context. The author as teacher-clinician has found over the years that students are best able to become critical and reflective learners if they are enabled to place the subject matter of study into appropriate context (history, economics, politics, purpose, etc.) Learning in context means approaching legal principles and processes by connecting theory and practice. If law is a *social* institution then the student of law must be guided to

⁴¹ Brayne *et al*, op. cit. p.10

adopt a critical approach to the study of law and legal processes that gives them an understanding of agency. With this approach, the student will hopefully understand that law is an instrument for the achievement of social goals. As such, the knowledge that the student derives from the experience empowers them as active social functionaries who have the capacity to affect how law works in society. Equally, a teacher-clinician is a product of their own experience of matters requisite such as diversity and inequality and the values of the higher education sector⁴² that they may subscribe to individually or institutionally such as widening participation and equality of opportunity, adopting approaches that best help diverse learning communities to achieve high quality educational outcomes, etc. (progressive modes of assessment for example.)

4. TYPES OF LAW CLINICS AND THEIR EDUCATIONAL VALUE

Clinical legal education is expressed in a diversity of clinical projects and programmes ranging from in-house variants to externships. The most common are:⁴³

1. in-house real-client clinics;
2. externally-located real-client clinics;
3. simulated clinics;
4. externship and placement schemes;
5. street law projects;

⁴² See for example, 'Higher Education 2022 – Priorities for Government' *GuildHE*/30 May 2017

⁴³ See R.J. Wilson, *op. cit.* part II p 149. Also, R. Dunn, 'The Taxonomy of Clinics: The Realities and Risks of All Forms of Clinical Legal Education', *Asian Journal of Clinical Legal Education* 3 (2) 174-187 (2016)

6. specialist clinic projects; and
7. Advice/gateway clinics.

Regardless of the particular nature of each of these various schemes, with the possible exception of street law projects, the purposes of these clinics are relatively similar. These are said to be to expose students to law in a practice setting and to the analysis, management and process of the problems arising.⁴⁴ The in-house clinic involves the replication of a real solicitors practice within the law school. Such clinics typically deliver a full range of legal services to the public under the supervision of a practitioner academic. This type of clinic requires the commitment of substantial resources by the law school or the broader university – premises, salaries, insurance and other running costs. Some consider this type of clinic as ‘the ‘gold standard’⁴⁵ but there are severe limitations on the scope of service delivery because of the cost. For example, the number of clients dealt with per year would tend to be small.⁴⁶ In contrast to the in-house clinic, there are gateway/advice only services which provide initial advice and referral to members of the public, usually over a wide range of areas of law but sometimes limited and specific, with no continuing or retainer relationship between the client and the clinic. This type of clinic has the advantage of being cheaper to run and without most of the professional requirements of the Solicitors’ Regulation Authority (SRA), the professional body in England and Wales responsible for the regulation

⁴⁴ Brayne *et al*, *op. cit.* p. 12

⁴⁵ Kerrigan and Murray, *op. cit.* p. 1

⁴⁶ See, for example, York Law School clinic

of entry into the profession and the profession itself. Simulated clinics use hypothetical cases and students role-play as legal advisers. Simulated legal activity as a type of clinical legal education is dismissed by some as not being proper law clinics but it is clear that they can be a very useful vehicle to deliver clinical education or, at least, many of the benefits of clinical legal education. Externships/placements and street law may not be considered to be clinical legal education activities properly so-called, although there is little doubt in their value as vehicles for experiential or work-based learning. Externships are the structured placement of law students in law firms or advice or other agencies such as local authorities, or community organisations with or without pay. The obvious challenges that may limit the effectiveness of such programmes is the fact that there is no assurance of quality control or indeed anything else because of the variability of placement possibilities. Street law, another American idea, involves projects in which law students are engaged with raising legal literacy and awareness in local communities or with specific interest groups. The general objective is to raise community awareness of rights or seek to bring about policy reform or change.⁴⁷ For example. A project to educate a group or community about their rights against police harassment or unlawful stop-and-search in, say, Brixton in South London with a high population of ethnic minority residents. Such

⁴⁷ See R. Grimes, D. McQuoid-Mason, E. O'Brien and J. Zimmer, 'Street Law and Social Justice Education' in F. Bloc (ed.) *The Global Clinical Movement: Educating Lawyers for Social Justice*, op. cit. Chap. 15

consciousness-raising undoubtedly benefits groups, usually minority or disadvantaged or indigent groups, but has clinical benefits for student and academic participants who in the process of engagement, inevitably deal with real people, the law and the community and live issues. In this regard, particular mention must be made of the way in which the global expansion of clinical legal education, so well chronicled by the significant work of R.J. Wilson referred to repeatedly previously,⁴⁸ has accommodated regional and local nuances to produce models of clinical projects and practice that are redolent of location. The significance of the attributes of location is the subject of an informed article by Lasky and Sarker⁴⁹ on the Asian characteristics of the regional clinical legal education movement which observes as follows:

“An examination of this regional CLE movement would show that it reflects its own Asian characteristics. For example, one contemporary core commonality of most of these Asian university-based CLE programmes can be found in their focused social justice mission of delivering legal assistance and empowerment to the poor and marginalized while simultaneously developing legal knowledge, skills, ethics and pro bono values within the participating university students. A number of CLE programmes, including the Ateneo University Human Rights Center (AHRC) in the Philippines, 47 train students to use a participatory method of representation when working with clients. Rather than utilizing a top-down approach, clients are treated as equals throughout the representation process. In this manner, the lawyer’s role is not restricted to just solving a client’s problem and delivering the answers or solutions through a one-way exchange. Rather, the client is involved as a co-decision-maker. This mode of alternative lawyering enables clients to decide for themselves and find solutions to their own problematic situations based on a better understanding

⁴⁸ *Global Evolution of Clinical Legal Education*, op. cit. notes 3, 4 and 43.

⁴⁹ Op. cit., note 18.

of the issues involved. It is a means of achieving a break in the often cycle of need. Conventionally, clients meet lawyers looking to have their legal problems resolved. In these scenarios, once the immediate need is worked out, it is not unusual for these persons to return to the same environment from which they came. This frequently leads, often only a short time later, to the development of similar or identical problems. It is a type of Band-Aid approach to problem-solving. Traditional lawyering is seen as a mechanism that ‘promotes a client dependency on the lawyer instead of encouraging legal self-reliance on the part of marginalized groups’.⁵⁰

Thus, in seeking to advance the thesis of this article which aims to expose the political and jurisprudential basis of clinical legal education, the different strands of clinical practice discussed above provide the hard evidence that Brayne *et al* suggest are the basis upon which we are able to construct relevant theory. But this is only possible because clinical legal education is premised on the learner as a reflective subject as acknowledged earlier. An appreciation of the fundamental nature of this attribute is essential for an understanding of the analysis that comprises the final sections of this article. It would now be appropriate to consider the case study which is the basis of much of the evidence base for the theoretical arguments of this article advanced in the final section of this article...

⁵⁰ Ibid.

5. CASE STUDY – THE COMMUNITY ADVICE PROGRAMME (CAP – IN PARTNERSHIP WITH THE WEST LONDON EQUALITY CENTRE.)

i. The Project – General

The School of Law and Criminology at the University of West London (UWL) has operated one of the most successful law clinics in the United Kingdom since 1992, serving the community of West London. CAP celebrates its 26th Anniversary this year, 2018. The main project, called Community Advice Programme (CAP), is a legal advice and assistance service which runs in partnership with Ealing Equality Council (EEC⁵¹ (now, West London Equality Centre), the principal equalities and human rights body in the London Borough of Ealing and West London generally). EEC was established in 1963 as the Southall International Friendship Association, then Ealing Community Relations Council, Ealing Racial Equality Council (quasi-statutory affiliate of the Commission for Racial Equality), and finally, Ealing Equality Council in 2011 (and now, West London Equality Centre – WLEC.⁵²) CAP functions as a fortnightly weekend service from *The Street*, at the St Mary's Road Campus of the University of West London, with offices located at Villiers House, Ealing Broadway Station where there are also special student/client engaged daily

⁵¹ Now renamed West London Equality Centre (WLEC).

⁵² The following extract from the 2017 Annual Report presented at its AGM on 8th November 2017, is indicative of the nature of the functioning of CAP's partner organisation: "...our work targets the poor and disadvantaged and the newly-arrived. Ealing ranks as the third most ethnically diverse local authority (in the UK) – migrants of more than 102 nationalities have arrived in the borough due to the refugee crisis and the Referendum. We have seen many EU immigrants, newly-arrived refugees and undocumented migrants accessing the service for immigration and nationality advice." For a profile of the London Borough of Ealing, see: https://www.ealing.gov.uk/info/201048/ealing_facts_and_figures

advice sessions. CAP is serviced by volunteer legal practitioners, including solicitors, barristers, judges, trainees, law teachers, students and other legal professionals.

CAP assists members of the local community in West London with legal advice and other help such as drafting documents, making representations on behalf of clients to a variety of agencies or filling in forms covering areas such as employment, housing, family, discrimination, human rights, consumer, welfare, debt, crime, police and immigration law. CAP also offers placement and training opportunities to law and criminology students, as well as local secondary school students and therefore makes an important contribution to student employability, career development and community engagement through clinical practice. CAP does not engage in direct litigation or court proceedings although it typically advises and prepares documents for clients where referrals to solicitors or barristers are inappropriate or not possible.

The close partnership with the Equality Centre has enabled students to gain access to placements and practical experience on a myriad of projects and activities in West London such as hate crime, homelessness, refugee projects, debt and poverty reduction. The services and projects include the following:⁵³

⁵³ For a comprehensive account, see Director's Report and Report of Projects and Operations officer in 2016/2017 Annual Report: <http://ealingequalitycouncil.org.uk/wp-content/uploads/2018/01/Annual-Report-2016-2017-Final-09.11.2017.pdf>

- The MILAR Project, an ERASMUS+ refugee integration project funded by the European Commission (with partner universities in Italy, Sweden and Germany);
- Help Through Crisis - A Foodbank project funded by the Big Lottery Fund with operational sites at Northolt, Brentford, Greenford, Acton, Southall and Hanwell (all in West London);
- Positive Link – a UK Home Office Strengthening Communities project; and
- Hate Crime Project – a National Lottery substantial project which has enabled 90 placement places to be made available to University of West London Students over a period of 3 years which has only recently commenced.

The range of placement activities that CAP students are able to engage as indicated above perhaps has no equal in the UK in its particularity. However, this may be offered as evidence of the inter-connection between local communities and pro bono legal service provision typical of community-based law clinics.

A further illustration of CAP's community intersectionality is provided by a project that was instituted in 2016. CAP at UWL was a pioneering partner along with LSE, UCL, Queen Mary, University of London (and now College of Law) with the City of London Criminal Appeals Clinic where students engaged miscarriage of justice cases to research and prepare worthy cases for submission to the Criminal Cases Review Commission⁵⁴, the body in the UK that reviews and presents cases of alleged miscarriage of justice in criminal matters to the Court of

⁵⁴ <http://ccrc.gov.uk/about-us/>

Appeal for determination. In the first season of the project, CAP UWL was awarded the prize for the Best Performing institution in 2016.

ii The Academic Module – Community Legal Advice

One of CAP's most important functions is that it supports the University of West London law students with guaranteed placements for the LL.B clinical module, Community Legal Advice (CLA) which currently has a cohort of 42 students. This helps to overcome the significant problem clinical students experience in securing externship placements with live clients. The module is a 20-credit final year elective and its methodology is described as follows in the Module Study Guide:

“As a Clinical Legal Education module, the teaching and learning method places you at the centre of the delivery of the outcomes of the module. You have ownership of your learning because you largely control your placement and its activities or at least exercise a large measure of autonomy. Learning in the classroom is therefore a partnership which requires you to be an active learner who owns your learning. With this methodology, you can map with confidence, a clear path between effort and success.”⁵⁵

The module requires students to be in placement with law firms, community advice organisations, etc., for at least the duration of the module. Students participate in scheduled classroom activities including discussion of clinical legal education and experiential learning, skills training in research methodology and

⁵⁵ Community Legal Advice, UWL Module Study Guide 2017/18 p.28

electronic databases, employability, drafting, negotiation and conciliation, written and oral communication, policy issues such as legal services and access to justice, social justice ethics and law, etc. The module is assessed by the submission of a compulsory Reflective Journal, recording their placement activities and their reflection on these. This journal is submitted along with the student's placement report at the end of the module. The report is a critical account of, and reflection upon, their placement activities and their personal journey of development as a student clinician in the community. Student reflections often chronicle transformation and epiphany. The following excerpts from two student reports in 2018 are illustrative:

“By studying CLA I became acutely aware of the importance of access to justice. The public rely on services such as CRB and CAP to give free advice to the public who do not have the funds to hire a solicitor to take on their cases. The cut backs that are made in legal aid have forced individuals to self-help or rely on agencies to give them advice is so large. This is morally and ethically wrong as this effects the great number of the public who have no funds available for a solicitor or to pay court fees. Every individual should be entitled to a fair justice system not just the high paid citizens, the justice system has failed to help the lower class citizens who suffer the most, I have seen this first hand by interviewing clients at CAP many of the problems are caused my debt and arrears, these clients would never be able to afford a solicitor and pay the high fees. Relying on services like CAP benefits the community a great deal on providing advice and writing letters on behalf of the clients.

The government are aware that these agencies are run by volunteers who offer their time and advice to help people but do not fund these agencies, considering we play an active role in helping the public.

I did not know the extent of access to justice and how important it is until studying this module, I have developed a good understanding of this area and continue to do so in my legal profession.”

“During my reflective learning journey, I expressed large amounts of empathy and compassion and felt responsibility and purpose in a different form. I had challenged my own opinions on humanity and coming to find myself more intrigued and supportive of a communist regime in western society or perhaps globally.”

Thus, it may be concluded that the student clinicians have the opportunity to become socially conscious practitioners whose experience of the practical legal world intersects the lives of the communities that they serve.

In addition, one of the most significant developments at CAP over the past two years, has been the successful submission by four trainee solicitors on the work-based “equivalent means” route⁵⁶ through their work at CAP. Upon completion of the law degree and the required vocational course, the Legal Practice Course, a prospective solicitor in England and Wales must obtain a training contract with a law firm and serve their solicitor’s apprenticeship for two years before formal admission to the role of registered solicitors. Training contracts are notoriously limited in number, especially after the financial crash of 2008 and subsequent

⁵⁶ <https://www.sra.org.uk/SearchResult.aspx?q=alternative+to+training+contract>

regulatory changes by the Solicitors Regulation Authority (SRA) that led to many medium and small size high street practices folding. The recognition by the SRA of the appropriateness of CAP work and supervision is an important step in overcoming the age-old barrier students from diverse backgrounds and newer universities have when they try to enter the legal profession upon completion of the academic and vocational stages of their legal education.

Arguably, the most significant aspect of the CAP/WLEC project is the community and institutional networking that is made possible as well as the incidence of real community engagement across different issues and at different levels by clinicians. It is the usual practice for CAP sessions on Saturdays to end in seminars and lectures given by experts on key socio-legal issues such as immigration, hate crime, islamophobia, terrorism, refugees, food banks and poverty alleviation, debt prevention, social security, family, human rights and Brexit. All these matters have been covered over the past two years by CAP/EEC. Thus, there is a deeply enriching experience of intersectionality and community engagement within which the teacher and student-clinician interpret the law and enables the theorising of clinical legal education.

6. CONSTRUCTING AN UNDERLYING JURISPRUDENCE

What emerges from the CAP/WLEC project is the practical evidence of a particular model of clinical legal education acknowledged for its success in legal service

provision for the local community and clinical development of student participants for over 25 years. It may also be useful to observe the striking commonality of the CAP experience of interconnection with the issues of poverty and social disadvantage with experience elsewhere⁵⁷ consistent with the earliest social justice mission at the root of the vision of the realist founders of the idea of clinical legal education. On this basis, it is appropriate now to attempt to identify a unifying philosophical basis for clinical legal education in contemporary times.

i. Philosophical context

“A spider conducts operations resembling those of a weaver, and a bee puts to shame many an architect in the construction of her cells. But what distinguishes the worst architect from the best bees is this, that the architect raises the structure in imagination before he creates it in reality.”⁵⁸

The centrality of reflection in clinical legal education emphasised throughout this article means that any theory of clinical legal education must recognise the conscious choices that clinical programmes are based upon even if their philosophical underpinnings are not given specific expression. Thus, as human architects (human agency in other words) we first raise structures in imagination. Philosophy enables us to do this in a conscious way and therefore we are able to

⁵⁷ See for example, Tatyana Khudoykina and Vlalena Lysenko, ‘Development of Clinical Legal Studies as an Essential Component in the Modernization of Legal Education’ in [Integraciã](#) [Obrazovaniã](#) (Mordovia State University) 2017;21(1):124-137. Also Hannemann and Lampe, ‘Clinical Legal Education – Observing, Comparing and Analyzing the Differences in Germany and China for each other’s Respective Advantages’, *Asian Journal of Legal Education* Vol. 2, Issue 2 (2015) p 157-169. See also more generally R.J. Wilson, op. cit. note 5.

⁵⁸ K. Marx, *Capital Vol. 1*, Progress Pub. P. 174

assert that clinical legal education, by definition, has a philosophical basis and that this requires expression. What follows is therefore an attempt to explore an appropriate theory of clinical legal education.

Philosophy as an epistemological category, represents the capacity of human beings to conceptualise and reflect their world. Philosophy therefore represents the sum total of our world view and enables us to develop an integrated idea or conception of the phenomena of our world and thereby helping us to order our everyday activities and behaviour. But more than constructing our world outlook, philosophy provides us with a method of cognition. In this sense, philosophy is pervasive and integral to intellectual activity. Thus, as recognised earlier in this article, out of clinical practice emerges the “hard evidence” that enables us to build a theory of clinical legal education.⁵⁹

It was suggested at the beginning⁶⁰ of this article that, to a large extent, clinical legal education lacks an articulate and coherent jurisprudence. However, this state of affairs even in contemporary times is somewhat at odds with the early promise offered by the critics of the standard teaching model of American law schools and some of the originators of the idea of clinical legal education such as Frank⁶¹ and Llewelyn⁶² in the 1930s who were firmly rooted in legal realism. Also, as Brayne *et al* point out, well after the entrenchment of clinical legal education, “...the

⁵⁹ See preceding Case Study above (section 5)

⁶⁰ See ‘Introduction’ *supra* p.

⁶¹ J. Frank, *supra* note 20

⁶² K. Llewelyn, ‘Some Realism about Realism (1931) *Harv L Rev* 1222

critical legal studies advocate, the feminist jurist and those supporting a law in context approach have all found the narrow doctrinal system (of law teaching) wanting...(because) it does not take into account the realities of law in practice, the economic and political context in which law is made and operates.”⁶³ These antagonists are also united by the fact of their assumed different legal philosophical positions. The point here is this: there is a clear connection between clinical legal education and jurisprudence – those who depart from the standard operating model of teaching and learning law are marked by an ideological, political or philosophical departure from the standard position. For this reason, clinical legal education is neither politically or jurisprudentially neutral. This is a matter which is illuminated by the globalisation of clinical legal education and the enhanced contemporary focus (in tandem with legal skills training and experiential learning) on a social justice objective advanced as a contribution to enabling disadvantaged group’s access to justice. Of course, any deep analysis of the global problem of access to justice for the poor and the disadvantaged immediately confronts the more fundamental problem of all societies – social and economic inequality.

⁶³ *Op. cit.* p. 5. The authors support their observation with the following references:
G. Peller, ‘The metaphysics of American Law’ (1985) *Calif. Law Rev* 1151; and A. Seales, ‘The Emergence of a Feminist Jurisprudence: An Essay’ (198) 95 *Yale L Rev* 1373

ii. *Clinical Legal Education and Social Inequality*

We saw in Section 5 above that the existence of law clinics such as the Community Advice Programme (CAP), is justified not only by their legal skills and experiential learning aspects but also as service provision for unmet public need.

Unmet legal service need is a huge global problem as acute in most advanced economies as it is in developing societies,⁶⁴ with equally devastating consequences for hundreds of millions of people who are unable to vindicate their rights. In turn, unmet legal need is a reflection and consequence of socio-economic status and inequality. Thus, in a real sense, contemporary clinical legal education is inextricably connected to socio-economic inequality and the battle cry of “access to justice” is not simply intended to indicate the closing of the gap in communities between those who have access to the law, but also signifies a more profound social justice mission. The problem though is that most of the analyses of clinical legal education traditionally fail to cast law clinics in such terms – terms that are much more readily understood as a political or philosophical positioning. This failure creates the danger of neutering or masking the power of dynamic activism that is an integral part of the reflective process of clinical legal education. An illustration is provided by the following description of the law clinic by Evans: a clinic involves “...supervised experiential encounters between clients and their

⁶⁴ See for example, Y. Ouma and E. Chege, “Law Clinics and Access to Justice in Kenya: Bridging the Legal Divide”, *IJCLE* Vol. 23, No. 5 (2016) p.107

legal advisors, in the interest of just case outcomes, the processes of law reform and political renewal.”⁶⁵ This otherwise embrative and progressive description would have been better encapsulated by an explicit declaration of a social justice objective – for such is the clear underlying purpose expressed by Evans.

One may then ask why it matters that clinical legal education is given jurisprudential expression? The answer relates to the matter of social consciousness, or even a narrower legal consciousness that is essential for an active reflective role for the student and clinician alike, such consciousness being prerequisite for desirable social change. A conscious student or clinician is an agent for social change. Social change is necessary to redress the problem of social inequality which is deeply embedded in international society; not only within the familiar North- South divide, but marked inequalities within both the North and the South, and also as between genders, ethnicity, religion, etc. If we accept the globalised reach of clinical legal education carries with it a concomitant social justice mission, then a proper understanding of the philosophical underpinning of the movement is best achieved by also understanding the globalised nature of poverty and social inequality. On this basis, it is submitted that a unified theory of clinical legal education must encompass global socio-economic realities as indicated below; the student clinician and teacher practitioner operate within the

⁶⁵ A. Evans, “Global Agendas, Cultural Capital, and Self-assessment of Clinical Legal Education programs” (2012) 38 *Monash U L Rev* 55 at 59. See also R Wilson, “Training for Justice: the Global Reach of Clinical Legal Education” (2004) 22 *Penn St Int. L Rev* 421 at 422-423.

much broader spectrum of income and wealth inequalities as indicated by the following vignettes:

“More than 1 billion people in the world live on less than \$1 a day;”⁶⁶

“pre-Davos report shows how 1% now own more than the rest of us combined. Runaway inequality has created a world where 62 people own as much as the poorest half of the world's population, according to an Oxfam Report published today ahead of the annual gathering of the world's financial and political elites in Davos. This number has fallen dramatically from 388 as recently as 2010 and 80 last year. An Economy for the 1%, shows that the wealth of the poorest half of the world's population - that's 3.6 billion people - has fallen by a trillion dollars since 2010. This 38 per cent drop has occurred despite the global population increasing by around 400 million people during that period. Meanwhile the wealth of the richest 62 has increased by more than half a trillion dollars to \$1.76tr. Just nine of the '62' are women.”⁶⁷

Africa, for example, is a continent hardly contradicted by mass social and economic progress. Riven with mass poverty, hunger, disease, corruption, political instability and internecine warfare in many parts, the continent has been ravaged by over two centuries of structural underdevelopment, the evidence of poverty and deprivation is as clear as it is grim: The UN Food and Agriculture Organisation estimates that 239 million people in sub-Saharan Africa were

⁶⁶ ‘Introduction to PovcalNet’, <http://iresearch.worldbank.org/PovcalNet/introduction.aspx> ; see statistical data breakdown by region and country at <http://iresearch.worldbank.org/PovcalNet/data.aspx>

⁶⁷ *Oxfam* Press Release, 18th Jan. 2016 - <http://www.oxfam.org.uk/media-centre/press-releases/2016/01/62-people-own-same-as-half-world-says-oxfam-inequality-report-davos-world-economic-forum>

hungry/undernourished in 2010 (its most recent estimate) and 925 million people were hungry worldwide. Africa was the continent with the second largest number of hungry people, as Asia and the Pacific had 578 million, principally due to the much larger population of Asia when compared to sub-Saharan Africa. Sub-Saharan Africa actually had the largest proportion of its population undernourished, an estimated 30 per cent in 2010, compared to 16 per cent in Asia and the Pacific (FAO 2010). Thus almost one in three people who live in sub-Saharan Africa were hungry, far higher than any other region of the world, with the exception of South Asia. In 2008, 47 per cent of the population of sub-Saharan Africa lived on \$1.25 a day or less. (United Nations 2012)

In the meantime, the world's most expensive car has a price tag of \$4.8 million⁶⁸; the most expensive painting sold at auction, Leonardo Da Vinci's *Salvatore Mundi*, at a price of \$400 million⁶⁹ and in the United Kingdom, according to *The Guardian*, within the first three days of January 2018, the top business executives in the UK had earned the equivalent annual salary of the average worker.⁷⁰ To top it all in the absurdity of inequality, the BBC reported on 5th January 2018, the theft from a bar in Denmark of the most expensive bottle of vodka in the world claimed to be valued at \$1.3 million.⁷¹

⁶⁸ See <https://www.digitaltrends.com/cars/most-expensive-cars-in-the-world/>

⁶⁹ See <https://www.theguardian.com/artanddesign/2017/nov/16/salvator-mundi-leonardo-da-vinci-most-expensive-painting-ever-sold-auction>

⁷⁰ <https://www.theguardian.com/business/2018/jan/04/fat-cat-thursday-top-bosses-earn-workers-annual-salary-by-lunchtime>

⁷¹ <http://www.bbc.co.uk/news/world-europe-42558331>

Poverty and social inequality divide classes and communities in the United Kingdom. In the biggest ever review into race inequality in Great Britain, the Equality and Human Rights Commission in its 2016 race equality report⁷² reveals “...an alarming picture of the challenges to equality of opportunity that still remain in modern 21st century Britain...It is indefensible that...Black workers with degrees earn over 23 per cent less on average than White workers with degrees and that if you are Black in England you are more than three times likely to be a victim of murder and four times more likely to be stopped by the police. ”⁷³ Equally grimly, the report found that “If you are young and from an ethnic minority, your life chances have got much worse over the past five years and are at the most challenging for generations. Since 2010, there has been a 49% increase in the number of 16 to 24 year olds across the UK from ethnic minority communities who are long-term unemployed, compared with a fall of 2% if you are White. Black workers are also more than twice as likely to be in insecure forms of employment such as temporary contracts or working for an agency – which increased by nearly 40% for Black and Asian workers, compared with a 16% rise for White workers.⁷⁴ Also, ethnic minority people are more likely to live in poverty than the white population.⁷⁵ The same report details adverse statistics for Gypsy

⁷² “Healing a Divided Britain: the need for a comprehensive race equality strategy”, EHRC Report August 2016: <https://www.equalityhumanrights.com/en/race-report-healing-divided-britain>

⁷³ ‘Forward’ by David Isaac CBE, Chair, EHRC, *ibid* p.5

⁷⁴ *Ibid*.

⁷⁵ *Ibid*. p.31

and Traveller communities and regional inequalities between different parts of the United Kingdom.

In the field of health and wellbeing, there are again striking inequalities for different classes worldwide and in the UK. According to United Nations research statistics, average life expectancy in the highest developed economies is 80 years and 59 years in the lowest developed.⁷⁶ Thus, the global clinic is inextricably linked to global inequality. It is therefore necessary to examine the issues of access to justice and social justice more broadly.

7. CLINICAL LEGAL EDUCATION AS AN EXPRESSION OF SOCIAL JUSTICE

i. Access to Justice

“The concept of access to justice has various connotations. In common parlance, it simply refers to the accessibility or otherwise of adjudicatory forums where individuals can have disputes between them resolved. At a more technical level, access to justice has many conceptions. It may refer to the ease with which participants in the various adjudication forums are able to understand both the substantive and procedural aspects of the law applied in resolving their disputes. Access to justice may also refer to the extent to which disputants can afford the costs involved in having their disputes resolved at various adjudication forums.”⁷⁷

⁷⁶ http://www.un.org/en/development/desa/policy/cdp/cdp_statements/cdp_plen09_gph.pdf

⁷⁷ Y. Ouma and E. Chege, ‘Law Clinics and Access to Justice – Bridging the Legal Divide’, *IJCLE* vol. 25 No. 5 (2016) pp.107-108

Although the statement above conceptualises access to justice as a response to unmet legal need in various forms and thus extends beyond law clinics,⁷⁸ the authors also acknowledge “...law clinics in various countries in the world have continued to engage in activities aimed at the realization of the ideal of access to justice in its various conceptions.”⁷⁹ Access to justice as an issue is therefore very well understood in the popular literature as a referent for unmet legal need⁸⁰ and socio-economic inequality as discussed above. In this context, it would seem quite clear that the traditional approaches to access to justice as a variety of juridical responses to unmet legal need is reflective of much of clinical practice in the wider sense but narrower and limited in philosophical or jurisprudential sense as it misses the political economy context of law and of legal process. Ellie Palmer captures this critical point in the opening of her excellent book, *Judicial Review, Socio-Economic Rights and the Human Rights Act*: “During the past three decades individuals and groups have increasingly tested the extent to which governments and public authorities can be held to account through the judicial system for delay or failure to provide access to welfare services such as health treatment, education and housing. However, in the absence maladministration or flagrant breaches of public law duties, there is deep-rooted scepticism about the potential for courts to make effective and constitutionally appropriate contributions to the resolution of

⁷⁸ For an excellent study of the subject, see generally, Palmer, Cornford *et al* (eds.), *Access to Justice: Beyond the Policies and Politics of Austerity*, Hart Publishing (2016)

⁷⁹ *ibid.*

⁸⁰ See Elliot and Quinn, *supra*, chap. 15

such disputes. These doubts are not only based on widespread perceptions that courts are constitutionally and institutionally ill-suited to adjudicating in politically sensitive disputes involving issues of resource allocation, but also closely related to a prevailing understanding in Western style democracies that, by contrast with civil and political rights, socio-economic rights - whether enshrined international, regional or domestic instruments - are ideological aspirations or programmatic goals, dependent on resources for the satisfaction, and therefore inherently unsuited to the mechanisms and techniques developed by courts for the protection of fundamental human rights.”⁸¹ Given this contextual reality (rather redolent of the Legal Realism of the clinical legal education founders of the 1930s), clinical legal education, in addition to its educational role, is thus assigned a social justice function as an underlying attribute. It is therefore submitted that the jurisprudence of clinical legal education must be founded upon social justice theory.

ii. *The jurisprudence of Clinical Legal Education*

The attribution of a social justice function to clinical legal education requires an examination of social justice or justice theory. The intuitive meaning of social justice is often expressed in simple terms as what is fair and just in the individual’s relationship to society in terms of social goods and resources and access to

⁸¹ Hart Publishing (2009), ‘Introduction’ p.1

opportunity and personal functioning. In social theory however, the term is acknowledged to be far more complex beyond the scope of this current essay as it encompasses issues such as, taxation, social insurance, regulation of markets and the fair distribution of wealth.⁸² The issue of social justice has, however, found jurisprudential expression in justice theory, the philosophical antipode to the entrenched Western policy of utilitarianism.

iii. *Clinical Legal Education and the Just Society*

According to Ross, an appreciation of what is unfair develops early in the human being.⁸³ Indeed for Riddall, a child of five or a little older knows the meaning of unfairness or, at least, can give practical examples – “The position is similar to justice, a concept that has affinities to fairness. The absence of justice, injustice, proclaims itself.”⁸⁴ But what is justice?, he enquires. What is this quality, the absence of which produces such outcry?⁸⁵ The author offers the following comment in response to this question: “Justice is a quality considered to be desirable. Everyone claims to want justice, and people know what they want. The result is that in seeking to define justice, people attach the label, justice, to the ends

⁸² See, for example, the following: Muschert, Klocke *et al*, *Agenda for Social Justice: Solutions for 2016*, Policy Press (2016); M.J. Thompson, ‘The Limits of Liberalism: A Republican Theory of Social Justice’ *International Journal of Ethics*, vol. 7, No.3; P. Corning, *The Fair Society: The Science of Human Nature and the Pursuit of Social Justice*, Chicago Univ. Press (2011); and J.S. Mill, *Utilitarianism*, Prometheus Books (1987)

⁸³ A. Ross, *On Law and Justice*, Univ. of California Press (1959) p.269

⁸⁴ J.G. Riddall, *Jurisprudence*, Butterworths (1991) p.130

⁸⁵ *Ibid*.

that they desire.”⁸⁶ Even so, there is little doubt that the quality of fairness and justice is essentially an intuitive value, measurable against the standard of treatment by the state and society. As Rawls reminds us in his seminal work, *A Theory of Justice*, “Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.”⁸⁷ Although Rawls’ treatise is complex, as are all other theories that have sought to analyse the matter of fairness and justice in society in modern times such as Perelman, Nozick, Dworkin, etc., the notion of just treatment is premised on principles that recognise the equal worth and dignity of each individual, a key attribute of which has been characterised by Rawls as the first fundamental principle of a just society, namely that, “Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.”⁸⁸ As Rawls’ analysis shows, there is therefore an enhanced duty placed on the state to protect the vulnerable in society, if such people are to realise their entitlement to equality in society. The principle of equality is itself theoretical difficult, but in the context of the gross inequalities

⁸⁶ Ibid. p.131

⁸⁷ Oxford (1973) p.3

⁸⁸ Ibid. pp.302, 303

in resource allocation we saw in Section 6 (ii) above, the millions of people across the globe who are the beneficiaries of clinical legal education clinics and projects are not confused about their status as unequal citizens who are immiserated by poverty, discrimination and social disadvantage. Poverty is tangible and measurable, even if economists legitimately distinguish between relative and absolute poverty. Thus, the ideology of utilitarianism which Jeremy Bentham articulated so superficially attractively, and which is the basis of modern Western democratic institutions, contests the mission of clinical legal education which aims to promote the interest of the underprivileged to be enabled to vindicate their rights and to promote their equal participation in society. This is because, in essence, “Utilitarianism is a goal-based theory which evaluates actions in terms of their propensity to maximise goodness, however this is defined”⁸⁹ in the name of the greatest good for the greatest number, even at the expense of the minority. This is not the mission of clinical legal education and a theory based on justice would readily justify the functioning of the law clinic in its myriad forms.

⁸⁹ Davies & Holdcroft, *Jurisprudence*, Butterworths, (1996) p. 205. For an analysis of how rights and utility may be mediated, see N.E. Simmonds, *Central Issues in Jurisprudence*, Sweet & Maxwell, (1986) p.143 *et seq.*

CONCLUSION

In pressing the importance of clinical legal education theory in this article, the primary motivation has been to encourage the reconnection of the clinician, practice and theory as an inextricable, mutually-reinforcing process that enhances learning and directly impacts legal consciousness. The increasing commodification of education generally in the United Kingdom, accelerated by the recent institution of student self-funding in England and Wales, seems to have led to the preference of more apparently 'marketable' subjects to the detriment of theoretical ones or the theoretical components of subjects. For example, Legal Theory or Jurisprudence is much diminished in the life of the law student of the modern university in England.⁹⁰ Legal categories, like all philosophical categories, define specific world views and as such, guide human action. A conscious clinician is motivated and justified by an awareness of his or her actions or inaction and their place in the broader society as a stakeholder in society's general wellbeing. In short, they become a socially conscious being possessing agency.

⁹⁰ As an illustration, Jurisprudence as a subject was a core module for law students at the author's institution until the 1990s. Today, neither Legal Theory nor Jurisprudence is on offer on the law curriculum either at undergraduate or postgraduate levels.

**PROMOTING GENDER JUSTICE WITHIN
THE CLINICAL CURRICULUM: EVALUATING STUDENT
PARTICIPATION IN THE 16 DAYS OF ACTIVISM AGAINST
GENDER-BASED VIOLENCE CAMPAIGN**

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Abstract

The 16 Days of Activism against Gender-Based Violence is an international campaign which runs annually from 25 November (The International Day for the Elimination of Violence against Women) to 10 December (Human Rights Day)¹. The campaign aims to raise awareness of and stimulate action to end violence against women and girls globally. The issue of gender violence has gained worldwide prominence in the last few decades with the emergence of legislative frameworks including the Convention on the Elimination of all Forms of Discrimination against Women and the Istanbul Convention². More recently, there has been a policy focus on education as a tool for raising awareness of gender-based violence. The recent public unrest regarding sexual harassment, epitomised by the ‘#Me too’³ and ‘Times Up’⁴ movements, demonstrate that gender-based violence remains an everyday reality for many women and girls. In England and Wales, there has been an increase in applications to the Family Court for domestic abuse

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¹ More information about the 16 Days campaign can be found at the website: <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/16-days-of-activism>

² Fully referred to as The Council of Europe Convention on preventing and combating violence against women and domestic violence (Council of Europe Treaty Series Number 210)

³ See more about the movement at: <https://metoomvmt.org>

⁴ See more about the movement at: <https://www.timesupnow.com>

protection,⁵ however this has come at a time where cuts to the availability of legal aid have led to concerns about the ability of survivors to seek access to justice⁶.

During the 2017-2018 academic year the authors designed and delivered a range of teaching activities for clinical students as part of the 16 Days of Activism against Gender-Based Violence campaign. The aims were to increase student engagement with issues of gender justice and develop their understanding of the different forms of gender violence, the domestic and international frameworks for protecting victims and the roles that different organisations play in achieving this. It was hoped that this would better prepare students for the realities of family practice in England and Wales. Surveys and a semi-structured interview were used to gain insights into the student experience of participating in the campaign. This article will address how their participation went some way to meeting the objectives set out above in that students demonstrated increased knowledge of civil and criminal law relating to gender-based violence, developed their critical lawyering skills and competency in working with vulnerable clients and contributed to wider efforts to advance gender justice. Further the article will draw on the ancillary advantages of participating in the campaign, including improved client outcomes and reputational benefit. The limitations of the 16 Days campaign will also be acknowledged along with ideas for developing the programme in the future.

INTRODUCTION

Gender-based violence (GBV) can be defined as “any interpersonal, organisational, or politically oriented violation perpetrated against people due to their gender identity, sexual orientation, or location in the hierarchy of male-dominated social systems”⁷.

⁵ Ministry of Justice and National Statistics (29 March 2018) *Family Court Statistics Quarterly: October – December 2017*.

⁶See, for example, Amnesty International UK (October 2016) ‘Cuts that Hurt: The Impact of Legal Aid Cuts in England on Access to Justice’ (www.amnesty.org.uk/cutsthathurt) and The Law Society of England and Wales (June 2017) ‘Access Denied? LASPO Four Years On: Law Society Review’ (www.lawsociety.org.uk)

⁷ O’Toole, L. Schiffman, J. Edwards, M. (2007) *Gender Violence: Interdisciplinary Perspectives*. New York: New York University Press

Within international law, it is regarded as encompassing “all acts of violence which may result in physical, sexual, psychological or economic harm or suffering... such as coercion or arbitrary deprivation of liberty, whether occurring in public or private life”⁸. GBV is often synonymous with ‘violence against women’ because acts such as human trafficking, domestic servitude, forced marriage, female genital mutilation, sexual exploitation and harassment are disproportionately perpetrated against women⁹. GBV is viewed as an expression of gender inequality and a human rights infringement because it often stems from and reflects structural power inequalities which discriminate against women¹⁰.

This article will examine how the elimination of GBV is increasingly recognised as a priority for the international community. In part, this has arisen organically through a series of grassroots social media campaigns following the allegations of sexual abuse against Harvey Weinstein and other male celebrities¹¹. However, there are also legal frameworks which require states to pursue a policy of eliminating discrimination against women and put in place measures to protect women from domestic violence and unequal treatment¹².

In particular, there is a new legislative and policy focus on educating the general public through awareness raising campaigns as a means to challenge understandings of gender

⁸ See Article 3a, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention)

⁹ The European Institute for Gender Inequality’ (2015) “Strategic Framework on Violence against Women 2015-2018” Luxembourg: Publications Office of the European Union.

¹⁰ See the European Institute for Gender Inequality (2014) “Estimating the Costs of Gender-Based Violence in the European Union” Luxembourg: Publications Office of the European Union.

¹¹ See, for example, the ‘Me Too’ and ‘Time’s Up’ movements at <https://www.timesupnow.com> and <https://metoomvmt.org>

¹² See Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women and General Recommendation No 19 of the CEDAW Committee on violence against Women.

norms, gender stereotypes and to promote a better understanding of legal rights and responsibilities with regards to GBV. This arguably reflects the current climate of austerity in which the Government are keen to reduce the economic cost of GBV and comply with their international obligations in the most cost effective manner¹³. Further, the focus on public legal education is revealing at a time when many victims are struggling to enforce their rights and seek justice through the legal system as a result of the cuts to legal aid implemented by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

Alongside public legal education the demand for legal services from law school based clinics demonstrates they make an important contribution to facilitating access to justice in areas where public funding is no longer available and for those clients where paying privately for advice is not feasible. This is particularly important in the context of GBV where women (and in particular Black, Asian and minority ethnic (BAME)) women face multiple disadvantages. Not only are they more likely to be victims of GBV but they have been disproportionately affected by the legal aid cuts and are therefore more likely to require the assistance of law school clinics¹⁴. This is reflected in statistics which report that in the year ending April 2017, 58% of clinic users were women and 48% were from BAME communities¹⁵. Whilst there are no figures directly relating to GBV, 67% of clinics

¹³ Domestic violence alone costs the UK economy £16 billion per annum – as reported in Siddiqui, H (2018) 'Counting the Cost: BME women and gender-based violence in the UK'. IPPR Progressive Review Volume 24 Issue 4. pp 362 -368.

¹⁴ Sandhu, K. Stephenson, M.A. (2015) 'Open space layers of inequality – a human rights and equality impact assessment of the public spending cuts on black, Asian and minority ethnic women in Coventry'. Feminist Review Volume 109. pp 169-179.

¹⁵ LawWorks Clinic Network Report April 2016 – March 2017 (December 2017) 'Analysis of pro bono legal advice work being done across the LawWorks clinic network between April 2016 and March 2017'. Published by LawWorks.

reported seeing an increase in the number of clients in crisis or distress¹⁶. It is possible these figures may include victims of domestic abuse on the basis that over a quarter of the work carried out by clinics relates to family law¹⁷. This would reflect the authors' own experiences where there has been a considerable increase in the number of domestic abuse survivors making enquiries at their clinic. Further, the authors have been contacted by three domestic violence organisations over the last year who have wished to establish links with the clinic. They have sought advice on behalf of their service users and legal training for their volunteers. There is evidence that clinics in the USA are engaging with work relating to GBV¹⁸ however to date, there has been no evidence that this is being replicated in the United Kingdom.

Against the backdrop of unmet legal need, new domestic laws in relation to GBV and a policy focus on awareness raising, the authors, who are clinical supervisors at a full representation law clinic at Northumbria University, identified a critical need to incorporate training about GBV within the family law clinical curriculum. This was achieved through accepting instructions on client cases relating to GBV and setting up a referral system for enquiries with a local domestic abuse organisation for those clients

¹⁶ LawWorks Clinic Network Report April 2016 – March 2017 (December 2017) 'Analysis of pro bono legal advice work being done across the LawWorks clinic network between April 2016 and March 2017'. Published by LawWorks.

¹⁷ LawWorks Clinic Network Report April 2016 – March 2017 (December 2017) 'Analysis of pro bono legal advice work being done across the LawWorks clinic network between April 2016 and March 2017'. Published by LawWorks.

¹⁸ At the University of Chicago Law School students can elect to take part in the Gendered Violence and the Law clinic. The clinic aims to increase students' understanding of the civil and criminal systems that address GBV through field work complemented by a weekly seminar which addresses cases on domestic violence, sexual assault and child protection issues (see <https://www.law.uchicago.edu/clinics/genderedviolence>). The University of Buffalo also has a Family Violence and Women's Rights Clinic. Students have the opportunity to work on projects which impact the local community, including the preparation of self-help leaflets for survivors and the provision of community legal education for domestic abuse service providers. The clinic has also worked with advocacy groups to support domestic violence legislative reform (see <http://www.law.buffalo.edu/beyond/clinics/domestic-violence.html>).

who were unable to secure alternative funding. Further, the authors established a drop-in clinic (*Empower 4 Justice*) with a local BAME women's organisation. Empower 4 Justice is an interdisciplinary project which allows BAME women to receive one-off legal advice alongside independent domestic violence advocate (IDVA) services. The project was conceived out of the idea that BAME women often experience culturally specific forms of abuse, multiple barriers to reporting and difficulties accessing advice because of a shame culture, immigration insecurities and a lack of awareness of their rights.

Alongside these projects, the authors felt it was appropriate to supplement the students' case work with an overarching teaching programme about GBV. This was because many of the students' cases related to a single issue and this prevented the students developing a breadth of understanding that would allow them to put their learning experiences in a wider context. In order to achieve this, the authors decided to participate in the 16 Days of Activism against Gender-Based Violence (16 Days campaign). The 16 Days campaign takes place annually between 25 November (The International Day for the Elimination of Violence against Women) to 10 December (Human Rights Day) and aims to raise awareness of and stimulate action to end violence against women and girls globally. The dates of the campaign are intended to highlight that the act of perpetrating gender violence is a human rights violation¹⁹. It was felt that the 16 Days campaign was an appropriate cultural fit due to its interdisciplinary focus, international reach and

¹⁹ The 16 Days campaign was first run in 1991 by the Women's Global Leadership Institute coordinated by the Centre for Women's Global Leadership. Since then, it is estimated that over 2,800 organisations from approximately 156 countries have taken part. More information about the campaign can be found at <http://16dayscwgil.rutgers.edu/>.

emphasis on building local alliances. It was also an academic fit for law students because of its focus on advocacy and policy development. Whilst participants were invited to use a 16 Days toolkit²⁰ this was not compulsory and the authors retained full discretion about the topics covered and style of teaching activities. Further, as time is a premium within the clinic, the 16 Days campaign did not take too much time out of an otherwise busy clinic curriculum.

The authors' main objectives in participating in the campaign were to:

- a) Increase student engagement with issues of gender justice; and
- b) Develop an effective educational tool for raising student understanding of the different forms of gender violence, the domestic and international framework for protecting victims and the roles that different organisations play in achieving this.

If these aims were met, it was felt that we would realise the overall aim of;

- c) Better preparing the students for the realities of family practice in England and Wales.

Following completion of the 16 Days campaign, the students were asked to participate in a focus group or complete a questionnaire about their experiences.

The authors are not aware of any similar studies which have been conducted about the effectiveness of GBV awareness raising programmes in higher education students or within clinical legal education. There are however a number of studies regarding gender justice programmes which have been conducted with middle and high school students²¹.

²⁰ The 16 Days toolkit can be accessed at The Centre for Women's Global Leadership. Rutgers School of Arts and Sciences (https://www.sas.rutgers.edu/cms/16days/images/16dayscwg/2017_16_Days_of_Activism_Against_Gender-based_Violence_Action_Kit_Complete_September_28_2017.pdf).

²¹ A helpful summary of this literature is provided in Malhotra, K. Gonzales-Guarda, R. Mitchell, E (2015) 'A Review of Teen Dating Violence Prevention Research: What About Hispanic Youth?' *Trauma, Violence and Abuse* Volume 16, Issue 4. pp. 444-465. Sage Publications. Further studies are discussed later in this article.

These studies have focussed on improving student knowledge of domestic abuse and healthy relationships and preventing teen dating violence. These studies differ from ours in that they often do not deal with issues of GBV which occur outside an intimate partner relationship. In the authors' view, many of these studies fail to recognise wider issues of family violence such as forced marriage, female genital mutilation and honour violence. Further, whilst it was an aim of this programme to improve the students' knowledge, the authors did not intend to change the students' behaviour in their own personal relationships. The majority of the studies in this area have been carried out in America and the authors are not aware of any studies which have taken place in the United Kingdom.

This article will discuss the teaching materials that were designed and will present the students' experiences of participating in the campaign. It will address how their participation went some way to meeting the objectives set out above in that the students demonstrated increased knowledge of civil and criminal laws relating to GBV, developed their critical lawyering skills and competency in working with vulnerable clients and contributed to wider efforts to advance gender justice. Further, the article will draw on the ancillary advantages of participating in the campaign, including improved client outcomes and reputational benefit. The limitations of the 16 Days campaign will also be acknowledged along with ideas for developing the programme in the future.

SCOPING THE PROBLEM - GBV IN ENGLAND AND WALES

The legal and political significance of GBV has gained momentum in recent years. On an international level this can be evidenced through the Sustainable Development Goals which vowed to achieve gender equality and empower all women and girls by 2030²². The targets to achieve this goal include eliminating all forms of violence against women and girls in the public and private sphere including trafficking, sexual and other types of exploitation and eliminating harmful practices such as child and forced marriage and female genital mutilation. Likewise, the United Nations and the Council of Europe have developed international instruments to provide legal frameworks for ending GBV. An example of this is The Convention on the Elimination of All Forms of Discrimination against Women which was adopted in 1979 and requires signatory states to implement measures to abolish discriminatory laws, establish public institutions to ensure the effective protection of women against discrimination and the elimination of all acts of discrimination by persons and organisations. More recently, the Istanbul Convention obliges signatories to develop a comprehensive legal framework and approach to combat violence against women, through preventing violence, protecting victims and prosecuting perpetrators. The UK Government is a signatory to both conventions but is yet to take steps to ratify the Istanbul Convention. Providing a comprehensive legal

²² See the United Nations Sustainable Development Goals - 'Gender equality and women's empowerment' available at: <http://www.un.org/sustainabledevelopment/gender-equality/>

framework is important for providing protection and access to support services for victims and acting as a deterrent to perpetrators²³.

At a domestic level, there has been growing recognition of the different forms that GBV takes. This is evidenced through the introduction of the Modern Slavery Act 2015 which seeks to protect victims of human trafficking. In the same year, the Serious Crime Act 2015 came into force, criminalising coercive and controlling behaviour. There have also been considerable developments in relation to forced marriage. In 2005, the Foreign and Commonwealth Office and Home Office launched the Forced Marriage Unit (FMU) to lead on the Government's forced marriage policy and casework. In the last year, the FMU gave advice or support in relation to a possible forced marriage in 1,196 cases²⁴. In 2014, it became a criminal offence to force a person to marry, under the Anti-Social Behaviour, Crime and Policing Act 2014. The Government also introduced forced marriage protection orders as a civil remedy to protect someone who is facing being forced into a marriage or who is in a forced marriage²⁵. These provisions have been met with some success in tackling violence against women. Over the last year, 247 forced marriage protection orders have been granted (in all cases the applicants were women)²⁶ and two convictions for forced marriage have taken place²⁷.

²³ Klugman, J (2017) 'Background paper for World Development Report 2017 'Gender Based Violence and the Law' Georgetown University. Available at: <http://pubdocs.worldbank.org/en/232551485539744935/WDR17-BP-Gender-based-violence-and-the-law.pdf>

²⁴ Home Office and Foreign and Commonwealth Office (16 March 2018) 'Forced Marriage Unit Statistics 2017'. Home Office Publications.

²⁵ See the Forced Marriage (Civil Protection) Act 2007.

²⁶ Ministry of Justice and National Statistics (2018) 'Family Court Statistics Quarterly: Annual 2017 including October to December 2017' Published by the Ministry of Justice.

²⁷ See <http://www.familylawweek.co.uk/site.aspx?i=ed190141>

Whilst GBV may be encountered in many legal practice areas, it has particularly close links with family and criminal law because these areas regulate the most prevalent forms of GBV - intimate partner violence and domestic abuse. In the year ending March 2017, an estimated 1.9 million adults in England and Wales experienced domestic abuse²⁸. In the same year, the Crime Survey for England and Wales reported that 26% of women and 15% of men had experienced some form of domestic abuse since the age of 16 – equivalent to 4.3 million female victims and 2.4 million male victims²⁹. There continues to be an upward trend in applications for domestic violence remedy orders (e.g. non-molestation orders and occupation orders) in England and Wales³⁰. In 2017, there were 24,912 such applications, representing an increase of 5% in the year ending December 2017. Of course, this does not reflect the full reality of the situation as domestic violence is a vastly underreported area.

However, whilst on the one hand the Government has demonstrated a commitment to conferring rights on women and girls by becoming signatories to CEDAW and the Istanbul Convention, they have simultaneously made cuts to the funding which allows victims to enforce these rights. LASPO came into effect on 1 April 2013 and removed large parts of family law from the scope of public funding and removed completely funding for civil claims for compensation³¹. Funding remains available for victims of domestic

²⁸ Office of National Statistics (November 2017) 'Domestic Abuse in England and Wales: year ending March 2017. Statistical Bulletin'. Published by the Office of National Statistics.

²⁹ Office of National Statistics (November 2017) 'Domestic Abuse in England and Wales: year ending March 2017. Statistical Bulletin'. Published by the Office of National Statistics.

³⁰ Ministry of Justice and National Statistics (29 March 2018) 'Family Court Statistics Quarterly: October – December 2017'. Published by the Ministry of Justice.

³¹ In the context of GBV this is important because victims can pursue civil claims for compensation against perpetrators in respect of injuries suffered. Exceptional Case Funding (ECF) remains available for categories of law which do not ordinarily

abuse in family law proceedings, however in practice many victims are ineligible because they cannot provide the requisite gateway evidence and/or satisfy the strict means test. This has led to an increase in domestic abuse survivors representing themselves in court proceedings³². This situation is indefensible because despite promises from the Government, there are no legal prohibitions on unrepresented defendants cross-examining their alleged victims and no firm plans to introduce this³³. Court proceedings can therefore be a forum for perpetrators to exercise further control over their victims³⁴.

A REVIEW OF EXISTING LITERATURE – GBV IN EDUCATION

There have been attempts to raise public awareness of GBV through formal and informal channels of education. To some extent, this has happened organically following the allegations of sexual misconduct against Harvey Weinstein and other male celebrities, which have led to grassroots social media campaigns such as “#Me too” and “Time’s Up” and which aim to demonstrate the worldwide prevalence of sexual assault and

attract public funding but where a failure to provide legal services would be in breach of an individual’s rights under the Human Rights Act 1998. However, research suggests that there have been fewer than expected applications for funding. The Government estimated there would be between 5,000 – 7,000 applications for ECF per annum, however in 2013/2014 only 1,516 applications were made, of which around 50% were granted. Statistics reported in: The Law Society of England and Wales (June 2017) ‘Access Denied? LASPO Four Years On: Law Society Review’ Published by the Law Society.

³² Statistics indicate that in 2017 neither party had legal representation in 35% of cases in front of the family courts. Reported in the Ministry of Justice and National Statistics (29 March 2018) ‘Family Court Statistics Quarterly: October – December 2017’ Published by the Ministry of Justice.

³³ This issue has been raised in the HM Government consultation (2018) ‘Transforming the Approach to Domestic Abuse’. The consultation document acknowledges that unlike the criminal courts, the family courts do not have a specific power to prevent cross-examination of a victim by an alleged perpetrator. The consultation goes on to state ‘the government is committed to addressing this issue and will legislate to give family courts the power to stop this practice as soon as legislative time allows’ (p. 52) however no definitive time frame has been indicated.

³⁴ Richardson, K. & Speed, A (2019) ‘Restrictions on Legal Aid in Family Law Cases in England and Wales: creating a necessary barrier to public funding or simply increasing the burden on the family courts?’. *Journal of Social Welfare and Family Law* Volume 41 Issue 2 pp.135-152 DOI: 10.1080/09649069.2019.1590898.

harassment³⁵. Changing and challenging attitudes towards GBV through education however is also a key focus of GBV legislation. This shift towards prevention and education about legal rights and responsibilities is arguably reflective of the current climate of austerity in which the Government are keen to reduce the economic cost of GBV and comply with their legal obligations in the most cost effective manner³⁶. Further, the focus on public legal education is revealing at a time when many victims are struggling to enforce their rights and seek justice through the legal system as a result of the cuts to legal aid implemented by LASPO. Article 12 of the Istanbul Convention, for example, obliges states to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and other practices which are based on the inferiority of women. It is expected this will be achieved through Article 13 which requires signatories to “promote or conduct on a regular basis awareness raising campaigns or programmes... to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the Convention, their consequences on children and the need to prevent such violence”. Further, under Article 14, parties must “include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-

³⁵ It is reported that within 24 hours of the ‘Me Too’ hashtag going viral, there were more than 12 million posts, comments and reactions by 4.7 million internet users around the world. Reported at: <https://www.cbsnews.com/news/metoo-reaches-85-countries-with-1-7-million-tweets/>.

³⁶ Domestic violence alone costs the UK economy £16 billion per annum. Reported in Siddiqui, H (2018) *Counting the Cost: BME women and gender-based violence in the UK*. IPPR Progressive Review Volume 24 Issue 4. pp 362 -368.

based violence against women and the right to personal integrity... in formal curricula and *at all levels of education*".

The need for early education has been emphasised in the global 'Think Equal' initiative, which calls for governments across the world to embed "social and emotional learning" into their curriculums at an early stage (from 3 years old) in order to "end the discriminatory mind set and cycle of violence across our world".³⁷ So far 147 schools across 15 countries (including the United Kingdom) are piloting the Think Equal educational programme.³⁸ The outcome of that pilot study is currently being evaluated.

In March 2018, the Government launched a consultation on 'transforming the response to domestic violence'³⁹ in respect of the Domestic Violence and Abuse Bill, which (together with the Preventing and Combating Violence against Women and Domestic Violence (Ratification of Convention) Act 2017) will enable ratification of the Istanbul Convention into domestic law. One of the four key themes of the consultation is 'promoting public and professional awareness' of GBV. In order to ensure that domestic abuse is properly understood, the consultation proposes introducing a statutory definition of domestic abuse which will include economic abuse and controlling and coercive behaviour. In addition, it is intended that funding will be provided for all schools to deliver Relationships Education, Relationships and Sex Education (RSE) and Personal, Social, Health and Economic (PSHE) Education so that young adults leave

³⁷ <http://www.thinkequal.com/>

³⁸ <http://www.thinkequal.com/where-we-work/>

³⁹HM Government (2018) 'Transforming the Response to Domestic Abuse – Government Consultation'. Available at: https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/supporting_documents/Transforming%20the%20response%20to%20domestic%20abuse.pdf

school with the knowledge to prepare them for adult life. The Children and Social Work Act 2017 places a duty on the Secretary of State for Education to introduce 'relationship education' at all schools in England. Crucially, most of our students are between 21 and 22 years old and therefore are unlikely to have received any education around domestic abuse in their formative educational years. They have therefore not benefited from the changes that are currently being implemented into primary and secondary education.

The implication in the Istanbul Convention and the domestic abuse consultation is that improved knowledge and awareness will have a positive effect on reducing domestic abuse perpetration and will lead to more competent practitioners in this field. This because knowledge is typically regarded as a precursor to attitudinal and/or behaviour change⁴⁰. Whether this is in fact accurate has been the subject of many academic studies. The majority of studies in this area have been conducted with middle and high school students in the USA and have focussed on improving student knowledge of domestic abuse and healthy relationships and preventing youth violence within relationships. Whilst GBV is taught within university clinics, the authors are not aware of any such studies which have been conducted about the effectiveness of GBV awareness raising programmes in higher education students or within clinical legal education. Further, these studies often do not deal with issues of GBV which occur outside an intimate partner relationship and therefore fail to capture the full scope of family violence. These

⁴⁰ Salazar, L. Cook, A (2006) 'Preliminary findings from an outcome evaluation of an intimate partner violence preventing program for adjudicated, African American, adolescent males' *Journal of Youth Violence and Juvenile Justice* Volume 4, Issue 4, pp. 386-385.

studies are motivated by a desire to change youth behaviour within personal relationships rather than in a professional capacity. The findings suggest that such programmes have varying levels of success – a factor which may be attributable to the different teaching activities, format of the programmes and the time dedicated to teaching these issues. A comprehensive analysis of studies in this area has been prepared by Malhotra et al⁴¹ however for the purposes of this article, only those studies which focussed on developing students' knowledge and understanding of legal frameworks around domestic abuse/GBV have been considered.

Producing change in knowledge following an educational intervention has been well documented in studies⁴². Jaycox et al⁴³ for example, delivered a three-class programme over three hours to educate students aged 13-14 years old about domestic violence, healthy relationships and legal rights. The intervention group showed increased knowledge of the laws relating to domestic abuse and increased likelihood of seeking help (in particular from a lawyer specialising in domestic abuse) compared to a control group. However, the position on whether knowledge directly results in attitudinal or behavioural change is less clear. Salazar et al, for example, conducted five 2-hour sessions on intimate partner violence with predominantly African American males aged between

⁴¹ Malhotra, K. Gonzales-Guarda, R. Mitchell, E (2015) 'A Review of Teen Dating Violence Prevention Research: What About Hispanic Youth?' *Trauma, Violence and Abuse* Volume 16, Issue 4. pp. 444-465. Sage Publications.

⁴² See Foshee, V. A. Bauman, K. E. Arriga, X. B. Helms, R. W. Koch, G. G & Linder, G. F. (1998) 'An evaluation of Safe Dates, an adolescent dating violence prevention program' *American Journal of Public Health* Volume 88. pp 45-50 and Lavoie, F. Vezina, L. Piche, C. & Boivin, M. (1995) 'Evaluation of a prevention program for violence in teen dating relationships' *Journal of Interpersonal Violence* Volume 10. pp 516-524. Macgowan, M. J. (1997) 'An evaluation of a dating violence prevention program for middle school students' *Journal of Violence and Victims* Volume 12. pp 223-235.

⁴³ Jaycox, L.H. McCaffrey, D. Eiseman, B. Aronoff, J. Shelley, G.A. Collins, R.L. Marshall, G.N. (2006) 'Impact of a school-based dating violence prevention program among Latino teens: randomised controlled effectiveness trial' *Journal of Adolescent Health*, Volume 39 Issue 5 pp. 694-704.

12 and 18 with the aim of developing the students' awareness of violence against women, personal choice, and connecting violence against women to violence against ethnic minorities and the lesbian and gay community⁴⁴. Whilst the participants reported higher levels of knowledge of intimate partner violence, only those who had witnessed high levels of parental violence demonstrated lower patriarchal attitudes than the control group. Similar findings were reported by Lowe et al⁴⁵ whose study comprised four one-hour sessions on assault, coercion, victims' rights, legal information and healthy relationships. Lowe found that the students demonstrated a statistically significant increase in knowledge after the programme but there was no real effect on attitudes towards dating violence.

Another study which led to increased knowledge (but not necessarily behavioural change) was carried out by Taylor et al ⁴⁶. The researchers examined the effect of a teaching programme on student attitudes and knowledge of GBV and assessed whether participation reduced the probability of perpetration and/or victimisation. The study involved 123 sixth and seventh grade classrooms being randomly assigned to one of two five-session curriculum addressing GBV and sexual harassment or to a no-treatment control group. The first curriculum was 'interaction-based' which focussed on setting and communicating boundaries in relationships, the formation of relationships,

⁴⁴ Salazar, L. Cook, A (2006) 'Preliminary findings from an outcome evaluation of an intimate partner violence preventing program for adjudicated, African American, adolescent males' *Journal of Youth Violence and Juvenile Justice* Volume 4, Issue 4, pp. 386-385.

⁴⁵ Lowe, L. Jones, C.D. Banks, L (2007) 'Preventing Dating Violence in Public Schools: an evaluation of an interagency collaborative program for youth' *Journal of School Violence*, Volume 6 Issue 3. pp. 69-87

⁴⁶ Taylor, B. Stein, N. Burden, F (2010) 'The Effects of Gender Violence/Harassment Prevention Programming in Middle Schools: A Randomised Experimental Evaluation' *Violence and Victims Journal* Volume 25 Number 2. pp. 202-223.

wanted/unwanted behaviours and the role of the bystander as intervener. The lessons in this curriculum did not provide simple answers but required the students to engage with ambiguity. In contrast, the 'law and justice' curriculum focused on laws, definitions, information, data about penalties and the consequences for perpetrators of GBV. Students in the law and justice curriculum, compared to the control group (which received no training on GBV), had significantly improved outcomes in awareness of their abusive behaviours, attitudes towards GBV and knowledge. The knowledge gained was not long-lasting for all the groups however. Those in the interaction-based group demonstrated a similar level of knowledge as the control group after a six-month period. Students in the interaction-based curriculum experienced lower rates of victimisation, increased awareness of abusive behaviours, and improved attitudes toward personal space. Interestingly, students in both treatment groups were more likely to have committed violence against people they had dated. The researchers believed that the interventions affected the students' sensitivity to the problem of GBV, and it made it more likely for them to identify and report certain behaviours as GBV.

In a second study, Taylor et al ran an intervention programme in public middle schools in New York City⁴⁷. Students were allocated to a 'classroom-based intervention', a 'building based intervention', a mixed building and classroom intervention group or a control group. The classroom-based intervention consisted of six sessions over a ten-week period and covered consequences of domestic abuse for perpetrators, laws relating

⁴⁷ Taylor, B.G. Stein, N.D. Mumford, E.A. and Woods, D (2013) 'Shifting Boundaries: an experimental evaluation of a dating violence prevention program in middle schools' *Journal of Prevention Science*. Volume 14 Issue 1. pp 64-76.

to domestic abuse, the social construction of gender roles and healthy relationships. The building-based intervention included temporary building-based restraining orders, posters in school buildings to increase awareness and reporting of domestic abuse and higher levels of security presence in safe/unsafe 'hotspots' mapped by students. The results indicate that there was no significant difference between groups on the prevalence of sexual harassment perpetration. Contrary to expectations, prevalence of sexual harassment victimisation was significantly higher in the building only group, compared to the control group.

Some studies have reported an increase in prejudicial attitudes and behaviours following participation in gender justice programmes. For example, Jaffe found an increase in sexist attitudes among a minority of the males who participated⁴⁸. It was felt this could have arisen from a feeling of male defensiveness as females were present in the teaching sessions but the content related solely to male-to-female abuse. Edwards et al⁴⁹ also found that whilst the majority of the programmes had a moderate positive effect, 25% of the eight studies they analysed lead to a deterioration in the students' attitudes. These students appeared to be more supportive of dating violence after participating in the programme. This is also referred to as 'backlash effect'⁵⁰. However, there have also been

⁴⁸ Jaffe, P.G. Sudermann, M. Reitzel, D. Killip, S.M (1992) *An evaluation of secondary school primary prevention program on violence in intimate relationships*. *Violence Vict* 1992 Summer: 7(2) pp.129-26.

⁴⁹ Edwards, A. Hinsz, V (2014) *A Meta-Analysis of Empirically Tested School-Based Dating Violence Prevention Programs*. *SAGE Open* April-June 2014 1-8.

⁵⁰ Salazar, L. Cook, A (2006) *Preliminary findings from an outcome evaluation of an intimate partner violence preventing program for adjudicated, African American, adolescent males*. *Journal of Youth Violence and Juvenile Justice* Volume 4, Issue 4, pp. 386-385. *Academy of Criminal Justice Sciences*.

criticism of those programmes which have adopted a 'gender neutral approach' and failed to recognise that GBV disproportionately affects women⁵¹.

Negative effects can also stem from poor programme design, including sessions that are not engaging or effective, and adopting a 'one size fits all' approach which is not sufficiently tailored to the audiences they address. This was identified by Salazar who noted that many studies lack cultural competency and do not address culturally specific forms of abuse⁵².

THE STUDY

In order to try and meet the aims outlined above, the authors asked clinical students to take part in a number of activities centred around GBV. Those activities were compulsory for the 18 final year Masters in Law Exempting degree (M Law)⁵³ students who chose to undertake family law casework in the Student Law Office. However, all other final year students on the MLaw (Solicitors Route) degree programme at Northumbria University were invited to take part on a voluntary basis. Only three additional students chose to take part. As such, a total of 21 students participated in the programme. 19 of these students were female and 2 were male. The activities organised were as follows:

⁵¹ *ibid*

⁵² *ibid*

⁵³The MLaw programme is an Integrated Master's which meets the requirements of a Qualifying Law Degree, and incorporates the knowledge and professional skills needed to succeed as a solicitor (M Law Exempting) or barrister (M Law Exempting (Bar Professional Training Course)).

- a) A documentary screening of “Banaz: a love story”. The documentary chronicles the life and death of Banaz Mahmood, a young British Kurdish woman killed in a so-called ‘honour’ killing. Following the screening, the students took part in a discussion about the issues raised in the documentary.
- b) A workshop on GBV and online abuse ran by an academic whose research focusses on the online abuse of feminists as a form of violence against women and girls⁵⁴.
- c) A workshop on the domestic and international frameworks for protecting victims of domestic abuse.
- d) A seminar by a domestic violence organisation which focussed on identifying domestic abuse, the services offered by independent domestic violence advocates and the role that different organisations play in supporting survivors.
- e) The authors established a family law blog called “A Family Affair”⁵⁵ and all students were asked to submit a blog article on the subject of GBV. Students were able to pick their own topics, which ranged from sexual harassment in the workplace through to rape as an act of genocide.

⁵⁴ Lewis, R. Rowe, M and Wiper, C (2017) ‘Online abuse of feminists as an emerging form of violence against women and girls’. *British Journal of Criminology*, 57 (6). pp. 1462-1481.

⁵⁵ The blog can be accessed at <https://afamilyaffairsite.wordpress.com/>

In addition to these compulsory activities, the authors also ran a voluntary poster competition during the 16 Days campaign in which all students were invited to submit a poster considering the different forms of GBV or proposals for ending violence against women. Five students submitted posters to the competition. The posters were displayed at Northumbria University's Festival of Feminism in February 2018.

The students took part in these activities alongside their case work in the Student Law Office and additional one off advice provided through the Empower 4 Justice project.

Methodology

The authors adopted a mixed-methods approach for this research, using a semi-structured interview and electronic questionnaires. Ethical approval was provided for this by Northumbria University.

The initial approach was to only use focus groups with a mix of closed and open ended questions. All students who participated in at least one of the activities as part of the campaign were emailed inviting them to attend the focus groups to provide their views on their participation. 21 students were therefore emailed to participate. Participation was anonymous and the focus groups were to be conducted by a third party experienced researcher. This was important as the authors were also the academics who were responsible for marking the students on their clinical work. It was therefore important to avoid students perceiving the research as impacting on their clinic mark or distorting their opinions to please the researchers. Unfortunately, due to the focus groups taking

place at a busy time during the students' studies, one participant volunteered to take part in the focus group. The focus group therefore took the format of a semi-structured interview instead. There were specific points for discussion but the idea was that the interview would be conversational in order to obtain the student's general views on participating in the campaign. The interview was audio-recorded and transcribed by a research assistant. To maintain anonymity, the transcription, but not the audio recording, was provided to the authors.

The low response rate meant that the data gathered from the focus group could not in any way be reflective of the overall view of the participants more generally. A number of students did however indicate to the third-party researcher that they would like to give feedback on the campaign in a different method. To increase the response rate and provide more reliable data, the decision was therefore made to adopt a mixed approach using a combination of the feedback already gathered from the interview, together with additional electronic questionnaires.

Electronic questionnaires were emailed to all the students who participated in at least one of the campaign activities. Information was provided to the students about the aims of the research and they were asked to email their completed questionnaires, together with a signed consent form, to the same third-party researcher who had conducted the semi-structured interview. This again maintained appropriate anonymity for the respondents. In addition to the student who had already provided their views in an interview, four other students provided responses to the questionnaire. From a sample of 21 students, a

response was therefore received from 5 students, providing an improved response rate of 24%. Whilst this is not a particularly high response rate, research conducted by Fosnacht et al into the importance of high response rates for college surveys indicates that a response rate of 20 to 25 percent in a survey of higher education users with a small sampling frame should provide reliable results⁵⁶.

Once the authors received the questionnaires and transcription they separately coded the data on paper to ensure consistent analysis⁵⁷. The authors both used thematic analysis to identify any themes or patterns in the data, which was particularly useful when analysing the data from the semi-structured interview⁵⁸. After coding the data, the authors compared the themes they had identified and found them to be consistent, adding validity to the findings. In the next section, the authors will analyse the themes identified.

FINDINGS

Many of the themes that arose from the questionnaires and the semi-structured interview were as a result of the specific questions posed. For example, participants were asked about the impact on student well-being and whether they thought that the campaign was 'too female-victim focused'. However, there were other additional themes that arose naturally from the qualitative nature of the questionnaire. These largely related to the

⁵⁶ Fosnacht, K. Sarraf, S. Howe, E and Peck, L.K (2017) 'How Important are High Response Rates for College Surveys?' *The Review of Higher Education*, Vol 40, Number 2, Winter 2017, John Hopkins University Press p.245-266

⁵⁷ Schreier, M (2014) 'Qualitative Content Analysis' in *The SAGE Handbook of Qualitative Data Analysis*, SAGE Publishing, p. 179

⁵⁸ Burnard, P (1991) 'A method of analysing interview transcripts in qualitative research' *Nurse Education Today* 11:6. p461

different benefits the students felt they had obtained from their participation in the campaign.

The main themes the authors identified were as follows:

1. Educational benefits/skills enhancement
2. Employability benefits
3. Student well-being
4. Limitations/feed-forward ideas

Educational benefits

The findings were broadly consistent with Jaycox⁵⁹ and Taylors'⁶⁰ studies in that there was a positive correlation between the students' participation in the programme and their improved knowledge and understanding of GBV. All of the participants agreed that the campaign increased their awareness of GBV issues. This was also supported by the definitions that the participants were able to provide about their understanding of GBV (a specific question within both the electronic questionnaires and the semi-structured interview):

“Gender-based violence can be understood as a violation of human of rights and a form of discrimination against women”

⁵⁹ Jaycox, L.H. McCaffrey, D. Eiseman, B. Aronoff, J. Shelley, G.A. Collins, R.L. Marshall, G.N. (2006) 'Impact of a school-based dating violence prevention program among Latino teens: randomised controlled effectiveness trial' *Journal of Adolescent Health*, Volume 39 Issue 5 pp. 694-704.

⁶⁰ Taylor, B. Stein, N. Burden, F (2010) 'The Effects of Gender Violence/Harassment Prevention Programming in Middle Schools: A Randomised Experimental Evaluation' *Violence and Victims Journal* Volume 25 Number 2. pp. 202-223. Taylor, B.G. Stein, N.D. Mumford, E.A. and Woods, D (2013) 'Shifting Boundaries: an experimental evaluation of a dating violence prevention program in middle schools' *Journal of Prevention Science*. Volume 14 Issue 1. pp 64-76.

“Violence predominantly impacting women but can also be men. This can be in various ways and not limited to hurting an individual physically”

“Gender-based violence is a widespread issue of violence against someone because of their gender.”

“Where an individual is a victim of domestic violence due to their gender.”

“Gender-based violence is an extremely wide term and includes acts such as FGM, forced marriage, rape and domestic servitude. Gender-based violence is often a societal norm in many cultures.”

Whilst each participant gave a different interpretation of their understanding of GBV, the definitions acknowledge the wide range of issues that could fall under the GBV heading. Many of these definitions also fit within the guidance provided by the international frameworks for protection against GBV including CEDAW and the Istanbul Convention, as discussed above. Furthermore, many of the definitions acknowledge that GBV is predominantly (although not always exclusively) perpetrated against women and girls. In one case, the respondent used the term GBV interchangeably with domestic violence. This suggests that particular student’s understanding was weaker than the other students’ because they did not comprehend the fact that GBV is broader than domestic violence and also includes gendered abuse which takes place in the public sphere.

The final definition quoted above expressly mentioned the international and cultural elements of GBV. This increased knowledge of international family law issues was

another key theme running through the responses to the questionnaires. For example, when asked about their experience of writing for the blog, one participant commented:

“I thought it was really interesting, it allowed me to research an area of law I have never been able to before, in jurisdictions I have not looked at before.”

When discussing their experience of working on the Empower 4 Justice project, that same participant commented that:

“If I am honest, I had no idea of BME issues, never mind that they occurred so locally.”

Building on Salazar’s findings that many educational programmes fail to appropriately address cultural forms of violence⁶¹, the authors specifically set out to educate the students about forms of violence that disproportionately affect minority communities. Recognising the diversity of GBV was reflected in their initial aims. The authors did this by ensuring that the workshops dealt with a wide range of culturally sensitive issues and the international frameworks for protecting women and children from GBV.

Evidence of the students’ knowledge development was also evident from the blog articles and academic posters. The students both correctly identified the domestic and international legal provisions (despite being provided with minimal supervisor

⁶¹ Salazar, L. Cook, A (2006) ‘Preliminary findings from an outcome evaluation of an intimate partner violence preventing program for adjudicated, African American, *adolescent males*’ *Journal of Youth Violence and Juvenile Justice* Volume 4, Issue 4, pp. 386-385.

guidance) and included insightful practical assistance to support victims⁶². The choice of topics demonstrated that the students understood the broad spectrum of GBV and the fact that eradicating it demands a multi-agency approach. The '16 blogs for 16 days' were:

- 16 Days of Activism – about the campaign
- Social norms of GBV
- Sexual harassment in the workplace: a study of the Weinstein allegations
- The Istanbul Convention: Tackling Violence against Women and Girls
- Female Genital Mutilation: the law in England and Wales
- Female Genital Mutilation and Child Marriage in Kenya
- Raising awareness of domestic abuse in same-sex relationships
- Rape as an act of Genocide in Rwanda: the Role of the International Criminal Tribunal
- Marital rape: an exploration of the position in India
- Protection available under civil law for victims of domestic violence
- Forced marriage protection orders
- 21st Century honour killings
- Banaz: a love story – review
- Strategies to prevent Gender Based Violence
- Strategies for ending Female Genital Mutilation
- Legal aid for victims of domestic abuse

The respondents appeared to feel empowered by this knowledge. They felt there was value in understanding about GBV because of its prevalence and because as future

⁶² See for example *Strategies to Prevent Gender Based Violence* at <https://afamilyaffairsite.wordpress.com/2017/12/10/strategies-to-prevent-gender-based-violence> and *Protection available under the civil law for victims of gender based violence* at <https://afamilyaffairsite.wordpress.com/2017/12/04/protection-available-under-civil-law-for-victims-of-domestic-violence/>

family law practitioners they may be called upon to support victims of abuse. The personal rewards for the students are demonstrated in the participant comments below:

“Working in this project has helped me learn and grow and I think become a more well-rounded individual never mind practitioner.”

“Working in communities and with women where they seemingly have no other access to legal advice made it more satisfying that I was able to be a part of it.”

“You just felt so sorry for the women that you were helping, just it really made me feel like I was doing something worthwhile.”

“I found it rewarding to write an article which is aimed at helping others.”

Many of the respondents recognised that during the 16 Days campaign, they were exposed to topics and legislation which was not covered elsewhere on their degree programme. This raises the question about whether GBV should form part of the formal curriculum because only limited topics could be covered during the relatively short 16 Days campaign. Students were therefore also asked whether they would have benefited from the opportunity to undertake an academic module in International Family Law. One participant responded by stating:

“I think this would be a brilliant module to take, regardless of the E4J project... if I had been previously exposed to these issues, I would have had a wider understanding of them. Without this module, I had to understand the context

of their issues before I could begin to consider legal advice – a module would have removed this.”

As a result of this feedback, one of the authors has now developed an elective International Family Law module which will be available to level 6 students.

Unlike the majority of studies considered earlier in this article, this study did not attempt to measure attitudinal or behavioral change in the respondents’ own relationships. However, in a professional capacity it was apparent to the authors that the students became more sensitive to issues of GBV, which is consistent with the findings of Taylor’s research in this area⁶³. The students demonstrated increased competency in recognising triggers that many suggest a client had been subject to GBV that they may have previously overlooked. In turn, this allowed the students to ask appropriate fact find questions and direct their research appropriately.

Employability benefits

From the data gathered, the respondents appeared to value the employability benefits of participating in the campaign and comments were made about the fact that they could talk about this in job interviews. The authors are aware from separate conversations with students who participated in the campaign, that several students took a copy of their blog article along to job interviews as evidence of their written communication skills and understanding of the legal climate. Many of the students

⁶³ Taylor, B. Stein, N. Burden, F (2010) ‘The Effects of Gender Violence/Harassment Prevention Programming in Middle Schools: A Randomised Experimental Evaluation’ *Violence and Victims Journal* Volume 25 Number 2. pp. 202-223.

opted to prepare a second article on GBV, thereby demonstrating an engagement with GBV even after the campaign was over.

The focus on employability could be as a result of the stage of education that these students were at. All students who participated in the campaign were in their final year of study and may therefore be more focused on their impending graduation and post-education job prospects.

Participants were also asked about whether the campaign had any impact on their future career choices. There was an equal split of participants who said that the campaign had made them rethink their future career choices and those who said that it had no impact. One student now wants to pursue a career as a police officer specialising in domestic abuse and another wishes to become an IDVA. One student commented:

“It made me more interested in working within the area of family law.... I was able to gain a deeper insight into something that normally happens behind closed doors. I want to help people that are in similar situations”.

The fact that students reported a change in their career aspirations suggests that at least some of the students' engagement with issues of gender justice continued beyond involvement in the 16 Days campaign. The choice of their careers (i.e. a police officer and IDVA) also demonstrates that the students appreciate the roles of different organisations in tackling GBV. This suggests the students did not simply view GBV as a 'legal' issue for lawyers to solve.

Student well-being

The authors were aware that many of the issues covered during the campaign could potentially be distressing for students with no previous experience of GBV. That said, the authors recognised the benefit to students in learning about those issues in a safe educational environment before being exposed to these issues in practice. In order to limit the risk of vicarious trauma, students were provided with information about each of the sessions in advance and were given the opportunity to opt out of sessions if they felt that the issues covered would be too distressing. Both in advance of and following the sessions a number of students made disclosures to their supervisor about previous experiences of GBV. For some of them, this was the first time they had spoken out about their experience and they indicated that the campaign had given them the courage to make those disclosures. This meant that their supervisors were then able to direct them to appropriate support services. It is possible that the students had not identified their experiences as GBV before they participated in the campaign but that the sessions made them more sensitive to this. This would be in line with the findings of Taylor et al who found that their participants were more likely to identify their own behaviour as GBV after participating in the programme⁶⁴.

Participants in the study were asked whether they found any of the topics covered during the campaign distressing and all indicated that they did. However, those who

⁶⁴ Taylor, B. Stein, N. Burden, F (2010) 'The Effects of Gender Violence/Harassment Prevention Programming in Middle Schools: A Randomised Experimental Evaluation' *Violence and Victims Journal* Volume 25 Number 2. pp. 202-223.

responded to the questionnaires also felt that they did not feel the need to approach their supervisor for additional support. The reasons given for this included:

“Although some of this information was distressing, it is the truth and it made me more aware and gain a greater understanding of gender-based violence although I did speak to my friends about this.”

“Whilst the issues in discussed the various sessions were distressing, I did not feel the need to discuss the issues with my supervisor further. I also think discussing these issues in the sessions themselves, allowed me to reflect on them and deal with them.”

One student said that the documentary was distressing but they did not feel the need to approach their supervisor and decided to watch a similar documentary after the session because, whilst it was on a distressing topic, they found the subject matter interesting. This again suggests that this particular students continued to have an interest in gender justice issues after the campaign ended. They also said that they would have been able to approach their supervisor for support if they had needed to because their supervisor was so *“approachable”*.

The documentary screening appeared to be the session that the participants found most distressing but the responses also indicated that it was also one of the most enjoyable sessions, alongside the blog articles. The participants clearly valued the educative aspects of these activities and felt appropriately prepared and supported to deal with them within a classroom environment. For example, one participant stated:

“Some of the topics were distressing, such as the violence Banaz was exposed to. However, we are warned of this at the start and had the option to leave. Gender-based violence is real life for many young girls and therefore the activities were more eye opening than distressing.”

The data suggests that the authors struck an appropriate balance in meeting their duty of care to the students whilst also highlighting issues that in practice they may be exposed to with little support or prior warning.

Limitations of the campaign

When asked about the limitations of the campaign and areas that could be improved in future campaigns/activities, a number of issues were raised by the participants.

Firstly, students were asked whether they thought the campaign was too “female victim focused”. Four out of five respondents felt that it was. The female focus of the campaign was also reflected in the definitions of GBV outlined above, where two out of five of the students specifically mentioned abuse perpetrated against women. Students made the following comments about the mainly female-victim focus of the campaign:

“I know that Gender-based Violence and Violence against Women is interchangeable, but it has been really women focused and I’m just wondering if it could be more men focused”

“I just feel like it needs to be a bit more like, “ok, this can encompass everyone”, whereas it was just really “women, women, women, women”, which I understand. It’s mainly just against women...”

“When [X] came in, you could tell straight off that she was really, just a feminist basically... which isn’t like awful, but... the way she was speaking was a bit against men in some aspects. She was like “when men do this” and “when men do that.”

“Whilst I appreciate that GBV is considered to be generally towards females and their perspectives need to be presented, I think it would allow students to have a more well-rounded and informed viewpoint if other groups of people are also considered.”

The negative reaction to the female focus of this campaign appears to be evidence of the ‘backlash effect’ as highlighted by Salazar.⁶⁵ This was particularly apparent in the session on online abuse against feminists. It is possible that students who did not identify as feminist felt ostracised by this session or that the focus on male-to-female abuse led to some students feeling defensive about the treatment of men within the sessions. However, as is apparent from the quotes above, students appeared to understand that the reason for the female-victim approach was that statistically there are more female victims of GBV.

However, as identified in the final quote, students were also keen to hear about other victims of GBV. Students expressly indicated a wish to hear about male victims of domestic abuse and abuse within same-sex relationships.

⁶⁵ Salazar, L. Cook, A (2006) ‘Preliminary findings from an outcome evaluation of an intimate partner violence preventing program for adjudicated, African American, *adolescent males*’ *Journal of Youth Violence and Juvenile Justice* Volume 4, Issue 4, pp. 386-385.

REFLECTING ON OUR INITIAL AIMS

After analysing the data and identifying the key themes, the authors then considered the feedback from the participants, reflecting on the initial aims. All respondents agreed that participation in the campaign had increased their awareness of GBV and in particular the practical issues of advising BAME victims of domestic abuse. England is a multicultural, diverse society and as a result family law practitioners are now often being expected advise in culturally sensitive or international family law cases. As has been highlighted earlier in this article, recent family court statistics demonstrate a continuing general upward trend in both the number of applications and actual orders made for Forced Marriage Protection Orders and Female Genital Mutilation Protection Orders.⁶⁶ By increasing the students' awareness of these issues the authors would argue that they have taken steps towards developing an effective educational tool to ensure that students are equipped to deal with the realities of family practice in England. There was some evidence that the students' engagement with issues of gender justice was continued beyond participation in the campaign in those students who completed second blog articles on GBV and those who reported changed career aspirations after participating in the 16 Days campaign.

There was also evidence that the students' knowledge of the domestic and international frameworks around GBV had increased. This was reflected in the blog articles and the definitions that the students provided of GBV. As this was not a longitudinal study, the

⁶⁶ Ministry of Justice and National Statistics (28 June 2018) *Family Court Statistics Quarterly: January to March 2018*.

data does not reveal whether this knowledge was retained after the end of the programme. This is discussed in the research limitations.

However, the campaign largely focused on GBV perpetrated against female victims by male perpetrators. This was somewhat led by female victim focus of the international campaign and also by the generally accepted view that the majority of victims of gender-based violence and abuse are female.⁶⁷ That said, the number of male victims of GBV is not insignificant. For example, there were an estimated 713,000 male victims of domestic abuse in 2017⁶⁸ and in the same year 21.4% of the cases referred to the Forced Marriage Protection Unit involved male victims⁶⁹. This limitation in the campaign was identified by many of the students in their responses and cannot be ignored. By failing to consider the wider victims of gender violence such as male victims, victims of abuse in a same-sex relationships or non-binary victims, it could be argued that the authors have not yet succeeded in fully achieving the aims of the study.

Research limitations

The research had other general limitations. This study only relates to students undertaking the Student Law Office module on the MLaw (Solicitors Route) Exempting course at Northumbria University. It therefore cannot be said to be representative of

⁶⁷ The Office of National Statistics estimates that, for the year ending March 2017, there were 1.2 million female victims of domestic abuse compared to 713,000 male victims: Office for National Statistics (23 November 2017) *Domestic abuse in England and Wales: year ending March 2017* <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2017>>.

⁶⁸ Ibid

⁶⁹ Home Office (16 March 2018) *Forced Marriage Unit Statistics 2017*

students on other programmes or at other Higher Education institutions. It is recognised that the findings therefore cannot be generalised and further research is necessary to understand if this is an effective way of educating students more generally about GBV.

To maintain anonymity in the responses the students were not asked to identify whether they were participating in a family law firm in the clinic and therefore required to attend the sessions or whether they were a member of a different firm and therefore attending voluntarily. It could be argued that the 18 students who elected to participate in a family law firm, may have an existing interest in some of the issues covered. The findings may therefore not be representative of MLaw students more generally.

It was not possible to identify from the data which of the particular activities were most effective in developing the students' knowledge or practical skills. As such, the authors are only able to comment on the campaign as a whole. Furthermore, whilst the authors noted an improvement in the students' confidence and ability to deal with vulnerable clients (and this was mirrored in comments made by the respondents), it was not clear from the data whether this was directly related to their participation in the campaign or the fact that the students simply became more experienced at working with such clients over the course of the academic year. It is the authors' belief, however, that the campaign provided the students with the breadth of knowledge that allowed them to think more broadly (and more creatively) about the issues affecting their clients.

A final limitation of the study is that the data does not show whether the students' knowledge was retained beyond their participation in the 16 Days campaign. Research

suggests that studies which focus on ‘laws and justice’ may be more likely to have longer term benefits than curriculums which are interaction based (i.e. focussed on setting and communicating boundaries in relationships, the formation of relationships, wanted/unwanted behaviours)⁷⁰. The authors’ curriculum was predominantly focussed on law and justice however further research would be needed to evaluate the longer-term effects of the study.

IMPACT ON THE WIDER COMMUNITY

One of the underlying reasons for asking students to participate in the campaign was to aid them in assisting victims of GBV both in their clinic work but also in their future employment, should they choose a career in this field. The true aim of the project therefore goes beyond the impact on the students participating in the campaign, towards the impact on victims of GBV in the local community and beyond. This is something that was acknowledged by one of the participants who stated that:

“I know that working in family firms is rewarding but working in communities and with women where they seemingly have no other access to legal advice made it more satisfying.”

Since 2017, students in the family firms in the Student Law Office have provided assistance by way of advice or representation in over 30 cases and over 20 women have received advice through the Empower 4 Justice drop in clinic. In addition to this, the A

⁷⁰ Taylor, B. Stein, N. Burden, F (2010) ‘The Effects of Gender Violence/Harassment Prevention Programming in Middle Schools: A Randomised Experimental Evaluation’ *Violence and Victims Journal* Volume 25 Number 2. pp. 202-223.

Family Affair blog has received over 2200 views across 35 countries since its launch in November 2017.

The impact of this project was acknowledged at the annual Law Works & Attorney General Student Pro-Bono Awards, where it was awarded “Best New Pro Bono Activity”.⁷¹ The award nomination acknowledged the 16 Days campaign, combined with the wider work that the students do to assist victims of domestic abuse in the local community through the clinic, Empower 4 Justice and the online blog.

TAKING THE RESEARCH FORWARD – CONCLUDING REMARKS

Building on the feedback received and in a continued attempt to meet the aims set out, the authors now plan to move away from the female-focused 16 Days campaign, towards a two-day student conference that will consider a wider range of victims of GBV. Workshops will be developed to specifically discuss male victims of domestic abuse and domestic abuse within same-sex relationships.

However, when educating students about these issues, the authors consider that it is important to maintain the pedagogical focus of the activities, acknowledging that students learn in very different ways. Jacobson discusses the importance of this in her work around learning style theory and particularly how increased diversity of gender and ethnicity in law schools has equally led to increased diversity in thought and learning

⁷¹<https://www.lawworks.org.uk/solicitors-and-volunteers/get-involved/lawworks-and-attorney-generals-student-pro-bono-awards-2018>

styles.⁷² A variety of different learning activities will therefore be incorporated into the conference structure including workshops, poster competitions and documentary screenings.

Adopting a conference structure will also be an opportunity to engage students in research-rich learning, a focus for many UK higher education institutions. At the end of the conference, students will be invited to either submit an article to the “A Family Affair” blog⁷³ or a paper to the Student Journal of Professional Education and Academic Research⁷⁴. This has employability benefits for the students who choose to take up these publication opportunities and provides evidence of their research and written communication skills that they can provide to potential employers. The data already gathered indicates that this is a benefit that students particularly value.

Staff and students from other higher education institutions will also be invited to attend the conference. This will be an opportunity to share best practice in this area and to engage other universities where there is a demand for this type of work but where there may be a lack of expertise, time or funding to be able to run similar programmes. Secondly, this will allow data to be gathered on methods of educating students about GBV outside of Northumbria University, making the findings more widely applicable to higher education institutions.

⁷² Jacobson, M.H. Sam (2001) *A primer on learning styles: reaching every student (law school)*, Seattle University Law Review, Summer, 2001, Vol.25(1), p.140,

⁷³ <https://afamilyaffairsite.wordpress.com>

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- <https://afamilyaffairsite.wordpress.com/>

Legislation

- Anti-Social Behaviour, Crime and Policing Act 2014
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Female Genital Mutilation Act 2003
- Forced Marriage (Civil Protection) Act 2007
- General Recommendation No 19 of the CEDAW Committee on violence against Women
- Modern Slavery Act 2015
- Serious Crime Act 2015

CLINICAL LEGAL EDUCATION: VISION AND STRATEGY FOR START-UP CLINICS IN NIGERIA

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Abstract:

Clinical Legal Education provides an opportunity for Law Students to, while learning, offer free legal services to the indigent community around where a law faculty is located. It is not enough to set up a law clinic without determining first of all, what role the clinic is to perform and secondly, how the clinic will aid students' learning. To have a successful clinic, it is imperative that it is well-planned with a structure to allow for funding, effective running and one that arouses student enthusiasm. The faculties of law in Nigeria have recognised that establishing law clinics will aid to achieve the vision of producing efficient lawyers who will be ready for practice soon after graduating from school. This article identifies the need to imbibe the right skills to aid student participation in law clinic activities and provides a guide to aid law faculties who wish to set up clinics or assist those already operating to realise their full potential. The article recommends the inclusion of law clinic module as one that all students must pass before graduating even though grades should not count to determine the overall Culminative Grade Point Average (CGPA) of a student.

Key words: Law Clinic, Skills, Pro bono, Law Faculty, Practice, Legal Education, Nigeria

I. INTRODUCTION

The origins of Clinical Legal Education (CLE) can be traced to the advent of that mode of instruction in the twentieth century in the United States where some law schools offered community law clinics.¹ In England and Wales, law clinics began to develop in the early 1970s. Clinics were set up in the Universities of Kent, Warwick and in some polytechnics that started by offering advice to students. The Kent Clinic, however, was designed to operate as a full-fledged legal practice.² In Africa, the evolution of CLE can be traced to the emergence of law clinics in the 1970s with the first of such clinics established at the University of Cape Town in 1972.³

The introduction of CLE in Nigeria is due largely to the efforts of the Network of University Legal Aid Institutions (NULAI).⁴ The first Nigerian law clinic was set up at the Adekunle Ajasin University in 2004. The University of Maiduguri and the University of Uyo followed suit in 2005.⁵ Other universities in the country have since gone ahead to establish law clinics in their law faculties.

Given that this article is concerned about clinical legal education (CLE) and the *modus operandi* for setting up *pro bono* law clinics in Nigerian law faculties, the need to begin

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¹ Kevin Kerrigan and Victoria Murray, (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan 2011) at 7.

² *Ibid* at 9.

³ Olugbenga Oke-Samuel, 'Clinical Legal Education in Nigeria: Developments and Challenges' (2008) *Griffith Law Review* 17 (1) at 143.

⁴ *ibid*.

⁵ *ibid*.

with a definition for CLE is germane. Unfortunately, like other terms in the field of law, no one has offered and it will amount to an exercise in futility to attempt to offer a universal definition for the term. The definitions offered so far are largely dependent on a writer's perspective. This is similar to an African folklore about seven blind men who were asked to describe an elephant. Each one of them, described the elephant by the part that was touched depending on whether it was the trunk, tail or the foot of the animal. Grimes describes CLE in the following words:

[Clinical legal education is] a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practiced.... It is almost inevitably means that the student takes on some aspect of a case and conducts this as it would be conducted in the real world.⁶

The problem with Grimes' definition is that it does not include the importance of legal aid and social responsibility that should characterise a legal clinic. It is imperative to note that a law clinic should combine practical legal education and legal aid. It should be more of a teaching experience with real clients.⁷ To the Network of University Legal Aid Institutions (NULAI), CLE is a 'multidisciplinary and multipurpose type of education which seeks to develop the skills and competences needed to strengthen

⁶ Richard Grimes, 'The Theory and Practice of Clinical Legal Education' in J Webb and C Maugham (eds), *Teaching Lawyers' Skills* (Butterworths Law1996) 5.

⁷ Mohammed M Meghdadi and Ahmed E Nasab, 'The Role of Legal Clinics in Human Tights Education: Mofid University Legal Clinic Experience' (2011) *Procedia Social and Behavioural Scince* 3014-2015.

the legal system, providing opportunities for learning and social justice concepts.⁸ This definition too does not touch on the importance of providing free services as an important aspect of CLE. In the context of the discussion running through this article, CLE is a phrase used to describe the several practical learning activities for law students. CLE maybe defined as the involvement of law students in activities geared towards the teaching of the law with opportunity to learn from real practice while at the same time providing *pro bono* services. This article aims to provide a guide for providing strategy for Nigerian law faculties seeking to establish a law clinic and for those with law clinics that are not currently being run to full potential. CLE serves two-fold purpose i.e. practical legal training of students and providing legal services to indigent members of the community.⁹ It is key in developing a strategy, that the law clinic is set up to ensure that students learn from practice. This is discussed in the next section.

II. LEARNING FROM PRACTICE

Participating in a Law Clinic is akin to medical students learning from experience during rounds at a ward while undertaking their clinicals at a teaching hospital. Law clinics are described as a teaching law office within a law school where students

⁸ Network of University Legal Aid Institutions, 'The Development of Clinical Legal Education' (2015) available at < <http://www.nulai.org/index.php/blog/83-cle> > accessed 21 July 2018.

⁹ MA du Plessis, 'Clinical Legal Education: Determining the Mission and Focus of a University Law Clinic and Required Outcomes, Skills and Values' (2015) *De Jure* 313.

participate in a supervised law practise to reflect law taught in the classroom.¹⁰ The law clinic should be conceived as a learning environment for applying the law in practice. This should go beyond mere simulations to students being presented with real cases under supervision just like medical students are presented with real patients at the teaching hospital.

It is important that students appreciate what they have been taught in theory early enough in their career to prepare them for the future. Even though, the provision of legal aid in Nigeria is primarily that of the government that set up the Legal Aid Council,¹¹ other players such as law firms, and non-governmental organisations (NGOs) may complement the government via providing *pro bono* legal services. The law clinic can serve as a way of contributing to the society and be included in the corporate social responsibility (CSR) of the law faculty/university to its immediate community while at the same time providing students with the opportunity to learn from experience under supervision. Giving the high number of inmates awaiting trial due to incapacity to afford legal services, law faculties in Nigeria can be of tremendous assistance in helping to decongest the prisons. For example, according to the National Human Rights Commission (NHRC), while the Owerri prisons has a capacity for 584 inmates, as at 14 June 2016, there were 2,228 inmates in the prison with those awaiting-

¹⁰ Stephen Wizner, 'The Law School Clinic: Legal Education in the Interest of Justice' (2002) *Fordham Law Review* 70 at 1929.

¹¹ See the Legal Aid Act 2011.

trial far out-numbering the inmates serving their prison terms.¹² There is, therefore, the need to tap into the opportunity of law students and their supervisors contributing to provide a solution to this societal challenge.¹³ It must be mentioned here that while students cannot practice in real courts, qualified lawyers who are attached to the clinics can do so while the students learn in the same way that medical students are taught in the various teaching hospitals in Nigeria.

A law student who participates in the faculty law clinic will benefit from interacting with professionals through the role of a lawyer serving a client. By the time that law student graduates, facing real clients in the future will not be much of a challenge as the experience gained at the Law Clinic will be handy. The argument here is that simulation can form part of what law students in the second year in the LLB programme and the third year engage in through mooting but students from LLB 4 to LLB 5 and those at the Nigerian Law School should have the experience of solving real cases. It has been argued as well that students are capable of learning far more through clinical techniques than skills developed from contextual studies.¹⁴

The benefits of law students participating in CLE are immense. The opportunity of having dealt with real cases and helping to provide solutions will prepare the student for the rigours of legal practice and make integration into the work in a law firm easier.

¹² National Human Rights Commission, *Annual Report 2016* at 96 available at <<https://www.nigeriarights.gov.ng/downloads/NHRC%202016%20ANNUAL%20REPORT.pdf>> accessed 18 July 2018.

¹³ Olanike S Adedokun-Odeyemi, 'Role of Legal Education in Social justice in Nigeria' (2017) *Asian Journal of Legal Education* 5(1) at 94.

¹⁴ Kevin Kerrigan and Victoria Murray, *op cit* (note 1) at 7.

For example, interviewing skills, drafting of documents and motions can be learnt before the student lawyer graduates from the law faculty. The argument in this article is that involvement in real cases will impact more on the students than mere simulation. Live client clinic offers the best opportunity to learn from spontaneity, authentic emotion and personal obligation.¹⁵ A law clinic that is merely framed to have just simulated cases may not fully realise the potential of CLE. The aspect of providing *pro bono* services to the community as a way of social responsibility will also be lacking. It is therefore, of importance, that this is taken into consideration in the planning and setting up of law clinics in Nigerian law faculties. A good example is the Women's Law Clinic of the University of Ibadan. The clinic provides services to live clients principally on women-related issues such as counselling on women's and girls' rights.¹⁶ CLE should be more than just organising gatherings for public education on the rights of citizens as practised by some law clinics in Nigeria. The approach of using guest lecturers to teach students in a law clinic setting appears to be more like the traditional method of the theoretical teaching of the law. A clinic ought to be a clinic. It should be the lawyer's equivalent of a medical clinic and nothing less. Having discussed the law clinic as an opportunity for the student to learn from the practice of law, the next section of this paper discusses the skills that a law student should possess or acquire to effectively participate in the law clinic while learning at the same time.

¹⁵ *ibid* at 9.

¹⁶ Olanike S Adedokun-Odeyemi, *op cit* (note 12) at 91.

III. SKILLS FOR LAW CLINICS

It is imperative that participating law students develop the skills required to be efficient working at the law clinic. First, for a student to be resourceful at the law clinic, the student needs to have a broad knowledge of the legal system including legal concepts, values, principles and rules. It is important that while introductory law courses are being taught at the early stages of the undergraduate career, the modules are prepared with this in mind. As such, it is recommended that the modules be revised to allow for simulation and the content be in touch with real application situations. Based on the foregoing, CLE is suitable for students in the fourth and fifth years of the LLB honours programme in Nigeria. Secondly, students should be able to demonstrate the ability to apply knowledge and provide the required arguable conclusions for actual or hypothetical law problems. Thirdly, students must be taught to imbibe research skills. This skill set is key to finding solutions for legal problems or issues. The students should demonstrate the skill to identify the problems in any given case, find out what area of law is in issue, research it and retrieve up-to-date information relevant to the case using a variety of primary and secondary sources of research. Fourthly, students require good interviewing skill. It is important that the relevant information is sourced from the client. A good mastering of this skill is a vital ingredient for law practice. It is key that the students are trained on how to conduct client interviews. All interviews must be prepared for. There must be an interview plan and a method for sourcing information. It is imperative, that all participating students go through a training before being admitted to participate in the clinic. Fifthly, Participating students should demonstrate good oral and communications skills. Working at a law clinic requires extensive communication. One way to develop this skill set is practice. Sixthly, A law student should possess the ability to recognise and prioritise issues; bring together materials from diverse sources; make critical judgements; and present the appropriate choice from a selection of solutions. The clinic should be organised to emphasise

this key area of training as it will be beneficial to the student in the future practice of law. Other skills required include the ability to use, present and assess numerical data, create word-processed documents, use ICT resources such as email and the ability to browse the internet. It is equally important that all participants must imbibe team work. Working as a team at the law clinic will be useful to the law students preparing for a career in legal practice. This should be imbibed in the students through their engagement in group tasks. In this wise, it will be effective to organise the students into various groups of say, four students each. Each group should be assigned its own case with the members of the group performing different tasks to achieve the group objective. For example, in a group of four handling a case, one person may conduct the interview with the client, a second person researches the law, a third person writes the brief and the fourth person is responsible for writing all communications with the clients. Even though, each group member may be assigned a specific task, they are all to discuss and review the tasks performed by each member of the group.

In Australia, the Queensland University of Technology, following the path of Australian Law Reform Commission's 2000 exhortation to re-orientate legal education around 'what lawyers need to be able to do,' have grouped the skill sets law students need into four different categories namely, attitudinal skills, cognitive skills, communication skills and relational skills.¹⁷ See table below for the skill sets listed under each of the four categories mentioned above.

¹⁷ Sally Kift, 'A Tale of Two Sectors: Dynamic Curriculum Change for a Dynamically Changing Profession' (2003) Being a Paper Presented at the *Developing the Law Curriculum to Meet the Needs of the 21st Century Legal Practitioner Conference* (Melbourne, Australia) 13-17 April 2003 available at <<https://core.ac.uk/download/pdf/10877994.pdf>> accessed 24 September 2018.

Table 1: Skills by Category

Attitudinal skills	Cognitive skills	Communication skills	Rational skills
Ethical orientation	Problem solving	Oral communication	Work independently
Creative outlook	Legal analysis	Oral presentation	Teamwork
Reflective practice	IT literacy	Advocacy	Appreciate race, gender, culture and socio-economic differences and diversity generally
Inclusive perspective	Legal research	Legal interviewing	Time management
Social justice orientation	Document management	Mooting	
Adaptive behaviour	Discipline and ethical knowledge	Negotiation	
Pro-active behaviour		Written communication	
		Drafting	

Other skills that will be useful for a law clinic include counselling, factual investigation, the development of personal strategies to enhance performance and ethics.¹⁸ To get the best of the law clinic in terms of work quality and to enhance students' learning, the law school needs to consider this skill set as a factor that should guide student recruitment and the foundation modules in the curriculum for law

¹⁸ MA du Plessis, op cit (note 9) 324-325.

training. Where this is done effectively, by the time the students graduate from the vocational law schools,¹⁹ they would be ready to be integrated into law firms in the country with little orientation needed.

Having identified the skills that law students require to efficiently participate in the law clinic, it remains to be stated that there are values that the law faculty should promote alongside these skills. This is important in the quest to train efficient, passionate and dedicated lawyers for the future. For example, the goal of the law faculty of the University of Maiduguri is stated as follows:

Vision

To be a world-class law faculty which produces highly disciplined law graduates that will provide quality legal representation to the people as well as cater for the contemporary legal needs of the society.²⁰

Mission

The mission of the faculty is:

- to inculcate in our students the values of decency, hard work, loyalty and self-discipline
- to produce high quality law graduates within a serene and peaceful academic environment who will complete favourably globally and
- to provide transferrable skills through ICT driven legal training and clinical legal education (CLE) to students to enable them perform tasks and execute responsibilities with the highest degree of professionalism.²¹

¹⁹ In Nigeria, after a compulsory 5-year LLB honours programme at the various law faculties, students who wish to be admitted as solicitors and advocates of the Supreme Court of Nigeria must attend the Nigerian Law School for a one year or two year (for students who studied law abroad) programme.

²⁰ Faculty of Law University of Maiduguri, 'Welcome to the Faculty of Law' available at <<http://www.unimaid.edu.ng/faculty/law.html>> accessed 24 September 2018.

²¹ Ibid.

Objectives

Main objective of the law programme is to train students who upon graduation will proceed to the Nigerian Law School where they will undergo the one-year compulsory training for the purpose of being called to the Nigerian Bar.

Specific objective of the law programme is to produce lawyers that will fit in well in all sectors of the society, be it in the judiciary, private legal practice, public sector, private sector or even the armed forces. This objective is of particular importance to the states that make up the University's catchment areas that depend on the Faculty to provide both high and low levels manpower to serve on both the Bench and the Bar.²²

In line with these values promoted by the faculty of law, University of Maiduguri, it has been noted that every lawyer must embrace the following: 'competent representation; striving to promote justice, fairness and morality; striving to improve the profession; professional and self-development; judgement; professionalism; civility and conservation of the resources of the justice system.'²³ The skills set for law students to perform effectively in a law clinic have been enumerated and discussed above. In the next section of this article, the setting up of a law clinic is the focus.

Case Study of the University of Maiduguri Law Clinic²⁴

The Maiduguri Law Clinic (MLC) was set up in February 2005 following the approval of the University Senate for the commencement of Clinical Legal Education in the University. Consequently, the MLC was registered as a member of the Network of

²² Ibid.

²³ MA du Plessis, op cit (note 9) 326-327.

²⁴ The information under this section is sourced from the Network of University Legal Aid Institutions Compendium of Campus Based Law Clinics in Nigeria 2014. Additional information was supplied by Dr Abdul Rasheed, one of the Law Clinic Supervisors.

Universities Legal Aid Institutions (NULAI). The MLC started operations on 9th December 2005. The clinic also, under a memorandum of understanding (MoU) with German Agency for Technical Cooperation (GTZ) serves as a model for the provision of mediation and legal services for women and children.

CLE is offered at the University as an elective course for students in LLB IV (fourth year) as well as for those in LLB V (fifth year) of the five year law degree programme. The MLC adopted the NULAI model of the CLE curriculum. The objectives of the MLC are first, the training of law students to become highly qualified public interest attorneys by serving the needs of the community and those of individual members of the community through legal representation, advice and education. Secondly, the opportunity to provide opportunity to law students to have first-hand experience in the practical application of law and thirdly, to develop skills of client counselling, negotiation, advocacy and litigation within a supportive learning environment.

The recruitment process for the MLC is as follows: applicants must be in the fourth or fifth year of the five year law degree honour programme. To be eligible for selection, a candidate must meet a minimum CGPA grade point. The second stage consists of a written and oral interview. Other criteria for eligibility include gender and the geopolitical state of origin of a candidate. At the University, CLE is taught as a course for both the fourth and fifth years. In the first semester of the fourth year, students study Clinical Legal Education (LW 414) which is a 3 unit course. They are taught interviewing and counselling skills, legal writing 1, Legal research and they undertake field work exercises. In the second semester of the fourth year, students take the

Clinical Legal Education (LW 415). They are taught ethics, information and communication technology, legal writing 2 and they also undertake field work. In the fifth year, students enrolled for CLE take Practical Lawyering Skills (LW 512) where they learn Alternative Dispute Resolution (ADR), introduction to practice management and undertake clinic work. In the second semester of the fifth year, students learn Practical Lawyering Skills (LW 513). The course outline includes public interest lawyering, access to justice and they undertake work in the clinic. Students who take CLE are evaluated based on 30 percent of continuous assessment and 70 percent for examinations for both year four and year five students.

The MLC serves as an in-house clinic with a street law component and a prison service unit. The clinic is run by students in the fifth year of the five year course. The students are divided into four groups and allocated clinic days in accordance with a schedule for clinic management and client consultation. The clinic is open Mondays through Fridays from 09.00 to 16.00 hours. The main areas of focus for the clinic include human rights, ADR, matrimonial/reproductive health and rights, labour related matters, child rights and prison and pre-trial detainees. The services provided include counselling/legal advice, mediation, child rights support, legal support services, citizenship/community sensitisation and case referrals.

IV. SETTING UP A LAW CLINIC

In this section, the focus is on the strategy to be employed in setting up a clinic for a law faculty within the Nigerian context. There are key issues that need to be addressed

for the establishment of a successful law clinic or for the development of already existing clinics. The aim is to ensure that the full potential of CLE is achieved and that the students get the real experience of working in a law firm even while they are still students. The guidance provided in this article is for clinics that are designed as *pro bono* live-clients law clinics. The steps required to establish a sustainable CLE project in a Nigerian law faculty are considered below.

Having decided that a clinic is to be established, the next call is to decide on where the clinic is to be positioned.²⁵ In the case of Nigeria, the clinic is suitable for the LLB programme and not for those pursuing post-graduate studies. The steps required in the setting up of the law clinic are discussed in sub-sections below.

1. Getting Support

Since the law clinic is to be set up in the University, it is important that some factors are taken into consideration. The support of the University Vice Chancellor and/or governing council is required. This is because, the University may need to bear the start-up costs for the project. There will be the need for an office within the law faculty or the university premises accessible to client. Approval for this can only come from the university authorities. It is noted that 'wheels tend to turn slowly in academia,'²⁶ as such, there is a need for a great deal of patience and follow-up to ensure that approval is obtained. The law faculty may also approach alumni, NGOs,

²⁵ Ronan Fahy and Mirreille van Eechoud, *Establishing a Start-up Law Clinic in Law School: A Practical Guide* (ICT Law Incubators Network 2015) at 5.

²⁶ Kevin Kerrigan and Victoria Murray, *op cit* (note 1) at 22.

philanthropists and funding bodies for support as there will be costs associated with setting up of the office. There will be need for office equipment including furniture, desktop computers/laptops, internet, telephone, stationery and for the services of a full-time clinic staff or clerk.

Ordinarily the dean of law of the faculty should be in support of the establishment of a law clinic in the faculty. It is the responsibility of the dean to appoint a champion who would serve as the vision driver. It is better if a member of faculty is employed principally as the legal director of the clinic as you would have a medical director in a teaching hospital. It is also in order if a member of faculty combines the responsibility of managing the clinic with some teaching in the faculty as well. The important thing is to have a member of staff who will be in charge and be accountable for the successful running of the project. Other staff members too may be delegated to the clinic to perform specific roles.

2. Recruiting Student Counsel/Advisors/ Participants

Having decided on the need to establish a law clinic, it is vital to consider how participating student counsel are to be recruited. It is recommended that CLE be made compulsory for all LLB four students and be optional for LLB five students. For students in the lower classes, moot court activities can be encouraged while they learn the theoretical aspects of the law in preparation for the CLE programme in their fourth and final years in the LLB programme. It should be optional for students in the final year, who at that level would have decided whether they wish to practice as

lawyers in chambers in the future. In this case, all students in the fourth year are to be selected in groups to take turns at attending to clients at the clinic.

To get the best out of the students, it is important that CLE be graded for participating student counsel. From experience, where the clinic is merely structured as an extra-curricular activity, students are usually not committed. Academic credits should therefore be given to participating students. It is recommended that a pass or fail grade model be used instead of specific grades and the result should not count towards the Grade Point Average of a student, but a pass must be required to graduate from the LLB programme.

3. Identify the Target Audience for the Clinic

It is important to determine what audience the clinic is to serve. This will determine the design and structure of the clinic. While it is given that as a part of the university's social responsibility project, the primary clients of the clinic would be the immediate community where the law faculty is located, the type of cases the clinic can handle must be determined from the start. Furthermore, whereas it is important that the clinic aspire to reach as many potential clients as possible,²⁷ since the more the clientele, the better the learning opportunity. Nevertheless, a student clinic cannot handle all types of cases. The clinic may only take on cases where there are sufficient resources to handle such cases. Where a clinic does not have the capacity to handle a case, this should be made known to the client as quickly as possible in order not to raise false

²⁷ Guy Alvarez, 'Law Firm Target Audience: Reaching Your Ideal Client' (2018) available at <<https://good2bsocial.com/law-firm-target-audience/>> accessed 23 July 2018.

hopes. Civil matters such as landlord and tenant cases, contractual matters, civil wrongs, employment disputes and criminal cases pertaining to those awaiting trial should form the core area of practice at the law clinic. Specialist matters like matrimonial causes, intellectual property rights etc should not be entertained.

4. Identify and Engage the Key Stakeholders

There are various key stakeholders that determine how successful a project would become. In the business plan for the clinic, it is important that roles are specified to ensure that all stakeholders identify and play their part. Clarity of roles will help drive the project on the path to success. The core clinic team must be identified from the start. These are:

i. The Legal Director

The legal director is to the law clinic what a medical director is to a teaching hospital. The person occupying this position, who ideally, should be a member of the faculty, must be the champion of the clinic and have the support of the dean and the university authorities. The legal director should oversee the budget for the clinic and provide policy directions as well as determine the areas of practice.

ii. The Supervising Lawyer

It is recommended that a legal practitioner with experience be employed and attached to the clinic. The lawyer may be assigned teaching responsibilities as well with a primary responsibility to appear in court where required. The Supervising lawyer may also be the legal director if there are staffing issues. It is important to appoint

someone with a wide experience of different areas of practice to this position especially in areas that the clinic will like to focus on.²⁸

iii. Supervisors

Supervisors should be drawn from members of the faculty to oversee the different groups. Their task should be to review the work done by the student counsel. They may or may not be practising lawyers. Their job is to oversee work done and have the student counsel pass it on to the supervising lawyer who should review it and approve letters of advice to clients and where necessary represent such clients in court.

iv. Academic Consultants

Some faculty members can be retained as consultants. Those members of the faculty who teach modules such as torts, contract, property law, criminal law, civil and criminal procedure as well as the law of evidence, should help the students as the need arises.

v. Student Advisors/Counsel

These are the students who participate in the clinic and relate with clients. They are expected to have the most contact with the clients and manage the cases under the supervision of the supervisors and/or the supervising lawyer.

5. *The Facility for the Law Clinic*

Careful thought needs to be given to the facility to be used for the clinic. The office space for the clinic should be exclusive to the clinic and accessible to clients. If the law

²⁸ Kevin Kerrigan and Victoria Murray, op cit (note 1) 31.

faculty is not accessible to members of the public, it may be wise to locate the law clinic in an area in the university that is more accessible. The working space should be big enough to accommodate key clinic staff and conducive enough to have visitors. There should be a reception area for clients and guests who are waiting to be seen. Care must be taken to separate this from the work area to protect the confidentiality of clients and to ensure clients do not see or get access to confidential information. The interview room should be conducive for at least four persons, with two student interviewers, a supervisor and the client attending. There is the need for storage and filing cabinets.

Office equipment such as computers and internet should be provided. For research, students may use the university law library. The clinic should have a dedicated line with which clients can reach the office. The office will require a photocopier, a shredder, a document scanner, digital camera, audio playback equipment, stationery and all the essentials required for running a law office.

The office will need furniture such as desks, chairs, filing cabinets and book shelves.²⁹

The following checklist of supplies should serve as a guide for supplies and equipment essential for a law clinic:

²⁹ Find Law, 'How to Start a Law Firm: Office Furniture and Supplies' (2018) available at <<https://practice.findlaw.com/how-to-start-a-law-firm/how-to-start-a-law-firm-office-furniture-and-supplies.html>> accessed 24 July 2018.

Table 2: Office Equipment for Law Clinic

Item	Check
i. Envelopes	
ii. Stationery	
iii. Paper (a 4-size)	
iv. Supply of sticky notes	
v. Pencils	
vi. Pens	
vii. Staplers	
viii. File folders	
ix. Three ring binders	
x. Staple removers	
xi. Scissors	

The above list is certainly not all-inclusive but constitute the essential items that are required for the law clinic.

V. PRACTICE STRATEGY FOR THE CLINIC

In medical practice, bedside teaching affords clinical students the opportunity to learn while attending to patients in a teaching hospital.³⁰ The method adopted in teaching medical students is said to provide opportunity for role playing, teaching of transferable skills, increased learner motivation, increased professional thinking; and integration of clinical skills, communication skills, problem-solving, decision making and ethical challenges.³¹ It follows that medical clinical education is structured in such

³⁰ Yousef Marwan, Muhammad Al-Saddique, Adnan Hassan, Jumanah Karim and Mervat Al-Saleh, 'Are Medical Students Accepted by Patients in Teaching Hospitals?' (2012) *Medical Education* 1.

³¹ *ibid.*

a manner to ensure that all the above skills in addition to study of medicine, are imbibed by the medical student. This should also be the strategy for CLE in a law faculty in Nigeria.

In the initial business plan for the clinic, office hours for the clinic should be determined. It will need to be decided whether the clinic should operate when school is not in session. If the clinic is offering pro bono services as well as representing real clients in court, it may be necessary to have the clinic operational during school breaks but with volunteer counsel.

It may help to define a practice theme for the clinic as this would help for cohesion and serve as a driver for success. A theme such as access to justice or human rights could be a good starting point. The benefits of such strategy is that it will aid the building of internal expertise, add coherence to the programme and have a greater impact.³²

Furthermore, in the plan for the clinic, the mode of attracting clients should be considered. It is also possible that since the services are free, the clinic may be over subscribed by clients. It follows that there should be a standard in place to serve as a guide for sourcing pro bono work and ways to reject those whose cases the clinic may unfortunately not handle due to capacity. Some of the ways to source for clients include, working with community leaders and organisations to inform them about the

³² The Law Society, 'Developing a Pro Bono Programme' (2015) available at <file:///Users/admin/Downloads/developing-pro-bono-guide-and-toolkit-october-2015.pdf> accessed 24 September 2018.

clinic, creating partnerships with NGOs, client self-referrals and encouraging students to identify a need personal to them.³³

VI. ENGAGING STUDENT ADVISERS/PARTICIPANTS

Students generally lose steam and focus in activities that are not directly graded to impact on their final results. As such, they may not continue to focus on their roles in the clinic with the same initial passion that they had when they were introduced to the clinic. This writer observed this trend while serving as a supervisor in a law clinic. Students gave several reasons why they did not turn up when they should for clinic activities. These ranged from having other school assignments, lectures or tests scheduled for the same period as the clinic activity. For some, this writer observed that after a while the students lost interest because they were either afraid of making mistakes or they simply did not want to appear lazy before their colleagues in cases where they did not know how to approach their tasks. It is recommended that the law faculty makes a decision on what time they operate the clinic to ensure that this does not clash with other faculty activities.

Furthermore, a reward system should be encouraged to engage the students. The supervisors and other staff of the law faculty should provide support to students who may require additional time to catch up. A friendly atmosphere for learning should

³³ Ibid.

be encouraged to make the clinic conducive for all. In addition, values such as mutual respect by the students for one another must remain sacrosanct.

VII. CONCLUSION

Clinical legal education is now regarded as an important aspect of the law school curriculum in many countries of the world including Nigeria. It is imperative that where law clinics are established, they should function as a means for the provision of free legal services and for learning. A law clinic is also an opportunity for the faculty and the University to give back to the immediate community. This article argues in support for the establishment of law clinics as a way of promoting clinical legal education in the law faculties in Nigeria. The Law clinic in the University of Maiduguri was briefly examined. The model that University has adopted is for students in Year four and five to take CLE as an elective course in the first and second semesters in two academic sessions. While this is encouraging for a start, this writer is of the opinion that CLE should be compulsory for all law students especially in the fifth year of the LLB programme. A primary focus of the discussion is that law clinics in the law faculties across the country should not be set up merely for only providing opportunities for simulation and the creation of public awareness for example, organising public activities to discuss human rights with members of the community. Rather, the article strongly recommends for law clinics to be set up in the same fashion as medical clinics at teaching hospitals are established.

The goal is to provide students with real-live lawyer-client scenarios and opportunities. The advantage of using this model is that the student profits from the experience of providing solutions to problems of real clients and the fulfilment that can derive from it. To get the participation of students and to ensure commitment, the law clinic module should be introduced as a mandatory module to be studied before graduation even though it may not count towards final degree classification; attendance and participation should determine if a student has passed the module. Finally, it is recommended that students who desire to apply to a law school should consider the law clinic and the immense benefits that can be derived from that decision.

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SUPERVISION IN THE CLINIC SETTING: WHAT WE REALLY WANT STUDENTS TO LEARN

Douglas D. Ferguson, Western University, Canada

1. INTRODUCTION

Student supervision by clinicians is a constant for lawyers and staff in every aspect of clinic life. We want to ensure that students are effective in their work and learn best practices for their future careers. We also want to ensure that clients are well served by our students. My fellow Canadian colleague Neil Gold has written about the role of a clinic supervisor in this way:

The supervisor, as guide and role model, should seek to be: thoughtful; insightful; measured-to-person, need and context; learned; holistic; and above all, constructively helpful. The importance of the role of the clinic supervisor in explicating and supporting student learning cannot be understated. This interpretive and reflective modeling and methodology can contribute to students' lifelong habits of learning and problem solving. In engaging the whole student, her thoughts, feelings, hopes and fears, the supervisor simultaneously engages the already stimulated affect and intellect of the student in her quest to deliver signal service. In this model, the student's experiences as primary actor and her thinking and feeling about them before action, in action and upon reflection are the focal point for guided debriefings and interpretations by the supervisor and often by the student herself once she has been trained to reflect in and on action.¹

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This paper focuses on certain key elements of student supervision in Community Legal Services at Western University in London, Canada. Our clinic offers a very broad range of legal services, ranging from criminal law to wills, and consumer law to housing, with 125-150 students taking part in 800-1,000 files per year.

Community Legal Services has a very broad range of practice:

- Criminal law
- Small Claims Court
- Landlord and tenant law
- Wills and powers of attorney
- Family law
- Mediation
- Immigration
- Employment and human rights
- Criminal injuries compensation
- University appeals
- Intellectual property

Western Law has three clinical courses: Litigation Practice, Criminal Law Advocacy, and CLS Internship. This paper will be referring to the materials for Litigation Practice, which is based on civil matters. In this course, students are expected to carry 3-5 active civil files, comprising 60% of their grade. They must also take part in a number of simulations worth 40% of their grade.

Our students handle all aspects of their files, including trials and hearings, even going so far as to draft challenges to criminal charges under the Canadian Charter of Rights and

¹ Neil Gold, "Clinic Is the Basis for a Complete Legal Education: Quality Assurance, Learning Outcomes and the Clinical Method" (2015) 22:1 Int'l J. Clinical Legal Educ. at 20-21.

Freedoms. They draft all pleadings and other documents, handle all meetings with the clients, and docketing their time. They handle duties that are often done by articling students or even junior lawyers.

As contemplated by Evans et al. in *Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school*, our clinic gives students significant autonomy:

Clinical models involving provision of advice to clients require students to assume responsibility for their actions in a much more direct way than in other forms of legal education. In such programs, students are compelled to recognise that their actions will influence the wellbeing of others, namely their clients... This type of student development relies very heavily on supervision designed to support student autonomy.²

The first part of this paper will examine compliance with the supervision requirements of the profession's governing body. Clinic supervision in a clinic must start with compliance with the regulator. The supervision requirements of the Law Society of Ontario are set out to demonstrate the standards Community Legal Services must meet.

I will discuss our clinic's supervision strategies for:

- ensuring students are aware of their responsibilities and are focused on their file work.
- legal research and case theory;
- effective communication with clients and drafting pleadings;

² Evans et al., *Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school* (Australia: ANU Press, 2017) at 141.

- trial and hearing processes and strategy;
- ethics and professional responsibility.

This paper will then discuss the classroom component consisting of lectures and simulation exercises where we deal with professional identity, ethical issues, sensitization to the lives of our clients, awareness of the importance of access to justice, and the capacity of legal processes.

I will discuss our online materials for the classroom, including our Caseworker Manual which provides guidance in substantive law, court/tribunal rules, and clinic policies and procedures.

2. COMPLIANCE

Supervision must at the outset be viewed through the lens of your jurisdiction's governing body. What the rules of your governing body or jurisdiction's statutes require for:

- The ability of law students to appear in the courts and handle legal work for clients; and
- The duties of lawyers to supervise students and/or non-lawyers in a law office or clinic setting.

In Ontario, the governing body is the Law Society of Ontario. Its *Rules of Professional Conduct*³ deal with supervision in R. 6.1:

³ Law Society of Ontario, Rules of Professional Conduct at <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>.

- 6.1-1 A lawyer shall in accordance with the by-laws
- (a) assume complete professional responsibility for their practice of law,
- and
- (b) shall directly supervise non-lawyers to whom particular tasks and functions are assigned.

Commentary

- [1] By-Law 7.1 governs the circumstances in which a lawyer may assign certain tasks and functions to a non-lawyer within a law practice. Where a non-lawyer is competent to do work under the supervision of a lawyer, a lawyer may assign work to the non-lawyer. The non-lawyer must be directly supervised by the lawyer. A lawyer is required to review the non-lawyer's work at frequent intervals to ensure its proper and timely completion.
- [1.1] A lawyer may permit a non-lawyer to perform tasks assigned and supervised by the lawyer as long as the lawyer maintains a direct relationship with the client or, if the lawyer is in a community legal clinic funded by Legal Aid Ontario, as long as the lawyer maintains a direct supervisory relationship with each client's case in accordance with the supervision requirements of Legal Aid Ontario and assumes full professional responsibility for the work.
- [2] A lawyer who practises alone or operates a branch or part-time office should ensure that all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work and that legal advice is not given by unauthorized persons, whether in the lawyer's name or otherwise.

[5.1] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, licensees, public officials, or with the public generally whether within or outside the offices of the law practice.

By-law 7.1⁴ of the Law Society of Ontario deals specifically with our responsibility for supervision of law students:

Assignment of tasks, functions: direct supervision required

- (3) A licensee shall assume complete professional responsibility for her or his practice of law or provision of legal services and shall directly supervise any Canadian law student, Ontario law student or Ontario paralegal student to whom the licensee assigns tasks and functions under this section.
- (4) Without limiting the generality of subsection (3),
- (a) the licensee shall assign only tasks and functions that the assignee is competent to perform;
 - (b) the licensee shall ensure that the assignee does not act without the licensee's instruction;
 - (c) the licensee shall give the assignee express authorization and instruction prior to permitting the assignee to act on behalf of a person in a proceeding before an adjudicative body;
 - (d) the licensee shall review the assignee's performance of the tasks and functions assigned to her or him at frequent intervals;
 - (e) the licensee shall ensure that the tasks and functions assigned to the assignee are performed properly and in a timely manner; and

⁴ Law Society of Ontario By-Laws, <https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/b/by-law-7.1-operational-obligations-01-25-18.pdf>.

(f) the licensee shall assume responsibility for all tasks and functions performed by the assignee, including all documents prepared by the assignee.

All of our supervisory practices are intended to comply with these Law Society rules.

Clinics should ensure that they comply with similar rules in their jurisdiction.

3. SUPERVISION STRATEGIES

(a) What We Want Students to Learn Through Supervision

Our clinic in effect operates as a law firm, with five “partners” and dozens of junior lawyers. Through their file assignments and interactions with the lawyers, students develop the practice skills they will need and will see the link between legal theory and practice. The clinic setting provides one of the three apprenticeships envisioned by the Carnegie Report:

Successful apprenticeship instills these habits of the practical mind as the learner sees expert judgment in action and is then coached through similar activities.⁵

(b) Training Sessions

Students taking a clinical course are provided with training in two settings. First, an in-class session where basic concepts are explained, and during duty hours in the first week or two of the course.

⁵ Sullivan, et al., *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass/Wiley, 2007) at 97.

The in-class session takes place during the first week of the course. It focuses on the following themes:

- The roles of lawyers, staff, and students
- The legal aid system in Ontario
- Legal research resources
- Our expectations of our student caseworkers
- Time management and balance
- Client relations, including reporting and returning messages
- Training for using Time Matters (by Lexis Nexis), our database and scheduling application
- Clinic policies and procedures
- Developing legal skills
- The nature of our client base
- Professionalism and confidentiality
- Client intakes
- File management
- Court appearances
- Caseworker manual

We recognize that this is a lot of information to digest in a short period of time. Each student is required to attend one duty hour per week (see below) in addition to file work and classroom time. During classes and duty hours more detail is provided and examples discussed with the students.

(c) Student Responsibilities

Our students are completely responsible for the conduct of a file, subject to the close supervision of a clinic lawyer. Their responsibilities include:

- Client meetings
- Correspondence
- Drafting pleadings
- Docketing and memos
- Legal research
- All court appearances including hearings and trials
- Keeping a file organized

(d) Legal Research and Theory of the Case

For all most files, students are expected to draft a research memo outlining the facts, the issues, and analysing the law as it applies to the facts. This research memo is crucial, as it provides the theory of the case: a roadmap that will guide the student and others working on a file.

We emphasize to students that the theory of the case will affect every aspect: pleadings, document disclosure, trial preparation, direct examination and cross-examination at trial, and closing arguments.

(e) Effective Communication and Writing

As our students are responsible for all correspondence, pleadings, and memos, we spend substantial time coaching them on their writing skills. One lecture during the course is devoted to writing.

For research memos and opinion letters, we provide templates with headings that students are expected to follow. This ensures students understand what is expected, and focuses them on the facts, issues, and legal analysis.

We place an emphasis on writing for your audience. When writing an opinion letter or other correspondence to a client, students are told to keep the “legalese” to a minimum, and write clearly and concisely so that clients will understand our advice.

When drafting a research memo, on the other hand, we tell students to assume they are drafting it for the eyes of a senior partner in a law firm. While this requires writing from more of a legal angle, we insist once again on conciseness and clarity. At times I find that students try to write in a complex or obscure manner in order to “sound like a lawyer,” but has the result of making issues less clear.

At times we find that some lawyers and paralegals attempt to take advantage of our students’ inexperience by intimidating them. We sit down with the student and explain the tactics of their opponent. We ensure that our response is firm yet civil and professional.

Many clients do not have English as their first language. If a student is not satisfied that a client fully understands what is said, we are able to provide a translator through the auspices of Legal Aid Ontario, our main funder. The translator can be available by phone or in person. As will be seen later, every document drafted by a student is reviewed and approved by a lawyer before it is sent.

(f) Trial and Hearing Preparation

Prior to a trial or hearing, we have what we call the 45-20-5 rule. A student is required to meet with the supervising lawyer on at least three occasions, 45 days, 20 days, and 5 days before the trial.

The initial meeting at 45 days is intended to outline what has to be completed for trial preparation. Has all disclosure been given or received? If we are the plaintiff, what is the cause of action? What do we have to prove, and how do we prove it? Do we have witness statements? Do pleadings need to be amended?

At this point we have the student start putting together their "trial book." The trial book will consist of the following:

- Pleadings
- Research memo
- Index of exhibits
- Witness statements/contact information
- Opening
- Direct and cross-examination questions
- Closing
- Chronology of the case (optional)

During the next few weeks, students are to identify the documents to be introduced as exhibits, draft their questions for the witnesses, and draft their openings and closings.

This is also the best time to make a formal offer to settle a civil case if one has not yet been made. In Canada, the opposing party is usually ordered to pay additional legal costs if, after judgment is rendered, the successful party does better than its offer.

At the 20 day meeting, the lawyer will review the drafts and the document list, and make suggestions for revision. Students will be told to arrange preparation meetings with their clients and any witnesses, and put together their document brief and their case brief.

At the 5-day meeting, the lawyer and caseworker will review the document brief. The brief is a bound volume with numbered tabs for each document. Normally the entire brief is introduced at trial as Exhibit 1, thus making the introduction of numerous exhibits unnecessary. We will cooperate if the opposing party wishes to do the same.

Similarly, the case brief contains any statutes or cases to be relied upon in final argument. They are bound with numbered tabs, and the relevant portions highlighted for the judge. At this point, final meetings with the client to review questions are arranged. Students are encouraged to attend at the court or tribunal with their colleagues on other cases so they know their way around and know what to expect.

(g) Ethics and Professional Responsibility

Ethics and professional responsibility issues arise regularly. To take two simple examples, can we call a client and leave a message on his/her home phone? How do we deal with self-represented litigants?

The basics of ethics and professional liability are discussed during training at the beginning of the term. During duty hours, and during individual meetings with lawyers, students take part in discussions about issues that arise in our clinic.

(h) Debriefing and Next Steps

Following the trial/hearing, the supervising lawyer will meet with the student to discuss what happened. What went right? What went wrong, and why? How could the student be better prepared? Was the theory of the case accurate? Could the client have been better prepared for their evidence?

We will also discuss any next steps. If we were successful, we discuss the process for collecting on a judgment. We also discuss the contents of the written report to the client.

(i) How Do We Track What Students Are Doing?

As part of our responsibilities to our clients, clinic lawyers must ensure that the students are working on the files in a timely way and following instructions from the lawyer, and ensure that students are following clinic policies and procedures. How can a clinic do that with dozens of students working on files at any given time?

The key is to have multiple methods of tracking at various points in the course of a term that lawyers can check regularly to ensure your students are doing quality work. Below are the methods we use.

1. **Supervising lawyers review all incoming and outgoing documents.** Any incoming document is initialled by the lawyer to signify it has been seen. The document is then scanned and the electronic copy is stored on Time Matters so it can be seen at any time from the lawyers' desk. The original is placed by the student in the file.

Outgoing documents such as correspondence and pleadings are submitted by the student to the supervising lawyer. The lawyer reviews it online, attaches a macro showing it has been approved, and the document then goes to staff for printing.

2. **Weekly file progress reports are reviewed by the lawyer supervising the file.**

Each student must submit a weekly report with a few sentences showing what has happened in the past week, and plans to push the file forward in the coming week. If it appears that a file is stalled, the lawyer can review the student's dockets, and contact the student if necessary.

3. **Students must docket their time as they would in a law firm.** Supervising lawyers can review the dockets for a particular file from their desk. In addition, I receive a monthly report from staff on the total hours docketed by each student. There is no particular docketing goal, as the activity on any given file may be different. If any students have unusually low docketing hours, we will investigate.

4. **Duty hours.** Students are required to attend one duty hour per week in the clinic. Attending are students, a supervising lawyer, some first year law students who are observers, and occasionally a member of the faculty. During the hour, some students will

take part in an intake interview with a new client, while the remaining students discuss issues with one of their files. All students are expected to take part in the discussions. This provides an opportunity to give supervising lawyers some time to deal with file issues.

5. **Regular meetings with supervising lawyers.** Students are expected to arrange a meeting with a supervising lawyer when an issue arises that they cannot resolve on their own.

6. **Use of technology.** Having network access along with a legal database application is essential for supervision. While we use Time Matters by Lexis Nexis, there are many other applications available, such as PC Law, Amicus Attorney, Clio, and others. Clio is a cloud-based application. Many applications are provided free to student clinics.

7. **Student Supervisors.** During each summer, we hire 10-12 students to handle all of our cases. During the academic year, these students become “supervisors.” Their role is to run a duty hour as well as act as a resource for their fellow students on questions about policies and procedures. They do not have a role in supervising the file work (which is the responsibility of the lawyer) but can let a lawyer know if a student is experiencing any problems.

8. **Clinic staff meetings.** Our lawyers and staff meet monthly, and discuss any problems with students following clinic policies and procedures.

9. **Future court appearances are documented.** If a court case is adjourned to another day (which is common for our criminal files), the student must fill out a form with the new date, which is added to the calendars of the student and the supervising lawyer.

10. **Using a “bring forward” (BF) or tickler system.** We enter limitation periods in our calendar system as soon as a file is opened. Students are urged to use Time Matters as a tickler system to track upcoming deadlines for individual files. This skill is essential to future success in private practice.

4. CLASSROOM COMPONENTS

(a) What We Want Students to Learn in the Classroom

Classroom time consists mainly of lectures followed by simulation exercises and discussions of professional responsibility problems. The lectures provide the theory or principles of the skills taught, which are then reinforced by the simulations and even more so in their file work.

(b) Lecture Topics

Our lecture topics include the following:

- Values and expectations
- Resolving professional responsibility issues
- Client interviews and counselling
- Research and writing
- Theory of the case

- Negotiation plans
- Pleadings
- Trial books
- Direct and cross-examination
- Openings and closings

(c) Simulations

During the course we have a number of simulations, all based on a fact situation appropriate for Small Claims Court. Students take part in a client interview, a negotiation, and a full trial. Actors portray the witnesses, and the students' performances are assessed by members of the private Bar. We use rubrics to provide a common basis for the assessments. Simulations comprise 40% of the final grade.

(d) Ethical Problems

During the course we provide the students with four ethical or professional responsibility problems. For example, what if the opposing lawyer appears to have a drinking problem? What if your client urges you to contact the other party directly? What constitutes a conflict of interest? These problems are discussed during class, and students are expected to refer to the Rules of Professional Conduct in providing their answers.

(e) Access to Justice

A constant theme during lectures or duty hours is access to justice. We want our students to understand the importance of the justice system to a healthy democracy, and to see the

obstacles encountered by low income Canadians. While the amounts involved are often low, their importance to our clients is huge.

For example, if a client is ordered evicted by the Landlord and Tenant Board, he/she could end up homeless. What is the impact on his/her children? What if the client suffers from mental illness?

We try to impart understanding of the impact of the justice system on our clients in the hope our students will carry this concern with them throughout their careers.

5. RESOURCES FOR STUDENTS

(a) *Online Materials*

The following materials are provided online for our students:

- Interview model
- Legal research model
- Opinion letter model
- Negotiation model
- Sample negotiation plan
- Sample video interview
- Professionalism/ethics case studies
- Powerpoints for lectures
- Trial simulation video
- Caseworker manual
- Fact situation documents, including pleadings, research memo, witness statements

(b) Caseworker Manual

Perhaps the most important resource for our students is our Caseworker Manual. It provides significant detail on how to handle a file in each area of law, as well as general information on our policies and procedures. Students are asked to consult the Caseworker Manual first before coming to see a lawyer with a question.

(c) Policies and Procedures

Our extensive policies and procedures are available on our network to all students. Their topics include file management, service of documents, rules for meeting with clients, and expense claims.

6. CONCLUSION

The supervision system at Community Legal Services has proven very effective over the years. The supervision strategies allow lawyers to provide the guidance and learning students need to represent real life clients. Our tracking system ensures that students are fulfilling their responsibilities and clients are protected.

Our classroom component gives students the theory and principles of the skills they are learning, while our online resources set out skill models, fact situations, and our caseworker manual.

Students are often able to settle cases, but if we go to trial, we win more often than we lose. Having a brief weekly progress report ensures that the students are accountable for moving a file along. We are able to check student dockets for any given file at any given time. Every incoming and outgoing document is reviewed by a lawyer.

In other words, our lawyers know their files and are giving our students the guidance and supervision they need. This is a win-win for our clients and our students. Our clients, who had nowhere to turn for help, receive top quality legal services. For our students, they learn the best practices for their future legal careers.

We regularly receive feedback from our graduates, who usually work at small to medium size firms. Many of them tell us that their clinical experience was the best part of law school, or how much their clinical experience helped their career. Here is a note from a Western Law graduate who sent me an email not long ago:

Today I am starting my new job as a litigator... in my hometown... and I just wanted to thank you for the experience I had at Community Legal Services. Taking [clinical courses] was by far the best experience I had at Western, and not only helped prepare me for my articling and legal practice as a litigator, but significantly helped me get this position. I really appreciate the experience and opportunity I had with you, and will always look back fondly on my time at CLS, which will always be an important part of my career development.

My colleagues Gemma Smyth and Marion Overholt said it best about what it means to supervise students in the clinical setting:

Supervising law students is an opportunity to mentor them, helping identify skills, abilities, and values that may not have previously been identified, nurtured, or valued. Students come to law school with incredible personal and professional experiences, which contribute to and advance the mutual learning experience. Supervision in this context can be immensely gratifying, particularly when supervisors are able to participate in the development of the next generation of social activist lawyers.⁶

⁶ Gemma Smyth and Marion Overholt, "Framing Supervisory Relationships in Clinical Law: The Role of Critical Pedagogy" (2014) 23 *Journal of Law and Social Policy* 62 at 70.

A CASE STUDY APPROACH:

LEGAL OUTREACH CLINICS AT NORTHUMBRIA UNIVERSITY

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INTRODUCTION

Over the last decade there have been significant threats to access to justice, including the reduction in the availability of legal aid implemented by the Legal Aid Sentencing and Punishment of Offenders Act 2012¹ and cuts to charitable organisations and law clinics which have resulted in a reduction or loss of legal services². These measures have impacted disproportionately on people living in disadvantaged and minority communities both because they are likely to be unable to afford to pay for legal advice and representation when they require it and because they are more likely to face legal problems in those areas which have now been removed from the scope of public funding, such as welfare benefits, debt and immigration³. Structural barriers aside, there

¹ In 2010 the Government announced that it would implement a series of reforms to the legal aid regime. The reforms included removing large areas of law from the scope of legal aid; tightening the financial eligibility criteria; cutting fees paid to providers by 10%; and providing more legal advice over the telephone. Financially, the reforms aimed to reduce the legal aid budget by 23%. This equated to cuts of £350 million in 2013 and annual cuts of approximately £268 million until 2018. The reforms were implemented through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which can be accessed at: <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>.

² See, for example, Siddiqui, H (2018) 'Counting the Cost: BME women and gender-based violence in the UK' IPPR Progressive Review.

³ The Council of Europe Commissioner for Human Rights has stated that "vulnerable and marginalised groups of people have been hit disproportionately hard, compounding pre-existing patterns of discrimination in the political, economic and social spheres". This has been reported in "Safeguarding human rights in times of economic crisis", November 2013; Report of the Special Rapporteur on Extreme Poverty and Human Rights, 9 August 2012, UN Doc A/67/278.

is evidence that people who are disadvantaged by reason of financial hardship, unresolved mental health difficulties or immigration status may also be less aware of their legal rights and how to secure the assistance they need⁴. In addition, they may be less likely to seek advice because of a distrust of legal advisers or intimidation by the legal process⁵.

Clinical legal education (CLE) has often been called on to 'fill the gap' created by the above measures⁶. Whilst this is not plausible due to the sheer volume of cases, the complexity and urgency of many legal disputes, and the demands that this places both on students, clinical supervisors and the institutions which fund them, it is recognised that law school clinics nonetheless play a valuable role in promoting access to justice for the communities they serve. This is evidenced by the fact that 40% of the 225 clinics within the LawWorks Clinics Network in England and Wales were operated by law schools⁷. Together, they dealt with 32% (over 18,000) of enquiries between April 2016

⁴ Amnesty International (2016) 'Cuts that Hurt: The Impact of Legal Aid Cuts in England and Wales on Access to Justice'. London: Amnesty International. Retrieved from: <https://www.amnesty.org/en/documents/eur45/4936/2016/en/>.

⁵ See, for example, Siddiqui, H (2018) 'Counting the Cost: BME women and gender-based violence in the UK' IPPR Progressive Review; Legal Services Commission (2009) 'Report on Black, Asian and Minority Ethnic (BAME) Women, Domestic Abuse and Access to Legal Aid'; Schetzer, L, Mullins, J and Buonamano, R (2002) 'Access to Justice and Legal Needs: a project to identify legal needs, pathways and barriers for disadvantaged people in New South Wales' Background Paper – available at [http://www.lawfoundation.net.au/ljf/site/articleIDs/012E910236879BAECA257060007D13E0/\\$file/bkgr1.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/012E910236879BAECA257060007D13E0/$file/bkgr1.pdf) and Forell, S and Gray, A (2009) 'Outreach legal services to people with complex needs: what works?' Law and Justice Foundation Justice Issues Paper 12.

⁶ See Campbell, E (2014) 'Pro bono is great education for law students but they shouldn't fill the gap left by legal aid cuts' published in The Conversation – available at <https://theconversation.com/pro-bono-is-great-education-for-law-students-but-they-shouldnt-fill-gap-left-by-legal-aid-cuts-34323>.

⁷ LawWorks Clinics Network Report April 2016-2017: analysis of pro bono legal advice work being done across the LawWorks clinics network between April 2016 and March 2017 – accessed at <https://www.lawworks.org.uk/sites/default/files/LawWorks%20Clinics%20Report%202016-17.pdf> (last accessed on 26 September 2018).

and March 2017⁸. In addition to the provision of advice, law school clinics also account for 50% of clients receiving general information, signposting and referrals⁹. In the North-East of England, where the authors are based, there are 8 clinics within the LawWorks Clinics Network. Between April 2016 and March 2017, they dealt with 1,295 enquiries: 544 of these enquiries were on an ‘advice’ basis, whereas 588 related to general information, signposting and referrals¹⁰.

The emphasis on promoting access to justice is reflected in the educational aims of CLE.

This has been summarised by Wizner as follows:

“What do students learn from representing clients in the law school clinic that they would not learn from their regular academic courses? First, they learn that many social problems, like poverty, can be seen and acted upon as legal problems. Second, they learn that legal representation is as necessary to the resolution of complex legal problems of the poor as it is to those of the affluent. Third, they learn to develop and apply legal theory through the actual representation of clients. Fourth, they learn to use the legal system to seek social change. And finally, they learn the limits of law in solving individual and social problems... These are all important intellectual and ethical lessons for law students to learn¹¹”.

CLE is therefore socio-legal in its pedagogical approach as it “invites students to see the wider context and everyday realities of accessing an imperfect legal system, enabling

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Wizner, S (2002) ‘The Law School Clinic: Legal Education in the Interests of Justice’ Fordham Law Review Volume 70 Issue 5 Article 29.

them to integrate their learning of substantive law with the justice implications of its practical operation”¹². Social justice aside, the broader value of student participation in CLE is well-documented and includes community engagement,¹³ general skills improvement and preparation for the workplace¹⁴.

Through a case study approach, this paper discusses two projects which have been established by clinical supervisors at Northumbria University to support access to justice and promote the development of students’ professional skills and identities through CLE within disadvantaged or minority communities in the North East of England. The projects adopt the model of ‘legal outreach services’ because they operate within distinct communities to provide advice to target groups¹⁵. The paper will first discuss the different models of CLE; simulation, drop in clinics, letters of advice and full representation. The second part of the paper will go on to discuss legal outreach models and set out the key features of the legal outreach approach. The third part of the article will set out the considerations underpinning the two outreach projects operated by Northumbria Law School: Legal Advice Byker (LAB) and Empower 4 Justice (E4J). The fourth part of the paper will set out in detail the operation of LAB and E4J. The

¹²Evans, A. Cody, A. Copeland, A. Jeff, G. Joy, P. Noone, M and Rice, S (2017) Australian clinical legal education: models and definitions in Australian Clinical Legal Education published by ANU Press. p.41.

¹³ Russell, J (2013) ‘Running drop-in advice services in a university setting’ International Journal of Clinical Legal Education Volume 19.

¹⁴ Cantatore, F (2018) ‘The Impact of Pro Bono Law Clinics on Employability and Work Readiness in Law Students’ International Journal of Clinical Legal Education, Vol 25, No 1.

¹⁵ Forell, S and Gray, A (2009) ‘Outreach legal services to people with complex needs: what works?’ Law and Justice Foundation Justice Issues Paper 12.

final part of the article will discuss the benefits and limitations of this approach to CLE from a student and community perspective.

MODELS OF CLINICAL LEGAL EDUCATION

The term CLE has different meanings to academics, legal professionals and students¹⁶. This is largely because there is no generally accepted definition of CLE¹⁷. It is, however, widely recognised that CLE is an increasingly prevalent feature of legal education in England¹⁸. CLE fits within the wider pedagogical remit of experiential learning, in which students seek to develop their professional skills through exposure to ‘real’ experiences¹⁹. However, there are many different approaches and models which can be encompassed within CLE, each with differing financial and staffing resource requirements, forms of supervision and levels of advice provided to the client. This reflects the fact that clinics have varying staff and student numbers and institutional support²⁰. In addition, institutions’ decisions about which model of CLE to adopt may depend on their view as to whether its main aim is the education of students or the

¹⁶ Evans, A. Cody, A. Copeland, A. Jeff, G. Joy, P. Noone, M and Rice, S (2017) Australian clinical legal education: models and definitions in Australian Clinical Legal Education published by ANU Press.

¹⁷ Ibid.

¹⁸ See, for example, Bleasdale-Hill, L and Wragg, P (2013) ‘Models of Clinic and Their Values to Students, Universities and the Community in the post-2012 Fees Era. International Journal of Clinical Legal Education Issue 19, pp. 257-270.

¹⁹ Evans, A. Cody, A. Copeland, A. Jeff, G. Joy, P. Noone, M and Rice, S (2017) Australian clinical legal education: models and definitions in Australian Clinical Legal Education published by ANU Press, p. 41.

²⁰ Kemp, V. Munk, T and Gower, S (2016) Clinical Legal Education and Experiential Learning: Looking to the Future. University of Manchester. Accessed at: <http://eprints.nottingham.ac.uk/40920/1/Final%20Report%2022.09.2016..pdf>.

advancement of social justice (or indeed both). The main clinical models are identified further below:

(a) Simulation

Institutions may offer their students simulated client experiences in which they advise hired actors in relation to mock problem-based learning scenarios or conduct mock hearings²¹. This simple model of CLE can be integrated within existing modules and does not require qualified practitioners or significant financial resourcing, although some costs may be incurred if the actors are acting in a professional capacity and seek payment. However, this model also lacks community benefit, does not expose students to real people with complex needs and is likely to do little to instil a social justice ethic into students which they may take forward into a future career.

(b) Drop in clinics

Russell identifies that the drop-in model is characterised by clients being provided with on-the-spot one-off generalist information, advice or signposting by students who interview and assess clients and research the enquiry while the client waits²². Unlike the 'letters of advice' model (outlined below), no prior filtering or triage takes place before the appointment. This means that students are "presented with people who do not necessarily have a readily identifiable legal problem and learn to assist clients in

²¹ See Milstein, E (2001) 'Clinical Legal Education in the United States: In-House Clinics, Externships and Simulations' 51 J Legal Educ. 375.

²² Russell, J (2013) 'Running drop-in advice services in a university setting' International Journal of Clinical Legal Education Volume 19.

translating their concerns into legally recognisable categories”²³. Kemp et al note that drop-in clinics are a relatively recent trend in CLE²⁴. They prioritise community engagement over educational development and endeavour to address the unmet legal need which has arisen following the series of threats to access to justice. As such, drop in clinics typically operate in areas which have seen significant legal aid cuts such as family, housing, immigration and welfare law.

The key benefits of drop-in clinics are that they expose students to people from all walks of life, including disadvantaged and vulnerable communities. Russell notes that students who participate in drop-in clinics develop their interviewing skills, practical legal knowledge and understanding of client care²⁵. However, drop-in clinics inevitably have limitations. For example, instead of students conducting detailed legal research to identify a solution to a clients’ enquiry, they may instead search for pre-formulated advice on an existing practitioner website such as Citizens Advice’s ‘advisernet’²⁶. Alternatively, they may simply just provide the client with an information leaflet²⁷. In turn, this means that the level of advice provided to clients can be very basic. Cases with any complexity are unlikely to be appropriate for advice without significant supervisor

²³ Ibid.

²⁴ Kemp, V. Munk, T and Gower, S (2016) *Clinical Legal Education and Experiential Learning: Looking to the Future*. University of Manchester. Accessed at: <http://eprints.nottingham.ac.uk/40920/1/Final%20Report%2022.09.2016..pdf>.

²⁵ Russell, J (2013) ‘Running drop-in advice services in a university setting’ *International Journal of Clinical Legal Education* Volume 19.

²⁶ Advisernet is an online resource tool for advisers and volunteers at Citizens Advice which covers areas such as welfare law, employment, benefits, housing and debt. The website can be accessed by subscription at: <https://www.citizensadvice.org.uk/>.

²⁷ Russell, J (2013) ‘Running drop-in advice services in a university setting’ *International Journal of Clinical Legal Education* Volume 19.

input because the student does not have sufficient time to get to grips with the issue. In turn, this reduces the students' engagement with the case and their role may be reduced to note taking. As no advice is provided in writing, the students do not develop their legal writing or drafting skills and clients do not receive a comprehensive document containing the advice which they can refer to at a later date. Further, strict drop in models can have practical difficulties. Without pre-arranged appointments, it is difficult to predict the number of clients who will attend the clinic and therefore the amount of student volunteers and supervising solicitors in the requisite practice area needed to service the clients.

(c) Letters of advice

Russell describes the letters of advice model as characterised by clients receiving a one-off letter of advice (but no face-to-face advice) after a lengthy process in which the enquiry is filtered by an administration team and supervising solicitor, an information gathering interview has taken place (at which no advice is provided), and students have spent a period of time conducting research²⁸. This scenario seems to balance the needs of clients with the educational needs of students. Clients are provided with tailored and comprehensive legal advice in relation to their enquiry, however the trade-off is the inevitable delay it takes students to complete the necessary stages (i.e. fact-finding interview, research, preparing the letter of advice).

(d) Full representation clinic

²⁸ Ibid.

Some clinics more closely resemble a full-service law firm in which students do not only provide advice but also represent clients in court and tribunal proceedings. Bleasdale-Hill et al note that this can include students being supervised by external practitioners who assume ultimate responsibility for the quality of the advice; advice provided under the practicing certificate of a qualified pro bono director; or by students under the supervision of qualified academic members of staff²⁹.

An example of a full-representation model is the SLO at Northumbria University. All students enrolled on the four-year M Law Exempting law degree (a programme which combines the undergraduate law degree with the requirements of the Legal Practice Course (LPC) or Bar Practitioner Training Course (BPTC)) undertake a year-long assessed clinical module in the SLO in their final year. This option is also available to students on the LPC and BPTC as an elective module in the second semester. Students provide pro bono advice and potentially representation to members of the public under the supervision of qualified solicitors, barristers or caseworkers. Around 200 students work in the clinic each academic year³⁰. Students specialise in their supervisor's area of expertise, such as civil litigation, crime, welfare benefits, housing law, employment and family law. Inevitably, this is a more labour-intensive model of CLE both for staff and

²⁹ Bleasdale-Hill, L and Wragg, P (2013) 'Models of Clinic and Their Values to Students, Universities and the Community in the post-2012 Fees Era. *International Journal of Clinical Legal Education* Issue 19, pp. 257-270.

³⁰ Information about the Student Law Office can be accessed at: <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/> .

students but in principle this model has the potential for great rewards in terms of client satisfaction, community engagement and student development.

Law school clinics can also be categorised as ‘individual’, ‘specialist’ or ‘community based’³¹. The individual service model concentrates on the students’ ability to engage with core issues of legal practice that come from the experience of working with a client on any legal case. As such, they do not focus on the legal needs of a particular community or area of law³². In contrast, the specialist model is defined by a particular area of legal need or a broader national concern. In the United Kingdom an example of a specialist clinic would be the Dementia Law Clinic at Manchester University. Established in 2015, this clinic enables students to provide advice under supervision to clients on a range of dementia issues. Cases are referred by Dementia UK and the Alzheimer’s Society, and students provide advice to carers and, where appropriate, clients with dementia³³.

The key feature of the community-based model is that students work with particular communities or geographic areas with the aim of empowering the people they serve. Some projects will focus on a variety of different practice areas, thereby exposing their students to a diverse caseload. In contrast, other projects will focus on niche areas which

³¹ Winkler, E (2013) ‘Clinical legal education: a report on the concept of law clinics’, accessed at https://law.handels.gu.se/digitalAssets/1500/1500268_law-clinic-rapport.pdf.

³² Ibid.

³³ Further information about the Dementia Clinic at Manchester University can be accessed at <https://www.law.manchester.ac.uk/about/stories/dementia-law-clinic-2/>.

are determined by, and according to the needs of, community members³⁴. Further, as their role may also require the students to deliver training, they become law teachers as well as legal advisers. Street Law is a good example of a community-based programme which develops students' skills and empowers communities³⁵.

LEGAL OUTREACH MODELS

Legal outreach has been defined as “face-to-face legal assistance and advice services delivered away from the primary service/office, in places accessible to the target group”³⁶. Such services tend to focus on people who are marginalised or socially excluded as a result of issues such as homelessness, disability, mental health issues, vulnerable immigration statuses, financial hardship, unemployment or remote location³⁷. As such, individuals may have multiple, complex and interrelated needs which are relevant to their legal problems. Legal outreach clinics therefore share some common features with drop-in clinics and community-based projects, discussed earlier in this article.

³⁴ Winkler, E (2013) ‘Clinical legal education: a report on the concept of law clinics’, accessed at https://law.handels.gu.se/digitalAssets/1500/1500268_law-clinic-rapport.pdf.

³⁵ Street Law’s website states its aims as ‘advancing justice through classroom and community education programs that empower people with the legal and civil knowledge, skills and confidence to bring about positive change for themselves and others. More information can be obtained at <https://www.streetlaw.org/>.

³⁶ Forell, S and Gray, A (2009) ‘Outreach legal services to people with complex needs: what works?’ Law and Justice Foundation Justice Issues Paper 12.

³⁷ Ibid.

Forrell et al's study of 16 legal outreach projects in New South Wales identified that quality outreach advice services are effective in reaching target clients who have not previously sought advice from mainstream legal service providers, or who otherwise would not have received legal assistance. Further, there is evidence that legal assistance through outreach services can provide positive legal outcomes, improve clients' circumstances and prevent problems escalating³⁸. In order to achieve positive outcomes, outreach services must be appropriately located and connected with target groups and their support agencies. In addition, they must fill a gap in the existing advice provision to the target group. The service must operate from a location which is physically (and financially) accessible to users and which has private spaces or clients and advisers to discuss confidential cases.

Forrell's review of existing outreach projects indicated that the legal advisers working in outreach services required particular skills. These included having a 'generalist' knowledge across varied practice areas as many clients have intersecting legal problems, having an awareness of other organisations and support services which clients could be referred to and being skilled in communicating and working with the target group³⁹. To this, the authors would add that advisors must also be compassionate and able to empathise with how clients' difficulties can impact their engagement with legal services. For example, clients with complex needs may not always attend appointments, may

³⁸ Ibid.

³⁹ Ibid.

give contradictory accounts, may not provide the relevant documentation and may struggle to remain engaged in the process. It is valuable for students to gain an appreciation of how legal needs impact individuals' abilities to engage in the legal process.

The projects discussed within this article, LAB and E4J, can be regarded as legal outreach services as they both focus on working with targeted communities in order to address unmet legal need⁴⁰. The advice is provided by students within the communities and therefore in places which are frequented and trusted by the target groups. Partnerships have been formed with local agencies and/or law firms in order to carry out appropriate legal needs and service gap analyses, develop appropriate systems of referrals and ensure legitimacy within the target communities. In relation to the targeted communities, LAB operates within the community of Byker in the east-end of Newcastle upon Tyne to provide initial advice to its residents. Byker has a score of 2 on the index of multiple deprivation⁴¹. Of the families living in the community, 48% live in local authority accommodation⁴², 53% of the children are regarded as living in low-income families⁴³ and over 25% describe themselves as living with a long-term health problem

⁴⁰ Ibid.

⁴¹ Information about the socio-economic demographics of Byker can be accessed at: <http://www.knownewcastle.org.uk/DrillDownProfile.aspx?pid=44&rt=11&rid=59029&cookieCheck=true>

⁴² Ibid.

⁴³ Ibid.

which affects their day-to-day activities⁴⁴. LAB is delivered in partnership between the University and a regional legal aid law firm situated in Byker.

In contrast, E4J operates in the ward of Wingrove which is situated in the west-end of Newcastle. Whilst Wingrove has a lower score of 13 on the index of multiple deprivation, many of its female residents experience other barriers to securing legal advice. Wingrove has a high black and minority ethnic (BAME) population; over 50% of its residents identify as 'non-white' and 21% of households have no people for whom English is their first language⁴⁵. E4J was established with the principle aim of empowering BAME women through the provision of initial legal advice. Students work in association with a regional legal aid firm and a specialist BAME women-only organisation to provide initial legal advice to BAME women who are unable to secure legal aid or pay privately for advice. In addition to structural barriers, in many of the cultures served by the project, there are sociocultural practices that can permit male dominance and a culture of shame if BAME women dishonour their families by taking private issues into the public domain⁴⁶. Many BAME women with insecure immigration statuses, or which are dependent on a UK national spouses may also fear engaging with formal justice systems (i.e. lawyers, judges and the court system) because of fear they

⁴⁴ Ibid.

⁴⁵ Information about the socio-economic demographics of Wingrove can be accessed at: <http://www.knownewcastle.org.uk/DrillDownProfile.aspx?rt=11&rid=58981&pid=44&cookieCheck=true&JScrip=1>.

⁴⁶ Siddiqui, H (2018) 'Counting the Cost: BME women and gender-based violence in the UK' IPPR Progressive Review.

will 'say the wrong thing' and compromise their security⁴⁷. BAME women who have been brought to England upon marriage to a UK national may not speak English, lack cultural networks outside their immediate community and therefore lack awareness of their rights⁴⁸.

The Legal Aid Agency (formerly the Legal Services Commission) have identified that many BAME women distrust the legal system because of 'referral fatigue' (telling their story to numerous professionals who are unable to assist) whilst others fear engaging with a solicitor and are intimidated by a formal legal environment⁴⁹. For some BAME women, there are practical difficulties seeking advice because they are chaperoned to appointments by family members and therefore are unable to report or seek help. It has also been reported that BAME women who are able to secure access to a solicitor, find that professionals may be unable to understand the cultural issues in their case sufficiently to represent them⁵⁰. Other BAME women felt that solicitors were too 'process driven' and that legal aid clients were treated poorly in comparison to private paying clients⁵¹. The advice provided by solicitors can also be perceived as inflexible. An example of this is divorce being presented as the only option available on separation, despite the high status conferred on marriage in many cultures. This may lead to BAME women being deterred from seeking support in the future. Despite the fact that some

⁴⁷ Ibid.

⁴⁸ Legal Services Commission (2009) 'Report on Black, Asian and Minority Ethnic (BAME) Women, Domestic Abuse and Access to Legal Aid'.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

women might not wish to leave the relationship or take legal action in respect of their relationship, they still need information and support about their options. These barriers are concerning because BAME women are disproportionately affected by domestic abuse and therefore are more likely to require legal support and advice services⁵². BAME communities have higher levels of domestic homicide, 'honour' killings and abuse driven suicide⁵³. Women are also at risk of culturally specific forms of abuse such as forced marriage, female genital mutilation and dowry related abuse⁵⁴.

Considerations underpinning the projects

LAB and E4J are underpinned by the following community and pedagogical considerations:

1. The aims of the project are twofold. Firstly, the authors wish to reach the targeted communities in areas of legal practice where there is limited or no existing advice provision. As such, it was vital that the authors were not simply duplicating existing legal services or providing advice in cases where preferential funding opportunities may exist. The focus of the services is empowering communities through legal advice and education. Impact can be demonstrated in a variety of ways including that (a) the project has prevented a legal problem from escalating (b) the project has

⁵² Siddiqui, H (2018) 'Counting the Cost: BME women and gender-based violence in the UK' IPPR Progressive Review.

⁵³ Patel, P. and Siddiqui, H. (2010) 'Shrinking secular spaces: Asian women at the intersect of race, religion and gender', in Thiara, R.K. and Gill, A.K. (eds) Violence against Women in South Asian Communities: Issues for Policy and Practice, London: Jessica Kingsley Publishers.

⁵⁴ See Paragraph 73 of The Home Affairs report published on 22 October 2018, which can be accessed at: https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1015/101503.htm#_idTextAnchor000.

improved the client's circumstances and/or (c) the project has given the client confidence, self-esteem and capacity to take the case forward. In addition, the educational aims of the projects were to develop the students' professional skills and preparedness for practice whilst also developing their competency in working with communities with complex needs. It was also considered important that students had the opportunity to provide advice off-campus and within the targeted communities.

2. It was felt that face-to-face advice was vital in order to build trust and a relationship between the students and the client. As such, the project could not be limited to the 'letters of advice' model discussed above. Due to capacity and resourcing issues, it was not feasible to offer a full representation model. As such, it was felt that advice would be limited to one-off initial advice. In relation to E4J, it was also felt that the students could draw on the clients' experiences to engage in advocacy and law reform to improve the ways in which law affects people within the community.
3. It was considered that a strict drop-in would not be feasible given that both projects would be supervised by a small number of solicitors with limited specialisms. Further, the space available at the appointment venues (a regional legal aid firm for LAB and a women's centre for E4J) would not allow high numbers of clients at each sessions. The authors were also mindful of the pedagogical limitations of drop-in clinics, which are addressed above. In particular, it was felt that students working

with vulnerable individuals for the first time (and indeed the clients they were serving) would benefit from their having sufficient time to conduct research and prepare for the appointments. Prior to beginning work with LAB or E4J, the authors organise induction sessions for the students in which they are able to work through simulated scenarios which mirror those they are likely to incur within the sessions. Arranging the appointments in advance also reduces the likelihood of clients disclosing legal issues which are beyond the scope and/or expertise of the service as full details of the enquiry are taken at the enquiry stage.

4. By increasing the students' understanding of the context in which advice is provided, it was hoped that this would reduce the likelihood of the students becoming distressed by the issues they are exposed to. To reduce the possibility of vicarious trauma, the supervisors ensure that they are approachable for students to discuss any concerns with. Further, the university runs a number of sessions focussed on wellbeing which students are encouraged to attend. Students are also encouraged to reflect with their supervisors and peers about their cases in regular weekly meetings.

The next part of this article will discuss LAB and E4J in detail.

Case Study 1: Legal Advice Byker

LAB is a legal outreach clinic whereby students go into the community in order to provide the advice. LAB began in January 2012 with the objective of providing members of the public with access to legal advice in circumstances in which they may not

otherwise be able to obtain such advice⁵⁵. This may be due to either the cost involved in paying a solicitor or otherwise to the nature of the enquiry where the solicitor may not assist. Students work in partnership with a regional legal aid firm in the community of Byker, Newcastle upon Tyne in order to provide initial advice to its residents.

The project runs from January to May each year. During the course of the project, the students conduct three separate, one-off initial advice sessions. LAB is run by student advisors who study on the post-graduate LPC course at Northumbria University. The students chose whether to take LAB as one of their elective subjects after attending an introductory lecture on what is involved and what is expected of them⁵⁶. The students therefore undertake this project alongside several other classroom based, elective subjects. Students generally have limited practical experience advising clients when they begin this elective, although many have had a period of work experience in law firms.

All appointments are arranged in advance with the clients and brief details of the case are taken by the LAB administrators within the SLO. This is necessary as cases with urgent deadlines, cases that are particularly complex and cases where there is no solicitor with expertise in the applicable area of law are unlikely to be offered an appointment. Areas of law which have been covered include family law, housing,

⁵⁵ This is highlighted in the Northumbria University course manual 'Legal Practice Course Student Manual 2018-19'.

⁵⁶ In contrast to the final year law students undertaking the four year M Law (Exempting) Degree at Northumbria University where the Student Law Office module is a compulsory year-long module.

employment, civil litigation and welfare benefits. However, the areas of practice do change each year depending on what area of law the available solicitors specialise in. The students gain the opportunity to deliver three advice sessions throughout LAB. Therefore they could potentially conduct client interviews in three different areas of law and provides students with the experience of working under the supervision of three different solicitors.

If the enquiry is considered suitable by the solicitor supervisor the enquiry is allocated to a pair of students and they undertake responsibility for the client. They have up to a week to open a client file, undertake and prepare the practical legal research and draft the interview plan. This work is completed under a tight timescale, so that they are prepared to advise on the day of their first appointment with the client. The solicitor supervisor checks both the practical legal research report and interview plan and returns each document to the students with their amendments as formative feedback⁵⁷.

Two advice appointments take place at the offices of the regional law firm and one appointment takes place within the SLO at Northumbria University. On the day of the advice session at the local law firm, the students gather in the boardroom in advance of the appointment time. Here they meet the external solicitor supervisor and discuss the enquiry, the amended research report and the interview plan. Each student pair then conducts the client interview. They provide compliance information, confirm their

⁵⁷ Boothby, C (2016) 'Pigs are not fattened by being weighed' so why assess clinic and can we defend our methods?' *International Journal of Clinical Legal Education* Volume 23.

instructions and obtains any missing factfind information. After around 30 minutes the interview is paused for 15 minutes and the client waits while the students return to the board room to further discuss the case with their supervisor. A discussion takes place as to whether any further research is required before advice can be given or whether the advice remains appropriate and can therefore be given there and then. Where advice can be given, it is formulated by the students drawing on their existing research and agreed by the supervisor. The students return to the interview room and deliver the appropriate advice. Where possible, should the client require further assistance referrals are made to appropriate law firms. The interview process is usually complete within one hour. The speed at which the advice is provided more closely resembles life in practice where a client can expect to receive some initial advice during their first appointment. For the advice appointment which takes place in the SLO, the same procedure is followed, except the enquiry is supervised solely by the designated solicitor within the University.

Following the advice appointment, the students draft an attendance note of the meeting which sets out the client's instructions and the advice that was given. The students then confirm the advice in writing to the client within three weeks of the date of the appointment. The solicitor supervisor approves the letter of advice and provides the students with feedback. Where the case has been supervised by a solicitor at the local law firm, the advice letter is approved and signed by the solicitor and sent out on the firms' letterhead paper. Attached to the letter is a questionnaire, which asks the client to

provide feedback about their experience. Once the letter is sent to the client, the file is closed. At this stage, the external solicitor completes a pro-forma feedback form and sends this to the designated SLO supervisor who will ultimately assess that student at the end of the programme. The pro-forma allows the supervisor to comment on all aspects of the students work, including the research report, interview and letter writing.

As each pair of students have the opportunity to conduct three advice appointments, 18 clients can benefit from legal advice under this model. During the academic year 2016-2017, 12 students participated in this project and advice was provided to 12 clients. The discrepancy in the numbers is because not all clients attended an appointment and whilst the authors do not know the exact reasons why, this may support the authors' view that clients with complex needs may struggle to engage in the legal advice process more so than those who do not.

Case study 2: Empower 4 Justice (E4J)

As considered earlier in this article, E4J is another example of a legal outreach clinic operating within a vulnerable community and lead by staff who work within the SLO. E4J was set up in September 2017 with the principle aim of empowering BAME women through the provision of initial legal advice. Students work in association with a regional legal aid firm and a specialist BAME women-only organisation to provide initial legal advice to BAME women who are unable to secure legal aid or pay privately for advice. Many of the clients are vulnerable by reason of being survivors of domestic abuse including forced marriage, FGM, sexual abuse and exploitation, domestic slavery and

coercive control. In addition to legal concerns, some of the women also experience related problems such as homelessness, poverty and insecure immigration statuses.

E4J was established to address some of the structural and cultural access difficulties that many BAME women found in securing advice in the North-East of England, which are explored above. There is national concern about a reduction in support for specialist BAME services and ongoing support for their existence. This was summarised in the recent Home Affairs Committee report following the government consultation 'Transforming the Response to Domestic Abuse':

We are particularly concerned about the reported decrease in specialist services for BAME victims of abuse. Some BAME women are more vulnerable to culturally specific types of abuse and can find it particularly difficult to seek help because of close-knit family and communities, and because of language difficulties. Witnesses provided evidence about a range of specific problems for some BAME women, including financial difficulties for those with No Recourse to Public Funds, transnational marriage abandonment, honour-based violence and extra-territorial jurisdiction for victims who are removed from the UK in order to be harmed. We believe that specialist 'by and for' BAME domestic abuse services are necessary to win the confidence of BAME

*victims of abuse, to understand the issues they face and to have the skills and experience to provide the necessary support*⁵⁸.

The project runs one afternoon each month between October and April, in line with the academic calendar. Within each session, four appointments are available ranging in length between one hour and one and a half hours. Every year there is therefore capacity to deal with 28 enquiries. Unlike LAB, which is an LPC elective, E4J is run by student advisors on the final year of the M Law degree programme who are undertaking the clinical SLO module. As such, participation in this project supplements their existing casework in the SLO. Typically, these students have limited practical experience working with clients as their undergraduate legal education has thus far focussed on black letter law.

Similarly to LAB, E4J is not a strict drop-in clinic in the sense that appointments are arranged in advance with the clients. It was felt that a drop-in clinic would lack merit for both the students and the clients, as the students would not be familiar with the areas of law and could not therefore provide any meaningful advice (without significant supervisor input). Further, the sheer demand for the service would be problematic as there are a limited number of supervisors at each session with limited specialisms.

⁵⁸ Paragraph 73 of The Home Affairs report published on 22 October 2018, which can be accessed at: https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1015/101503.htm#_idTextAnchor000.

The women's organisation is responsible for identifying suitable referrals from their existing client base and providing enquiries to the SLO at least one week in advance of the appointment. This initial triage is helpful because it reduces the prospect of us receiving an enquiry which would not be suitable for the supervisor or students. Further, as the enquiry is prepared by someone with an existing relationship with the client (usually a support worker or domestic violence advocate), the referrals contain considerable levels of detail which in turn, supports the students' ability to conduct effective research. Of course, a limitation of the project is that women who have not sought initial support at the women's organisation are not able to receive advice through the project and therefore will likely continue to go without advice and support.

Suitable enquiries tend to be those which are neither urgent nor overly complex as the students have a limited amount of time to conduct research. In addition, where it is clear that clients are likely to be eligible for legal aid, it would always be preferable for a referral to be made to the partner legal aid firm at outset. The main areas of unmet legal need following LASPO are housing, family law and welfare benefits⁵⁹ and this is reflected in demand and therefore the areas of law that are covered by the project. There is also a demand for immigration advice however unfortunately there are no solicitors specialising in this area. Family law cases which are suitable for initial advice tend to include information about divorce and judicial separation proceedings, contact

⁵⁹Amnesty International (2016) 'Cuts that Hurt: legal aid cuts in England on access to justice' [accessed at <https://www.amnesty.org/download/Documents/EUR4549362016ENGLISH.PDF>].

arrangements for children and cohabitation disputes. Housing enquiries often focus on public sector issues (where legal aid is not available) such as homelessness, allocation policies and procedures and local government housing responsibilities more generally. By virtue of the fact that many of the clients have cultural, financial and familial links to other jurisdictions, the cases often have an international element. This provides students an opportunity to learn about different religious, cultural and political perspectives and approaches to the law⁶⁰. An example of this can be seen in relation to the recognition of Islamic marriages. There have been a handful of cases where students have been required to advise women about the legal validity (or lack thereof) of a Nikah contract. Many Muslim women are unaware that an Islamic Nikah ceremony performed in England (without an accompanying civil ceremony) is unlikely to create a legally recognised marriage with the couple still classed as cohabitants in the eyes of English law⁶¹. Therefore, should the marriage break down, the financially weaker party (usually the 'wife') is vulnerable as there are limited financial claims she can make against her husband. The need for legal reform in this area has been the focus of scholars, practitioners and campaigners⁶². It is valuable for students to engage in discussions about whether this lack of protection is discriminatory and debate the options for law reform in this area.

⁶⁰ Reynolds, W (1995) 'Why Teach International Family Law in Conflicts' 28 *Vanderbilt Journal of Transnational Law*.

⁶¹ See, for example, O'Sullivan, K & Jackson, J (2017) 'Muslim Marriage (Non Recognition): Implications and Possible Solutions' *Journal of Social Welfare and Family Law*, 39:1, pp. 22-41.

⁶² *Ibid*.

Similarly to LAB, after receiving the enquiry form, two student advisors are allocated to the case and they must carry out initial research based on the information available to them. The research report should identify any further information required about the client's case and make a preliminary assessment about any action the client can take and the merits of proposed action. Importantly, as the client will be taking any further steps without the assistance of a legal representative, any practical action must be clearly identified. The research report is approved by the students' supervisor who will be a specialist solicitor, barrister or caseworker in the relevant area of law. As with LAB, the research report forms the basis of the interview plans which the students rely on in the appointment.

Despite being a women's only service, both male and female students participate in E4J. There is, however, space on the enquiry form for the advocate to specify whether the client requires female-only advisers. This may be justified, for example, where the client may experience trauma or re-victimisation due to their previous experiences. The availability of female-only advisers is arguably an essential part of acting in the best interests of each client and providing a proper standard of service to each client⁶³. Whilst this option exists, to date there have been no requests for female-only advisers.

The appointments take place at the women's organisation in order to provide an accessible environment with which the women are already familiar. Unlike a formal legal environment, appointments are carried out on sofas in a room which resembles a

⁶³ As required by principles 4 and 5 of the Solicitors Regulation Authority Code of Conduct.

living room. With their consent, clients are accompanied by a support worker or independent domestic violence advocate (IDVA) with whom they already work closely. This ensures that a 'holistic' approach to supporting the client is adopted where both their legal and emotional needs are considered. Further, from a practical perspective, it means that the IDVA is aware what advice has been provided and can provide ongoing support to the client if they need to take further steps to resolve their legal case. It also allows the advocate to act as an independent translator for clients with limited English. To assist with the informality, students are encouraged to wear office appropriate clothing however this does not necessarily have to be a suit, which may be intimidating to some clients.

The students are supported in the appointment by their supervisor. In a similar manner to LAB, during the first part of the appointment the students will provide compliance information (i.e. in order to comply with GDPR and Solicitors Regulation Authority requirements) and ask fact find questions to ensure they have all relevant information. Following this, the students have a discussion with their supervisor about whether the advice remains appropriate in light of any further information that has been provided. Assuming this is the case, the students then return to the appointment to deliver the advice. Alternatively, if the advice has changed (typically because the factual background to the case is different to anticipated), the students may not be able to provide immediate advice as it may be necessary to carry out further research. After the appointment, the students complete a one-page pro-forma with a bullet pointed list of

the advice provided to the client and any immediate action they need to take. This is followed by a comprehensive advice letter which is sent to the client within 21 days of the appointment. At this point, the client's file is closed reflecting that the retainer has come to an end. Where possible, referrals will be made to appropriate law firms for the case to be taken on under a legal aid contract or a fee agreement. At this stage, the clients are also asked to provide feedback about their experience through a questionnaire in order to assess client satisfaction and contribute to the ongoing development of the project.

In its initial year, over 28 students participated in the project and advice was provided to 14 women. In addition to this, a training session was delivered to the IDVAs and support staff at the women's organisation about the availability of civil claims under the Criminal Injuries Compensation Authority for victims of domestic abuse.

ANALYSIS OF THE NORTHUMBRIA UNIVERSITY CASE STUDIES

Community benefits

The advantage of a legal clinic in offering a valuable service to the local community is well established in the literature⁶⁴. However, the projects outlined in this article have taken this one-step further. With both projects, the students are required to leave the

⁶⁴ Frank Dignan (2011) 'Bridging the Academic/Vocational Divide: The Creation of a Law Clinic in an Academic Law School' 16 International Journal of Clinical Legal Education Volume 75.

university campus and actively go out into the targeted community in order to provide their legal advice. The legal advice is provided within communities where there is limited or no existing pro bono advice provision available. In LAB, the students go to a regional law firm situated in an area of high social deprivation to provide the advice. By providing a pro bono legal advice clinic alongside this law firm, the partnership raises the profile of the service within the local community and supports unmet legal need. Likewise, in E4J, students work within a women's organisation alongside IDVAs and support workers. In turn, the students target a specific community to ensure they receive the appropriate advice and assistance.

There is arguably a direct access to justice advantage that arises from extending the legal services offered by a law clinic to those areas of law in which external solicitors can supervise⁶⁵. In LAB, 12 clients benefitted from legal advice under this model during the academic year 2016-2017 and there was an equal spread of advice given in the areas of general civil litigation, housing, family and employment law. With regards to E4J, 14 women benefitted from legal advice last year. The majority of advice (61%) was in the area of family law, whilst 30% of cases related to housing law and the remainder concerned welfare benefits. As explained above, whether the enquiry is suitable to advise on does depend on the area of specialism of the available supervisors in each

⁶⁵ Castles, M (2016) 'Marriage of convenience or a match made in heaven? Collaboration between a law school clinic and a commercial law firm' *International Journal of Clinical Legal Education*, volume 23, pp. 7-47.

project; however, these were also the areas in which there was the most demand for service.

From the authors' experience, the one-off advice appointment is usually either sufficient to resolve the client's issue (in that they have no need to seek further legal advice) or the project gives the client the confidence, self-esteem and capacity to take the case forward themselves. In some cases this has been reported by the clients' support worker (in the case of E4J) or was reported in the client feedback questionnaire. In the authors' view this beneficial impact is a result of the advice being comprehensive, tailored to the particular case and practically focussed so clients have a clear idea about how to progress the matter. Where further legal assistance has been required, the client's circumstances were also improved through an appropriate referral system which directed them either to the SLO (to students on another programme at the university), to the partner law firm as a client because legal aid or a conditional or contingent fee agreement could be offered or to another local law firm or pro bono organisation specialising in the relevant area of law. This supports previous research, which highlights that a legal outreach service can provide effective legal outcomes, improve clients' circumstances and prevent problems escalating⁶⁶.

The projects have received positive feedback from clients within the questionnaires that are completed at the end of their experience with the clinic or from the clients' support

⁶⁶ Forell, S and Gray, A (2009) 'Outreach legal services to people with complex needs: what works?' Law and Justice Foundation Justice Issues Paper 12

workers. E4J has also been recognised at the annual Law Works & Attorney General Student Pro-Bono Awards, where it was awarded “Best New Pro Bono Activity”⁶⁷. The award nomination included the E4J project together with the wider work that the students do to assist victims of domestic abuse in the local community through the SLO. As such, these projects have led to reputational benefits for the university.

Pedagogical benefits

The outreach model used in both LAB and E4J enables the students to intensively develop their employability skills and preparedness for practice. Unlike the SLO model, there is no initial fact find interview, which gives the students a significant amount of time to digest the information and undertake their legal research. In LAB, the students swiftly conduct their research based upon the initial enquiry information and thereafter prepare for their advice interview. However, unlike a drop-in model, the students have sufficient time to prepare for the interview and get to grips with the issues. In the authors’ view, the right balance is struck between giving the students the appropriate time to research but also ensuring they meet the challenges of working under pressure and under a tight timescale. The result is that arguably the students intensively develop their professional skills and are better equipped and prepared to handle the demands of the legal profession. Simultaneously the advice is comprehensive and tailored to the client’s case rather than the more superficial

⁶⁷<https://www.lawworks.org.uk/solicitors-and-volunteers/get-involved/lawworks-and-attorney-generals-student-pro-bono-awards-2018>.

approach of a drop-in. As the advice is confirmed in writing, the students also develop their written communication skills.

In LAB, the partnership between the university and the local law firm enriches the students' experience. The students work with and learn from at least two solicitor supervisors; one of whom is an experienced practitioner within the target community, thereby allowing students to develop a holistic approach to providing the advice. Bleasdale-Hill highlights that the internal supervision model (where the academic members of staff supervise the student) provides for more contact with the supervisor than an external model (which involves external practitioners)⁶⁸. She considers that this in turn enhances the skills students gain from the clinic. Under the LAB model, the students gain the benefit of both the internal and external supervision model. They work under their internal supervisor throughout the project and this provides them with an opportunity to gain frequent and regular feedback. They attend their weekly firm meeting with their internal supervisor and the rest of their firm members. They also have the benefit of an appraisal where they are invited to reflect upon their skills and their experience to date. They also work under the external supervisor, which brings the opportunity for the student to engage with different practice styles⁶⁹. Students learn whether they should adjust their style and how they can do so, thereby

⁶⁸ Bleasdale-Hill, L and Wragg, P (2013) 'Models of Clinics and Their Value to Students, Universities and the Community in the post 2012 Fees Era' *International Journal of Clinical Legal Education*, volume 19, pp.257-270.

⁶⁹ Plerhoples, A and Spratley, A (2014) 'Engaging Outside Counsel in Transactional Law Clinics' *Clinical Law Review* Volume 20, pp 379, 393.

developing their professional identity. Likewise, in E4J, students work alongside IDVAs and support workers which gives them an understanding of how legal advice interacts with other services (for example counselling) and an awareness of the different roles that professionals play in supporting survivors.

The involvement of different supervisors also expands the breadth of work the students can engage in and thereby affords those students with experience in different areas of law. However where students advise on the same area of law in all of their advice sessions this equally beneficial as they are exposed to ‘the same legal problem but from new or different perspectives’⁷⁰. In turn, this enables students to develop a deeper perspective about the complexities and nuances of particular legal problems.

The students also gain an insight into the social and personal issues affecting their local communities, are exposed to clients they otherwise may not be in contact with. As students are required to leave the university campus and go out into the community, they are able to meet people from different walks of life and develop new perspectives. By advising within disadvantaged, targeted communities the students develop their competency in working with those who have complex needs. In addition the students must also be compassionate and learn the importance of empathy when meeting their clients. As mentioned earlier in this article, clients’ difficulties can impact their engagement with legal services and students gain an appreciation of this. For example,

⁷⁰ Winkler, E (2013) ‘Clinical legal education: a report on the concept of law clinics’, accessed at https://law.handels.gu.se/digitalAssets/1500/1500268_law-clinic-rapport.pdf.

clients with complex needs may not always attend appointments, may give contradictory accounts and may not provide the relevant documentation. The students involved have valued the opportunity to promote access to justice at difficult times in their lives. This is reflected in the comments made by students, shown below.

“Working in this project has helped me learn and grow and I think become a more well-rounded individual never mind practitioner.”

“Working in communities and with women where they seemingly have no other access to legal advice made it more satisfying that I was able to be a part of it.”

“You just felt so sorry for the women that you were helping, just it really made me feel like I was doing something worthwhile.”

“It made me more interested in working within the area of family law.... I was able to gain a deeper insight into something that normally happens behind closed doors. I want to help people that are in similar situations”.

Limitations

The authors accept that the model adopted in LAB and E4J has limitations from a client, student and supervision viewpoint. The students provide one-off initial advice, they do not undertake to represent the client at court or provide any further assistance beyond the appointment. However, as highlighted above this model does benefit more clients as a greater number receive initial advice than in a model, which involves further legal assistance and representation. From a student perspective, through initial advice they

see a snapshot of their client's case. They do not gain the experience that full case representation brings, such as liaising with an opponent and drafting court documents. It also remains a challenge for the students to balance their workload however this is not unique to LAB and E4J. However, the students are informed at an early stage what is expected of them and the authors consider that this ultimately improves their time management skills.

Finally, from a supervision viewpoint, it is recognised that there must be sufficient feedback from the external solicitor to both the student and the internal solicitor. This is imperative for both the student who must learn how they can improve a particular skill or piece of work and for the internal supervisor who must be in a position to effectively assess the students on their practical work at the end of the project. To overcome this challenge a framework was put in place for the students to receive not just feedback on their work and during the face-to-face meeting, but also to receive a completed feedback form on their performance.

CONCLUSION

Undoubtedly CLE plays a valuable role both to the community in promoting access to justice and to the participating students in developing their professional skills and preparedness for practice. This article has outlined two outreach projects operated by Northumbria University through CLE and has sought to demonstrate the pedagogical benefits to the participating students and the access to justice advantages they bring to the communities they serve. From a student perspective, the value of the model lies not

only in the intense development of skills competencies but also in gaining an insight into the social and personal issues affecting a local community through working with those who have complex needs. The students gain an appreciation of the value of clinical work within disadvantaged communities and the access to justice challenges faced by their clients. From a community perspective, effective partnerships have been formed which have targeted vulnerable communities whilst simultaneously addressing unmet legal need. Taking into account the positive student and client feedback from these projects (and therefore the associated reputational benefit), the authors would encourage other clinical supervisors to form partnerships with external agencies and utilise the legal outreach model.

**REFLECTING ON REFLECTIVE PRACTICES
IN CLINICAL LEGAL EDUCATION**

Victoria Roper, Northumbria University, UK

The annual International Journal of Clinical Legal Education conference took place on 28th- 30th November at Monash University in Melbourne, Australia. The day before the conference opened, a well-attended pre-conference workshop on 'Reflective Practices in Clinical Legal Education' was held at Monash University's Clayton campus. This article provides a summary of the key highlights of the day.

SESSION 1 - REFLECTIVE PRACTICES IN CLINICAL LEGAL EDUCATION

The workshop was opened by Associate Professor Rachel Spencer of Monash University and Professor Susan Brooks of Kilne School of Law, Drexel University, Philadelphia. Professor Susan Brooks explained they intended the day to take the form of a conversation.

A show of hands poll revealed there was a real mix of people in attendance. Delegates ranged from in house clinicians, to people involved more widely in externships and pro bono. There were also people whose teaching was outside of clinic and 'real' practitioners present. Delegates were asked to introduce themselves in pairs and to explain to one another what they hoped to get out of the day. The pairs were then

asked to volunteer to the wider group what they had discussed. This plenary discussion revealed a wide variety of aspirations for the day, which included:

- learning how best to get students to reflect on their own values and assumptions rather than just commenting on what they 'did';
- taking a step back in order to unpack further why reflection is important;
- learning about different reflective methods and how to respect diversity;
- exploring ways of encouraging high quality reflection and translating that into reflective writing – this clinician noted that reflective insights in oral debriefs were often not translated into strong written reflections;
- wanting to get better at providing objective feedback on student reflections;
- learning about new ideas for how to assess reflection;
- wanting to explore the idea of reflection and mental health and resilience, and whether they tie together;
- acknowledging that there are difficulties with reflection because within a team of clinicians there are varying conceptions of what 'good' reflection or 'good enough' reflection are;
- looking forward to getting to know more about interrelationship between reflective practice and competence;
- seeing if there is a support for reflection in social science theory; and
- exploring the relationship between critical thinking and reflection.

Susan explained that she had been interested in reflection a part of a larger skill set around relational skill sets and lawyering. In particular, she was interested in habits of mind and tools that we can offer students to help enable them to their work as individuals within a wider social context. Susan explained that a while ago she across

an article of Rachel Spencer's entitled 'Holding up the Mirror'¹, which made her realise there was someone who was thinking about these things deeply. She later visited Rachel in Australia to explore their common interests further.

Rachel explained the introductory exercise in pairs we had just undertaken was an edited version of something she has done in reflection classes with students for a number of years. She explained how she liked to build her students ability to reflect through a scaffolded process. Firstly, she gets students to talk to one another (like we had just done) to build their confidence, before they may be invited to share their thoughts with her as the supervisor or the wider group. This is important for establishing a relationship of trust between supervisor and the students and between the students; we cannot expect this trust just to exist automatically. We all have students who write amazing reflections but they would not necessarily share these insights in a large group discussion. It is important to recognise the diversity of students and a scaffolding approach compliments this. It was noted that clinical legal education is about learning by doing AND reflecting. Reflecting is important, but the word 'reflection' can be problematic and off-putting. Many people, both colleagues and students, think reflection is 'navel gazing' and not for them. It was suggested that there are perhaps other words we can use to describe for reflection which may make it more accessible (discussed further later).

¹ R.M.A. Spencer, 'Holding Up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education' (2012) 18 *International Journal of Clinical Legal Education* 181.

From the Field

Rachel went on to note that she tells her students it is great that they are doing clinic or an externship, but that experience alone does not produce competence. Many practitioners run into trouble because they are not reflective enough about what they are doing. There is a clear contrast between classroom learning (simulated, replicable, low risk etc.) where the central interest is the student, and workplace learning (unpredictable, messy, high risk etc.) which involves competing interests. In workplace learning the supervisor is not just there to serve the needs of the student, and the student is not the centre of the universe. Much more direction may be given in the classroom – this is not the case in workplace. Rachel tells her students that everything that happens in the workplace is a learning opportunity but that they need to become opportunistic learners. She believes that there is a necessity to teach emotional intelligence and that this is intrinsically linked to reflection.

Susan then went on to discuss fields of transformation. Three dimensions we are engaging in all the time – personal, interpersonal, and systemic. For example, she gets students to think about how their interaction with their client is informed by the wider social context and to ask themselves how it shapes that interaction.

Rachel noted that it was widely becoming accepted that a law student now needs more than just a good knowledge of law. In this era of artificial intelligence, the human touch is what is important. Technology may be able to provide legal knowledge but it cannot relate to a client as a person can. Students therefore need to be able to establish

a relationship of trust with clients. It was noted that students coming into clinic can sometimes have a preconception that they need to be detached in order to be a good lawyer. They then become confused when we tell them that they need to embrace feelings in reflection. Students need to learn that emotional intelligence and emotional involvement are two different things.

Susan noted she was really interested in creativity and how emotions affect a person's thinking. That we should be aware of the two sides to our brains and that effective legal work requires a person to engage both and 'bringing our whole selves'.

Rachel then went on to note that competencies were linked to emotional intelligence (empathy, self-confidence, innovation, self-control, conflict management etc.). Emotional intelligence has been described as the ability to perceive your own and others' feelings and emotions, and to use this to guide your actions.² In clinical legal education, this might involve recognising a client's anger and that how they feel about something will affect their decision-making. Any decision we make naturally involves emotions, we cannot disconnect logic from emotion entirely. Susan clarified that we need not only to teach our students to understand client emotions, but also their own emotions too. We can make more intelligent choices when we understand how our emotions influence our decision-making.

² John, D. Mayer and Peter Salovey, 'What is emotional intelligence?' in Salovey and Sluyter (Eds.), *Emotional Development and Emotional Intelligence: Educational Implications* (New York: Harper Collins, 1997).

Rachel then turned the focus of the discussion to analysing what reflection *is*. It was noted that reflection is something people have been thinking about for a long time – there are millions of results on Google if you do a search. It is impossible though to give a universal definition, as reflection is something that means different things to different people. In 1993, there was an article written by Atkins and Murphy which noted that a lot had been written about reflection but it still lacked a clear definition.³ Whilst commentators tend to use different terminology and detail to discuss the reflective process, Atkins and Murphy identified commonality that could be broken down into three key stages:

1. *Stage 1* – Awareness of uncomfortable feelings. This is the disorientating moment or moment of surprise or discomfort. This is one of the significant differences between classroom learning and workplace learning.
2. *Stage 2* – Critical analysis of the situation. This involves an examination of feelings and knowledge. It is necessary at this stage to get the student to think about how the experience was for them, but then also consider it from the perspective of the client (what was going on in the client's head etc.).
3. *Stage 3* - Development of new perspective, leading to an outcome of learning. This is the stage where the student should be asking did it go well? Why did it go well? How can I replicate this? What would I change?

³ Sue Atkins and Kathy Murphy, 'Reflection: A Review of the Literature' (1993) 18(3) *Journal of Advanced Nursing* 1188.

It was noted that students often only become aware of their own privileged position from undertaking clinic and that clinic could therefore enhance a student's self-awareness.

The room then split into groups again to discuss our own reflective practices. A wider plenary discussion followed and a number of interesting points were mentioned, including:

- One person favoured giving students articles to read to encourage them to refer to literature and produce academically rigorous pieces of work that are not just introspective.
- It was noted that requiring students to consider multiple perspectives could be particularly useful. There may be more ways of doing this earlier in a degree so it is not just suddenly introduced in clinic.
- A speaker queried how much emphasis should be placed on the 'discomfort' moment in student reflections. How much emphasis on the physical sensation of discomfort?
- Another person emphasised the importance of creating a safe space for reflection. For example, reflections are marked but it is ok for a student to acknowledge their failures.
- It was highlighted that first year students are often far more in touch with their emotions than final year students. This is a barrier to reflection as usually it is our final year students we are asking to reflect.
- One person's practice involved getting first year students to write themselves a letter that they were then required to reflect on in a later year of the degree.

It was noted that it was possible to include relational competences in other modules, and to have a learning outcome linked to reflective practice. Students can be required to think about a future plan of action and to self-evaluate and assess in both clinical and non-clinical settings.

Rachel noted that it was possible to ground this in theory. Schon's "the Reflective Practitioner" discusses the distinction between reflection on action (e.g. keeping a reflective journal) which may, in time, lead to being able to reflect in action i.e. the ability to critique what you are doing while you are doing it.⁴

It was highlighted that there were two main forms of reflection (1) Oral reflection/debriefing and (2) Written reflection. Of key concern to clinicians is how to help students achieve their full reflective potential.

The following reflective exercises were discussed as ways of encouraging students to reflect:

- Start with oral reflection or a debriefing in a pair or small group. Gradually build this up so the students have to discuss matters with a wider range of people. Next time start with a slightly bigger group. Gradually build this up until the student is comfortable discussing matters with a larger group and you as the supervisor.

⁴ Donald, A. Schön, *The reflective practitioner: How professionals think in action* (New York: Basic Books, 1983)

- Challenge students to think about what they want to get out of clinic and what their values are. Encourage them to talk about personal issues too.
- Ask the students to undertake a strength finder exercise at the start of the clinic and then get them to reflect on this at the end of the semester.
- Challenge students to see things from a different perspective. A good way to do this (which was demonstrated in the workshop) was to show the students an ambiguous picture that they may interpret as two different things. The example used in the workshop was a picture that may have been either a vase or a face.⁵ This illustrates that people can be looking at exactly the same problem or set of facts but see them in a completely different way. This is a way of teaching perspectives.
- Give students a list of traits and get them to pick five they already have and that will be useful, and then ask them to choose five they need to develop. Then can revisit these later in their journal writing.
- Ask the students to prepare a critical incident report when they have been surprised or learnt something from an experience.

Rachel helpfully also gave twelve recommendations based on her research with students, which had included focus groups:

1. Advise students that feelings of discomfort are not unusual;
2. Provide an introductory session about what is required in good reflective writing. Provide examples (she uses good examples only);

⁵ See examples at:

https://www.google.co.uk/search?ei=6b6LXKT8JrThxgPB9r2gAg&q=woman+vase+optical+illusion&oeq=woman+vase+opti&gs_l=psy-ab.1.0.0i22i30.2162.4578..5943...2.0..0.88.466.7.....0....1..gws-wiz.....0i71j0j33i21j0i13i30.Qm4M6OYwI18 (accessed 15 March 2019).

3. Assessment tasks should allow for rigorous discussion of articles on reading list. Students can be tasked with reading articles and presenting back to the group so all group members have a greater understanding.
4. Teach students about the skills inherent in the act of reflection.
5. Discuss potential questions about reflection with students in class. Yes, you should write in the first person etc.
6. Confirm what reflections are confidential or negotiate otherwise. For example, explain that anything discussed in the classroom might be overheard, but nothing written and marked will be passed on to anyone else.
7. Negotiate how oral sharing of experiences in class might occur, as students get anxious about reflective journals.
8. Alleviate student anxiety by advising students to expect difficulty.
9. Use reflection prompts such as:
 - o Have you questioned any of your prior beliefs?
 - o Have you been aware of any access to justice issues?
10. Be mindful of student diversity and tailor sensitive feedback to individual students.
11. Articulate our own ideas about emotional intelligence and professionalism. Explain that not all lawyers will agree.
12. Consider rebadging reflection as 'clinical retrospective', 'placement analysis' or 'a reflective analysis paper' to make it sound more accessible.

SESSION 2 - REFLECTION, EMOTIONS AND STUDENT WELLBEING

The next session was led by Associate Professor Kate Seear of Monash University, Professor Catherine Klein of the Catholic University of America and Professor Lisa Bliss of Georgia State University. The three acknowledge the contribution of Professor

Paula Galowitz who could not join them on the day but who has contributed to the planning of the session.

Kate started by explaining what they hoped to explore the ethical and moral dilemmas expressions of emotion pose. They also wanted to discuss what we might make of articulations of emotion for learning and to try to come to some consensus on what clinical supervisors should do to navigate emotions in clinic.

It was discussed that lawyering practice expresses distaste for emotional vulnerability. Notwithstanding, or perhaps because of this, there is a growing concern about mental health in the legal profession. It was noted that this is a very live debate in Australia at present. Interest had been piqued in the topic by a 2009 Report, “Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers”, which has been published by the University of Sydney.⁶ There is now a concern about the mental health of both lawyers and law students. The issue is very topical because in recent months two magistrates in Victoria have committed suicide.⁷ Magistrates and judges are now talking about workload pressure and the importance of being more open about feelings. It was highlighted that emotions have to be scrutinised for their various

⁶ University of Sydney, *Courting the Blues: Attitudes towards depression in Australian law students and lawyers* (2009). Available at: <https://cald.asn.au/wp-content/uploads/2017/11/BMRI-Report-Courting-the-BluesLaw-Report-Website-version-4-May-091.pdf> (accessed 15 March 2019).

⁷ See for example <https://www.abc.net.au/news/2018-04-12/stephen-myall-magistrate-unrelenting-workload/9643950> (accessed 22 March 2019).

potential consequences. Emotions may shape our practice. For example, if we feel disgust towards a client, we may be less likely to help them.

The session then turned interactive and we were asked to discuss with our neighbour our own experiences in clinic and a time when we had felt a strong positive or negative emotion. The idea behind the exercise was that once we had confronted our own emotions in clinic, we would be in a better position to look outward to our students' and clients' emotions. This exercise utilised the scaffolding process we had earlier discussed. Once we had talked in small groups, we were asked to write our emotion on a post it note and to put it on the whiteboard and there was then a group discussion.

Most delegates had focused on negative emotions (see Image 1 below). Common emotions experiences were:

- Frustration - with self and with students.
- Anger - students or supervisor may react with anger. It is sometimes necessary to deal with other people's anger.
- Disappointment – for example with a judge in court or the legal system that has let a client down.

There were some positive emotions like joy and excitement but these were in the minority.

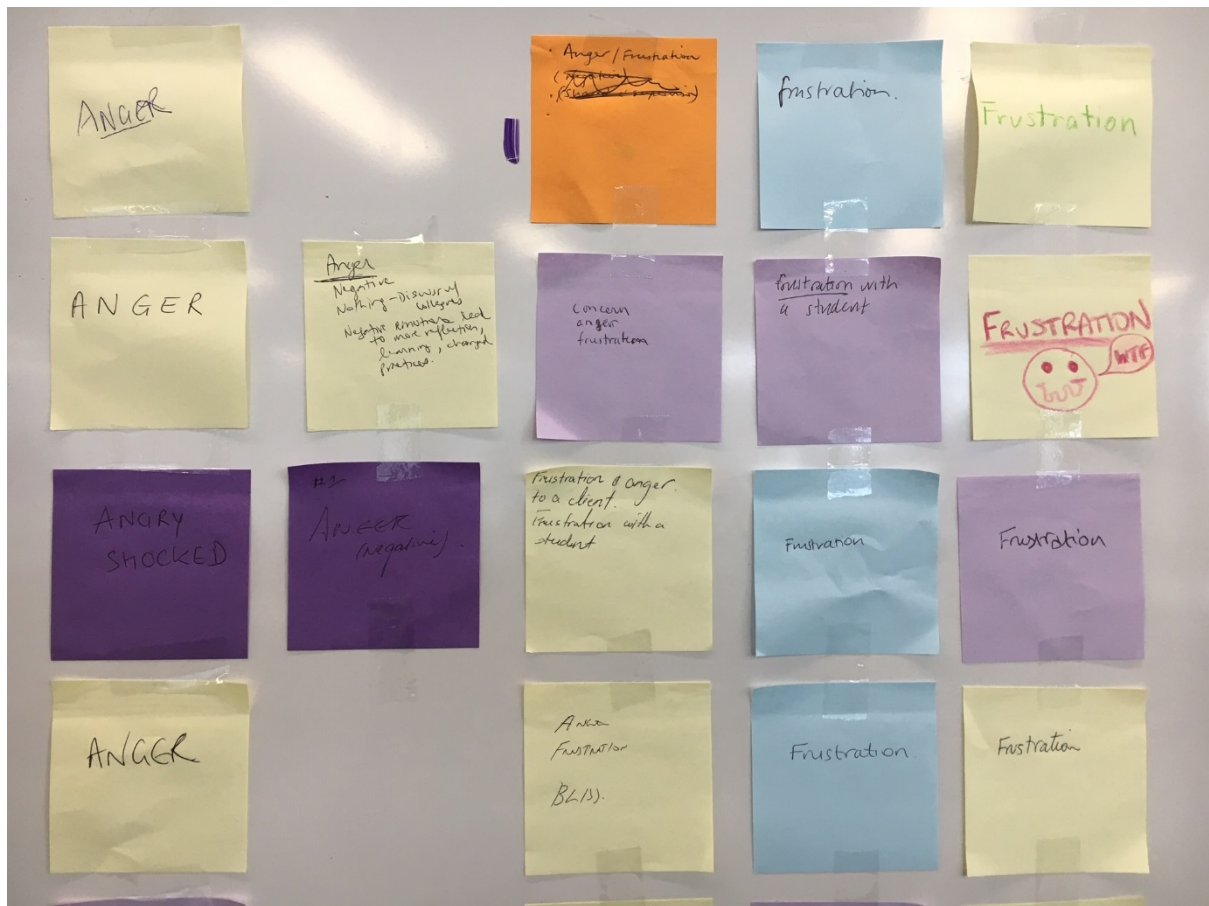


Image 1 – A selection of post it note emotions

The discussion then turned to student emotions and how we deal with these. We again talked to those around us before discussing in the wider group. The following examples were explored in the subsequent plenary discussion:

- One example involved a student failing an assignment. The student was angry about this and blamed the clinician, criticising the assignment. The clinician noted that the student's anger caused her to be angry in turn. She had to manage her own anger, but then after the anger subsided she thought about the student's criticisms. This led her to make adaptations to future assignments based on the feedback the student had given.

- Another person explained how one of their students became very frustrated in their tax clinic when their client failed to show up and provide information. The student was not in touch with their privileged position or sympathetic to the client. The clinician tried to emphasise to the student that 80% of lawyers are dealing with people who have problems and are less privileged than themselves.
- One person explained how they had encountered an absence of student emotion when dealing with clients. They believed this was because the students were so fearful of saying the wrong thing they did not want to express any kind of emotion. It was noted that we do tend to teach students that emotion in law is bad, so perhaps we need to help them overcome this in clinic.

The third workshop activity involved the room splitting into three groups. Each group was assigned with an area to consider:

- Group A – Teaching and planning for emotions;
- Group B – Issues and challenges when teaching for emotions; and
- Group C – Pedagogical priorities in the teaching of emotions.

After each group had debated their particular topic, it was asked to feedback their best ideas to the wider group. There was a common theme running through all the groups in terms of embracing emotion in clinic.

Group A – Teaching and planning for emotions:

- The group thought that the supervisor has a key role in modelling the best way to deal with emotion. It may be counterproductive to pretend you are always

calm and collected. Consider being honest with students when you are feeling anger or frustration (but avoid coming across as angry).

Group B – Issues and challenges when teaching for emotions:

- This group thought that if you do not show or talk about emotions with your students then they will not come to you for help. We should be normalising emotion in the clinic space.

Group C – Pedagogical priorities in the teaching of emotions.

- This group also discussed acknowledging that it is ok to have emotions. We should avoid labelling feelings as right or wrong. They noted that we cannot have a pedagogical goal of ‘solving’ emotions or dealing with them in a half an hour session. This needs to be a longer-term pedagogical goal.
- They also identified that it should be clear from the beginning what students can expect and how they should try to manage their emotions. This process should continue throughout clinic.
- It was noted that getting students to embrace their emotions is a complicated to frame as a pedagogical goal.

THIRD SESSION: A WORKING CONCEPTUALISATION FOR REFLECTIVE PRACTICE IN THE LEGAL PROFESSION – EXPLORING THE DOMAINS OF REFLECTION FOR LAW STUDENTS

After lunch Michele Leering, a PhD candidate from Queen’s University, Canada led the first session of the afternoon. She started with a short mindfulness exercise.

Michele noted that her research had revealed that there were 86 reflective practice authors in Australia but only nine in Canada. She explained that she had been a lawyer for many years and she recalls that in law school they did not talk about reflection at all. Without being a reflective practitioner Michelle thinks you cannot make your tacit knowledge explicit and that this is important for practice. When Michele did a masters in adult education it was based on reflection, unlike her law school experience. This highlighted to her the tension between liberal arts and vocational educational education in law schools. She opined that in Canada it was quite difficult for legal academics to find common cause with the regulator and even to also to agree with one another. Michele cares about access to justice and she wants the profession to be more engaged with this.

Michelle referred to the Carnegie Report⁸, published in 2007, which called for reform to legal education in North America. It recommended that law schools should integrate three sets of values or 'apprenticeships' in the legal curriculum:

- (1) Intellectual or cognitive apprenticeship. This focuses on knowledge and the way of thinking of the profession;
- (2) Practice apprenticeship. This is where students are introduced to practice-based learning through simulated scenarios or working for real clients in clinics; and

⁸ The Carnegie Foundation of the Advancement of Teaching, *Educating Lawyers: Preparation for the Profession of Law* (2007). Summary available at: http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf (accessed 15 March 2019).

- (3) Socio-ethical apprenticeship – this involve the exploration and assumption of the identity, values of the professional community.

Integrating the three parts of legal education would better prepare students for the varied demands of professional legal work. This would helping people learn better, learn from their experience, develop professional competency, and develop their skills.

The room then split into groups to focus on five different domains of reflective practice discussed in Michele's research: (1) reflection on practice; (2) critical reflection; (3) self-reflection; (4) integrated reflection and (5) collective reflection.⁹ The focus of the discussion was student reflection. Feedback from the groups was as follows.

Reflection on practice groups:

- This group had focused on reflecting upon, and developing, a single competency like interviewing. Methods varied as to how the group members encouraged their students to do this e.g. debrief and discussion, modelling interviewing etc.

Critical reflection groups:

- Spent time talking about how to encourage critical reflection. For example, by exploring how law might harm vulnerable or disadvantaged people. There was also a broader discussion about laws being made by the privileged. The group

⁹ Michelle, M. Leering, 'Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism' *Canadian Bar Review* 95, 47-89.

thought it was important to discuss law reform and change to legal systems and the fact that precedents can perpetuate injustice.

- There were many different methods discussed by this group for encouraging critical reflection. Examples included sending students off to an inquiry, or giving them statistics and asking them to unpack any assumptions or prejudices that might stand behind such statistics. The idea of case rounds were also discussed.

Self-reflection groups:

- This group made a reference to the fact students come to law school to be lawyers, whatever their preconceptions about being a 'lawyer' are. It was suggested that self-reflection might lead students to embrace the norms they want but challenging the norms they do not like. It is still possible to be in the 'tribe' but reject certain norms of thinking.
- One group talked about how self-reflection lead to thinking about the role of a lawyer. There is a need to have both time and space to have this deeper type of reflection though.

Integrated reflection groups:

- This discussion had centred on students making the most of opportunities they are afforded. A reflective portfolio is the vehicle for drawing everything together.

Collective reflection groups:

- Discussed building collaborative skills – a shared vision for achievement, common goals, improvement ongoing, and student mind mapping of feedback

SESSION 4 - ASSESSMENT OF STUDENT REFLECTIONS

Associate Professor Ross Hyams of Monash University led the final session of the day.

Ross explained that in his clinic the students initially were required to keep a reflective journal but that it was not assessed. He began to question the credibility of not assessing it. However, assessing reflection raises difficulties and challenges. As Stefani suggests, we may accept a pedagogical rationale for reflective journals but cannot presume it is easy to create a fair assessment tool for reflective journaling.¹⁰ We need to recognise that the learning process involved in reflection is itself is important. Reflective journaling should be assessed on the reflective process involved, not just the 'product' produced.¹¹ The challenge is therefore finding an assessment tool that assesses the reflective journey as well.

Ross noted that we might not always agree with some of the things our students write in their reflections. He questioned whether it is appropriate for us, as clinical teachers, to comment upon, counsel or advise students on their:

- Prejudices;
- Biases;
- Non- legal ethics;
- Beliefs; and
- Opinions.

If we believe we have a right or obligation to tackle such issues this leads us to further questions such as:

¹⁰ Lorraine Stefani, 'Assessment in Partnership with Learners' (2006) *Assessment and Evaluation in Higher Education* pp. 339-350

¹¹ As above.

From the Field

- How does that translate to assessing reflection?; and
- Can we create an assessment tool that adequately and appropriately assesses such matters?

We then split into groups to work on clinical scenarios involving various challenges and issues including the following.

Scenario 1 - The first scenario involved a student who was resistant to idea of reflection but whose clinic work was reasonably good:

- The group who looked at this scenario said that they would have started by discussing the positive aspects to her work and encourage her to talk about the implicit reflection in her work. They would have avoided dealing with the issue in an overly formal way.
- They would have also given the student specific questions to answer so she had more guidance.

Scenario 2 – Involved a student from a privileged background who was showing no empathy towards his clients. He had expressed a view that the clients find themselves in need of legal help because they are poor and stupid:

- The group who considered this scenario agreed that it was necessary to challenge the student's views. It was noted that it was important to set learning outcomes in clinic that are not just about legal skills like research and advice.

The pre-conference workshop proved to be a thought provoking prelude to the following International Journal of Clinical Legal Education conference. The perennial challenge of engaging students in reflective practice in clinic was thoroughly debated, and new insights were generated from the interactive group sessions. The 2019 pre-

From the Field

conference workshop on European Best Practice Standard in clinic will no doubt be equally as engaging.

**FROM 'PARADISE' TO PRAGMATISM – REFLECTIONS ON A VISIT
TO YORK LAW SCHOOL FROM THE PERSPECTIVE OF
A LARGE, TRADITIONAL, CONTINENTAL LAW SCHOOL**

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York Law School benefited from a privilege of being established only ten years ago. Although universities and law schools in particular cherish their long history, it gave York a chance to design their curriculum and pedagogy from scratch and establish a teaching team committed to that. For various reasons² they decided to introduce an intellectually robust yet practical, skills oriented, curriculum based on the application of theory to practice using problem-based learning (“PBL”). Doubtful as it may have then appeared, ten years of experience have brought student satisfaction, respect from other law schools, some of which are even trying to learn something from York, and certainly good ratings.³

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² The problem-based learning approach had already been used at York medical school and as a newly designed law school, York probably wanted to distinguish itself on the law school market. Last, but not least they considered this way of law teaching a good (if not best) way to teach law.

³ York Law School is a highly rated law school. See for example rankings at <https://www.thecompleteuniversityguide.co.uk/league-tables/rankings?s=law> or <https://www.theguardian.com/education/ng-interactive/2017/may/16/university-guide-2018-league-table-for-law>.

Following recommendations from various clinicians, I decided I needed to see York teaching strategies with my own eyes. The reality might, after all, differ from University PR including its website praising the school as an *'inspirational place for both study and research... with innovative teaching and forward thinking approach that keeps us at the forefront of legal education.'*⁴ I must confess it did not.

For a week, I found myself in the middle of a well-oiled educational machine, following elaborate curriculum consisting of a very large number of given scenarios, case studies, analytical exercises and clear and articulated lesson plans put together in a thoughtful way to guide students from first shy steps towards leaving in three years as lawyers, at least partially, equipped for their future careers. Now, every law school, at least in theory, shares this goal and many law schools may achieve this. It was however the practical curriculum at York, more than previous visits in the UK, US and elsewhere, that made me seriously reflect on the way we educate lawyers in continental Europe.

York, at least to my knowledge, chose PBL as the main teaching method because it had already been successfully used at York medical school. As a newly designed law school, York probably wanted to distinguish itself on the law school market. Last, but not least they considered this way of law teaching a good way to teach law. Problem-based learning is a student-centred approach to teaching that makes students learn through the experience of solving open-

⁴ See <https://www.york.ac.uk/law/>.

ended problems introduced by teachers (usually called tutors). These problems might be real or fictitious and students in small groups (usually 6-12) analyse them, identify legal issues and agree on what more they need to know and how they will obtain information they lack. The focus is not so much on solving the problem, but on proper analysis of the problem. Once the group identifies what needs to be found out, each student individually does the research needed and the group meets again to discuss what they have found out and how it helps them to understand the problem. Teachers do not lecture, but just briefly introduce the problem and then leave as much activity as possible on students. Only when they struggle too much, omit important legal issues or fail to find key literature or cases, teachers step in to gently navigate the group. Apart from searching for the solution of the presented problems, this type of learning aims at cultivating students' skills and attitudes. Initially used in medical schools, problem-based learning is now being used for teaching other disciplines, including law.⁵

PBL, as well as other alternative teaching methods, naturally has its limits: teachers need to be well trained (especially to hold themselves back and let students take their time to solve given scenarios, and to only subtly guide students towards expected goals when they are lost) and students need to be

⁵ See Grimes, R. (2014). *Delivering legal education through an integrated problem-based learning model – the nuts and bolts*. International Journal of Clinical Legal Education. Vol 21, No 2, [online] Available at: <http://www.northumbria-journals.co.uk/index.php/ijcle/article/view/388> or Hedlund, R. (2018). *A case study from York*. In Grimes, R. (2018). *Re-thinking legal education under the civil and common law: a road map for constructive change*. New York, NY: Routledge, pp. 47-59.

far more active than students traditionally are. To make sure students understand how important their own activity for the whole learning process is, all York students are interviewed before being accepted, well-informed about the specifics and demands of York law school and welcomed in a special culture where the majority of students adopt rather active roles. Each student also has their personal tutor from members of the school staff. Of course, York benefits from being an alternative to more traditional British law schools and undoubtedly attracts students more inclined to participatory learning. PBL as well as other alternative teaching methods might not suit everybody, but the same surely applies to traditional teaching methods. Many lecture halls in classical law schools are far from being overcrowded since a number of students decide to acquire information by other means.

Coming from an institution with its roots in the Middle Ages (1348), teaching masses of students through lectures (more than 600 in each year) and seminars for groups of up to 40 students, a week in York made me wonder whether a traditional continental law school can implement any of the successful practices of the York curriculum. The first encounter made me feel that unless I became a minister of education or established a completely new law school there is no way to transform York experience into our everyday practice of law teaching. Day after day at York, however, I was recovering from the first impression and started finding ways to imagine the transfer of York's good practice to the setting of the continental law school. In this paper, I attempt to summarize the

main points of inspiration that could relatively easily improve my work and that of my colleagues in the more traditional law schools in continental Europe and possibly elsewhere. They are not unique to PBL which makes them even more suitable for using at other law schools, even though they do not fully implement PBL.

Small groups are key to effective learning. Lectures to several hundreds of students, and seminars for 30 – 40 participants, are still an unfortunate norm in number of traditional law schools. The experience of teachers in York and elsewhere suggest that everything works better in small groups.⁶ They are the foundation for learning at York Law School. Students know each other and their teachers, who likewise know the students and are able to observe and support their progress. The groups of around 10-12 students with the same group membership throughout the academic year meet regularly (once or twice a week) creating a secure, even intimate, learning atmosphere which promotes trust, cooperation and responsibility within the groups, founding

⁶ As Professor Warren Binford summarizes it, “Over 700 studies have confirmed what many of us know based on our own experience as students: Lectures are among the least effective methods for achieving almost every educational goal ever identified. In fact, for some education goals, lectures have been identified as the least effective learning method. Others suggest that they may be worse than no teaching at all since attending a lecture leads to less studying afterward.” Binford, W. (2015). *How to Be the World’s Best Law Professor*. *Journal of Legal Education*, Vol 64 No 4, pp. 542-561. See also Attard, A., Di Iorio, E., Geven, K., & Santa, R. (2010). *Student-Centred Learning: Toolkit for Students, Staff and Higher Education Institutions*. Brussels: European Students Union; Marquardt, M. (2007). *Action Learning: Resolving Real Problems in Real Time* in Silberman, M. (2007). *The handbook of experiential learning*. San Francisco: Pfeiffer, p. 94-110; Tiberius, R. G. (2013). *Small group teaching: A trouble-shooting guide*. Routledge; or Springer, L., Stanne, M. E., & Donovan, S. S. (1999). *Effects of small-group learning on undergraduates in science, mathematics, engineering, and technology: A meta-analysis*. *Review of educational research*, Vol 69 No 1, pp. 21-51.

stones of all effective learning. If those of us teaching at large continental law schools cannot influence the number of students enrolled in our compulsory subjects, we can certainly limit student numbers on optional courses, accepting only 10-20 students. In larger compulsory seminar groups, activities such as fishbowl or role-play⁷ can be performed by 10-15 students with the rest of the class observing and reflecting on the performance. This is an option available for any subject.

Another huge advantage of small groups is that it allows and sometimes even supports students to assume active roles, a function traditionally belonging to the teacher. When students are given clear instructions, materials and outcomes (or indeed encouragement to find their own learning goals), they are able to assume much of the work that is traditionally expected from the teacher – bringing facts, presenting cases, chairing discussions and making notes of the most important points said. Teachers may turn into active observers, helpers, commentators and tutors asking students important questions and reminding them of what they might be missing in their discussions or research, and still be doing their teaching job correctly. In fact, in some aspects even far more effectively. It is, after all, an educational myth to believe that the more words a teacher says during the class, the better s/he is and the more students

⁷ See <http://www.teachingmethodsonline.com/etm/m75/> and Silberman, M. (1996). *Active Learning: 101 Strategies To Teach Any Subject*. Boston: Allyn and Bacon, 1996.

understand.⁸ Often, it works the other way round: a good teacher says only little and lets the students do the work instead. “Talk less, teach more” is an insightful slogan Law Society of Ireland has put on their T-shirts to remind themselves that talkative teachers tend not to be the best teachers.

Another good way to keep teachers’ talking down and student participation up is to change traditional **room seating** – more often than not comprising of rows of desks facing the lectern. On many occasions I have considered moving the classroom furniture at my law school, breaking rows of desks into more discussion-evoking seating, where the teacher is not the centre of attention all of the time. It takes some time and effort to do so – not to mention noise! Having been to a law school where alternative seating is the norm, I now promise myself not to hesitate in the future anymore and will ask my students to change the room seating on every occasion if this complements the method and subject for study at that particular session.

⁸ Many authors stress the key importance of student’s activity for efficient learning. It is an integral part of constructivism, a theory of learning stressing that students must construct and reconstruct knowledge in order to learn effectively, as well as all of the student-centred learning strategies, experiential education, action learning, participatory learning (and participatory teaching methods) and many other alternative teaching and learning approaches. See Attard, A., Di Iorio, E., Geven, K., & Santa, R. (2010). *Student-Centred Learning: Toolkit for Students, Staff and Higher Education Institutions*. Brussels: European Students Union; Lea, S., Stephenson, D. and Troy Y. (2003). *Higher Education Students’ Attitudes to Student-Centred Learning: Beyond ‘Educational Bulimia’*. *Studies in Higher Education*, Vol 28 No 3, pp. 321–334; Marquardt, M. (2007). *Action Learning: Resolving Real Problems in Real Time* in Silberman, M. (2007). *The handbook of experiential learning*. San Francisco: Pfeiffer, p. 94-110; McCabe, A., O’Connor, U. (2014). *Student-centred learning: the role and responsibility of the lecturer*, *Teaching in Higher Education*, Vol 19 No 4, 350-359; Stuckey, R. T. (2007). *Best practices for legal education: A vision and a road map*. Clinical Legal Education Association, pp. 119-132; or Silberman, M. L. (Ed.). (2007). *The handbook of experiential learning*. John Wiley & Sons. For the importance of attention for memory retention, see also Shaw, J. (2016). *The memory illusion: Remembering, forgetting, and the science of false memory*. Random House.

From the Field

Over the time, with the help of like-minded colleagues we might even persuade the law school administration to change the default room seating in couple of classroom.

Most law teachers realize that no matter how hard they try, their students need to work in between the classes in order to progress their understanding of law.

However, many students do not do their homework and are not well prepared, which can adversely affect following classes. What are the ways around it? The

York experience advises us not to give up and instead of working less with the homework, so that our lessons are independent of how well the students prepared, but to make homework far more central part of the following lesson.

This can be done by devoting part of the class to answering questions from self-study, identifying important legal issues and linking it to previously acquired

legal knowledge. In this way, students will learn that preparation is key and an integral part of study. Working intensively with homework helps to bridge

lessons and support the idea that learning is a continuing process, which cannot be fully satisfied during classes or in the exams period. For reasons given

above, it is clearly easier to persuade your students to prepare for lesson in small-groups environment, but the above described principles apply equally to

larger seminars. Bigger groups support anonymity and reduce chance to be called upon, but the choice whether and to what extent to work with homework

is still up to the teacher to decide.⁹ Another York experience advises teachers to pass, at least for part of the lesson, the role of a chair to a student. When students take turns in chairing discussion about what they have learned when doing their homework, peer pressure is on teachers' side and motivates the students to prepare.

Another York way to motivate students to work in between classes is to introduce **reflective journals**. Following the reflective learning principles, journals help students to see their learning as a process in which they are continually required to look back on their and the groups experiences and actions in order to improve their own and everyone else's knowledge, skills and attitudes and how they might now approach new tasks or their learning more generally. Such journals do not have to be formally assessed, or at least not unless the curriculum calls for that at certain points. They represent a far freer form of capturing learning (unlike e.g. essays), are personal to each student (unlike reading cases or articles) and represent a useful tool for tracking learning progress. Journals might be submitted to teachers for their comments, but given time constrains in bigger classes, they may also be submitted only at key points for the award of relevant credits. Alternatively, students might be obliged to submit them two or three time every semester knowing that the

⁹ Arguably one way not to encourage your students to prepare is to use a police-like approach heavily built around powerful external sanctions. Notoriously, some US law schools operated around this model, which is captured e.g. in the *The Paper Chase* movie from 1973.

teacher will send their comments only to e.g. one student out of four. Another option is to ask graduates of the particular subject to help with providing feedback to new students, or ask a fellow student to read the work of their colleagues. It should not be difficult to provide for confidentiality and their feedback, enriched with their recent experience of the same course, might be very useful to new students. On top of that, credits need not to be given based on “correctness” of the journals and information they contain, but predominantly on the fact that students were reflecting their learning experience and able to identify what they need to do better (and why) in the future.¹⁰

An understandable fear of a traditional teacher is that students will not keep their journals. After all, many fail to do even their seminar homework, which tend to be less frequent. To prevent that, it helps to introduce the journals at the very beginning of the course and make sure students really understand all benefits of keeping them – ideally students formulate the benefits themselves in a role play or other interactive activity. One of the most important points is to be aware that journals help students to track their progress. Some pressure is taken away when students learn that the form and language of the journal in

¹⁰ For more information on assessment, see Gibbons, J. *Assessment in legal education: qualification or quantification?* In Grimes, R. (2018). *Re-thinking legal education under the civil and common law: a road map for constructive change*. New York, NY: Routledge, pp. 135-142 or Grimes, R., Gibbons, J. (2016) *Assessing experiential learning – us, them and the others*. International Journal of Clinical Legal Education. Vol 23, No 1, [online] Available at: <http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/492>.

mostly up to them. After all, some students in fact enjoy writing, especially when they are not held back by formal restrictions, which are rather typical for legal documents. Example journals of students from previous courses might serve as a motivation too.

Additionally, the existence of reflective journals gives lessons a natural ending point: each student (or only some students in larger classes) formulates what they take from today's meeting and are asked to note it down and expand on this in their journals. The necessity to formulate in what way, if any, today's lesson has developed their knowledge, skills or understanding of law is a simple, but surprisingly powerful learning tool. For the teacher this can be rewarding too, because you leave the class with numerous examples of what your students have actually learned and clues to what might be done differently and better in future classes. Ending your lessons in this way naturally helps your students to keep their journals, because they leave the session with the core of their entry ready. Since all teachers fight with time constraints, it is very easy to skip the reflective stage of each lesson, especially when teaching university students who we tend to believe must know how to reflect on their learning progress. The truth is that they generally don't and if they do, they might become far better at it, with the help of their teachers. Even if you don't want your students to keep their journals (yet), your lessons can still end with the "What have you learned today?" question.

When walking through corridors of traditional law schools and listening, unless there is a break, you will mostly hear one dominant voice through each door. The voice belongs to the teacher. Alternative schools such as the York one attempt to include where possible in every class an experiential element that makes students get on their feet (literally or metaphorically), engage in small group discussion, play out a scenario that helps them to experience principles and to apply that knowledge and to revisit the subject time and time again to reinforce and develop the learning. Put simply: instead of talking about things, let the students experience them through carefully designed case studies.¹¹ Students' engagement logically increases their motivation and coupled with reflection through journals and discussion enhances the learning process. A visitor to this type of a law school hears, to revisit our previous example once more, a mix of voices, most of which are rather young.

The overall principle that runs through personal engagement and experience and the examples of best practice described above is connected to the issue of responsibility. Who bears larger amount of responsibility for the process of learning? The teacher or the students? At York there is no doubt that it is up to the students to be engaged during small group seminars, to play active part in simulations, role-play and various games, to do their homework and be ready

¹¹ They might demonstrate different philosophical approaches to the law, let students simulate alternative dispute resolution or results of cooperation and non-cooperation of both parties to a contract.

to discuss its results in the following class, to track their learning progress in reflection journals and to identify and fulfil their learning outcomes. To put it simply – to assume responsibility for their own studies. As challenging as this sounds, it can be equally difficult for teachers to let go of their typical all-powerful position. Traditionally, teachers were responsible for everything – from classroom equipment, providing a safe learning environment and having sufficient knowledge to design, impart and control the substance of students' learning and progress. Alternative approaches ascribe teachers an equally crucial and active, but less obviously leading position as supporters, mentors and helpers. Strange as it may sound at first, in combination with students' responsibility for their own learning progress, it appears to be more effective role than that of the clear lesson leader.¹²

All of the mentioned elements of York approach to law teaching can be, at least partially, implemented into a large continental law school practice. What I still find hard to imagine is to follow York decision not to teach traditional subjects (civil law, land law, criminal law, tax law), but to arrange case studies and scenarios in such a way that students simultaneously deal with matter from several legal disciplines. It certainly prepares students better for the practice, in

¹² See Bujan, J. (1996). *Increasing Students' Responsibility for Their Own Learning*. Available at <https://eric.ed.gov/?id=ED400072>; Marquardt, M. (2007). *Action Learning: Resolving Real Problems in Real Time* in Silberman, M. (2007). *The handbook of experiential learning*. San Francisco: Pfeiffer, p. 94-110; Beard, C., & Wilson, J. P. (2013). *Experiential learning: A handbook for education, training and coaching*. Kogan Page Publishers, chapter Coaching and facilitation, good practice and ethics, pp. 53-90.

which your boss typically asks you to “solve the legal issue”, not to “look at it from labour law perspective only”. To implement this approach, however, means to dissolve traditional division of law into subjects and branches and expect law teachers to teach several subjects. That would be nothing less than a revolution, which for its success needs years of preparation and a persuasive dean able to gain general acceptance of the teachers. Before it happens (if it ever happens at all), every teacher willing to improve their teaching may enrich their classes with tips described earlier. Luckily, they need neither approval nor cooperation of their colleagues for that.

Even if the law school holds on to its more traditional curriculum and pedagogy, individual teachers can of course decide to apply the problem-based learning method in their seminar, especially in voluntary courses where it is up to the teacher to decide course outcomes and number of participants.¹³ Their students will, I believe, benefit from their decision, but the consequences of this change will understandably be only limited, since many other school classes will continue to be delivered in a traditional way. It is understandably tempting to think that the only way to transfer what PBL teaches is to introduce the full version of it at your law school, ideally in more subjects at once. Even though I would like to see this rapid change at many law schools, in this text I argue for

¹³ It may be more difficult in compulsory subjects as outcomes are defined by the head of the department (e.g. civil law), guarantee of the course (mostly a distinguished professor) or agreement of all colleagues teaching the particular subject. Additionally, students will be assessed based on these outcomes, not alternative approaches tried out in seminars.

a pragmatic approach: if it is for various reasons not possible to transplant the full PBL version, let's introduce at least its elements described in this text. They have been chosen in the way that even traditional large law schools can implement them rather easily and promptly, especially in elective courses. What PBL does greatly is that it encourages student participation and responsibility for their learning outcomes. The full version, of course, does it better than individual elements described in this text, but even they have a potential to spark student engagement and responsibility. As teachers employing these elements would confirm, even these relatively minor changes bring significant changes.

Should a group of devoted teachers or even the school management decide to implement problem-based method in its full version, it makes sense to apply it to students of one particular module.¹⁴ A practical skills module, containing subjects aiming at developing students' presentation, interviewing and argumentative skills, appears to be a natural start for such a change. The good practice might then start spreading, or the module might remain unique in the teaching methods it applies.

All of the described principles, techniques and pieces of good practice naturally work best when applied in a complementary way. However, it is true in ecology as well as pedagogy that every little counts. Even a small enrichment

¹⁴ By a module I mean a group of subjects that share same area of law (e.g. civil or criminal law) or outcomes (subjects aiming at developing students lawyering skills).

From the Field

of a standard large continental law school curriculum and pedagogy will deliver its results over time. Neither teachers nor curricula typically change overnight. Should one piece of my York experience enrich the teaching style of a reader, my text by all means fulfilled its goal.

REIMAGINING CLINICAL LEGAL EDUCATION

edited by Linden Thomas, Steven Vaughan, Bharat Malkani and Theresa Lynch

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Prompted by a complex of changes in government, markets, and society which push and pull at the aims, organisation and delivery of legal education, Linden Thomas, the manager and in-house solicitor of Birmingham Law School's Centre for Professional Legal Education and Research (CEPLER), organised a workshop, held in March 2015, to discuss and explore the implications of such changes for clinical legal education. This edited collection comprises a selection of contributions presented at the workshop. I approached this book as a student who has a several years' experience with various forms of clinical legal education. The title *Reimagining clinical legal education* inspired my imagination and I did not dare to estimate what it would come after. After reading this book I am able to confirm that the organizers of the workshop, which preceded this book, chose the apposite title.

The aim of the workshop, and thus this collection, was to bring together different stakeholders, including leading scholars, senior figures from professional practice, students, and representatives of third-sector organisations who contribute to the delivery of clinical legal education in law schools in England and Wales, in order to reflect on the key issues arising from the changing legal services market and higher

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education sector, and the opportunities and threats presented by those changes. Contributors were invited to explore the future of clinical legal education in this transformative period, and this collection comprises chapters based on, or inspired by, a selection of presentations given at the workshop. As such, this collection covers diverse ground and presents a range of perspectives. There are chapters which draw on theory, others which are empirically grounded, and a number that are reflective case studies. One is written by a student, and another by a practitioner with decades of experience of internal learning and development in a law firm. This breadth of insight and multiplicity of perspectives are supported by three post-scripts that offer short commentaries on these thoughts in a global context, based on clinical legal education practice in Australia, the United States of America, and Eastern Europe. However, this collection is not intended to be a roadmap to the future of clinical legal education. The authors make no claim that what they offer up is revolutionary. They are not trying to suggest new models of clinical legal education in the case studies discussed. Their intention is to consider instead the role that particular models are likely to have going forward, bearing in mind the current and likely future context in which clinics will operate. Their aim is to offer up thoughts, experiences and ideas that could form stepping-off points for conversations between academics (clinicians and others), students, employers, regulators, and third-sector organisations alike on the path to a future in which clinical legal education, and those who deliver it, are sufficiently robust and adequately prepared to rise to the challenges and opportunities that will continue to abound.

The main focus of this collection is to examine the extent to which clinical legal education has been (or should be) responding to the dynamic and developing context of the legal services market and higher education sector, whether cuts to legal aid following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act in 2012 prompted (or should prompt) a re-evaluation of the role and purpose of clinical legal education, specifically in regard to unmet legal need in England and Wales. Furthermore, the authors explore who engages in delivery of clinical legal education in England and Wales and how they carry out it; and whether, or to what extent, those involved in clinical legal education perceive it as preparing law students for the world of (legal) work. Finally, the authors come to clinical legal education as a distinct field of scholarship, they are interested in its relationships with other forms of teaching and student experience; and the approaches to, and quality of, clinical legal education scholarship.

There is no doubt that this collection provides an appropriate platform for reimagining clinical legal education. Distinct ways which shed light on how clinical legal education can be reimagined (supported by contributions of different stakeholders) enable to readers to reflect its own experience and imagining from multiple perspectives. Even if it is not possible in a collection such as this to fully capture the diverse and multifaceted clinical offering alluded to above, the main purpose and the intention of the authors remains preserved. The particular chapters encouraged by specific examples from practice underline the importance of clinical legal education as a meeting place where academia blends with practice. Although,

Book Review

the ideas raised in this collection are certainly not new, the overall context and different perspectives from which they are discussed demonstrates the potential for future development of clinical legal education. Undoubtedly, the book proposes incentive thoughts, experiences and ideas that will resonate for those involved in and interested in this field. It could be considered the cornerstone for conversations between scholars, legal practitioners, students, regulators, and third-sector organisations alike on the path to a future in which clinical legal education, and those who deliver it, are adequately prepared to rise to the challenges and opportunities that will continue to abound.

Pavel Glos,

REASONS TO DOUBT: WRONGFUL CONVICTIONS
AND THE CRIMINAL CASES REVIEW COMMISSION

by Carolyn Hoyle, and Mai Sato (Oxford University Press), 2019, 383pp,
£75.00 (hardback), ISBN: 978-0-19-879457-8

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In this book the authors explore their extensive, multi-year, empirical analysis of the Criminal Cases Review Commission (CCRC). The authors obtained unrivalled access to the CCRC in the course of their study; the result is a complex and rich analysis of the inner-workings of the organisation. The CCRC, a non-governmental organisation funded by the Ministry of Justice, has the power to investigate alleged miscarriages of justice (following an application by the convicted person) and to refer cases to the Court of Appeal (Criminal Division) for an appeal hearing. This book, by far the most detailed examination of the CCRC, will be valuable for those engaged in the field of miscarriages of justice or the criminal justice system more broadly.

The book's theoretical framework draws heavily upon Keith Hawkins's naturalistic approach, adopted in his book *Law as a Last Resort* (2002). It also draws upon, though to a much lesser degree, Chun Wei Choo's concept of a 'knowing organisation' (p. 47). Hawkins suggested that discretionary decision-making is a product of the connection between the 'surround', decision 'field', and the decision 'frame' of the organisation.

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The surround refers to the social, economic, and political environment in which the organisation operates (p. 39). The surround is not static, but shifts according to wider social and political changes (p. 316). The decision field (which is inevitably influenced by the surround) means the setting in which decisions are made – this is principally the law, policies, and guidance notes issued by the CCRC to its staff, as well as informal ‘working rules’ and assumptions (p. 40). The decision frame means the structures of knowledge and values that staff members at the CCRC use under the influence of the surround and field (p. 41). *Reasons to Doubt* accesses CCRC staff’s decision frames by unique access to case files and case records, which show what information was considered and rejected during the investigation. The book is consistent in applying this framework to the analysis of the CCRC’s decision-making, and this is to good effect to develop a deep sociological understanding of the CCRC.

The book is divided into 14 chapters. It is quite a long read, and has the benefit of a full bibliography at the end. The first three chapters contextualise the study by explaining the perceived problems with the CCRC and the concern with miscarriages of justice. The book’s methodology and theoretical framework are discussed in chapters 2 and 3. The reader is not aided by the book’s structure being somewhat confused, and at times a little repetitive (I found most of chapter 5 was scattered elsewhere throughout the book, for example). A clearer explanation of the law governing criminal appeals would have assisted. There is little sustained explanation of the unsafety test until chapter nine, and then only a few pages (see pp. 175 – 9). The

authors state expressly this was not a study of the Court of Appeal, but anyone new to the field will be left wondering what the test means; and the book's index does not point to any definition of the test.

Chapters 4 through 6 describe the stages of decision-making from receipt of an application to the decision of whether to refer to the Court of Appeal or not. There is a wealth of observational data here. These are valuable chapters; it is crucial that those working with, or making applications to, the CCRC understand its processes. Commissioners and staff at the CCRC exercise considerable discretion (p. 62). The presence of discretion should not be at all surprising for a body tasked with complex decision-making, but it is important that applications to the CCRC are drafted with this in mind. Any application must convince a living and breathing individual (or individuals) of its merits given the unique facts and circumstances of the case. 'I am innocent' will rarely suffice in this regard.

Chapters 7 through 10 consider the CCRC's decision-making in particular kinds of applications. Chapter 7 deals with applications which turn on forensic science and expert evidence. Changes in how forensic evidence is understood have influenced the CCRC's surround, field, and frame. New (understandings of) forensic evidence or expert testimony will only rarely obliterate the foundations of the conviction. It may undermine it to a greater or lesser degree, but the application will also need to provide a 'plausible alternative account for other incuplatory non-forensic evidence' (p. 131). The CCRC will rarely refer, and the Court of Appeal rarely quash, just because of some

change to forensic evidence; a good CCRC application will need to demonstrate how all the core planks of the prosecution case are undermined.

Chapters 8, 9, and 10 consider in turn appeals concerning sexual offences; allegations of police misconduct; and claims of inadequate defence. There was a change in CCRC policy in 2017 in relation to routine complainant 'credibility checks' (such as checking social services records) which were conducted between 2006 and 2017 in sexual offence cases. The CCRC became keenly aware that they were somewhat 'swimming against the tide', being an organisation concerned with convicted people rather than complainants, when the surround adopted a more victim-focussed approach. The change in policy made credibility checks a possible avenue of investigation rather than a routine one (p. 173). The authors are right to caution the CCRC against a restrictive application of credibility checks. It may close off another potential avenue for correcting / investigating wrongful convictions. Those submitting applications to the CCRC will need to be careful to ensure that valid reasons are provided for complainant credibility checks.

Chapters 11, 12, and 13 turn to the work of the CCRC within the broader criminal justice system context. The authors note that the CCRC's work is heavily dependent on other bodies, in particular the police and the Court of Appeal (p. 231). Chapter 12 considers one of the organisational aims of the CCRC: 'to investigate cases as quickly as possible with thoroughness and care'. While this is a noble enough aim, it is easy to see its flaws. Can the two components of that aim: efficiency and thoroughness, co-

exist? A more managerial structure within the CCRC sought to emphasise the efficiently component of the aim and facilitated a move away from a 'meandering' investigation. Perhaps the most successful CCRC applications will, in the future, be those which guide the CCRC in the most efficient way through an investigation.

The book concludes with chapter 14. They refer to the CCRC as being the 'last chance for justice', but note a number of crises in the current criminal justice system (cuts to legal aid, the issue of police non-disclosure, declining trust in forensic science, and so on). The book shows us that believing that the jury made the wrong decision does not get the CCRC, or indeed the applicant or their advisors, very far. The CCRC can only refer if they think there is a realistic prospect that the Court of Appeal will quash the conviction. The Court of Appeal will only usually quash if it thinks the jury might not have convicted due to some new information or evidence. It is a guessing game, constrained by the CCRC's and the Court of Appeal's organisational priorities.

This is an important book in a number of respects. In terms of thoroughness of analysis of the subject, it is hard to find a rival. The authors remain reasonably objective throughout in their analysis. This book is recommended reading for those primarily concerned with criminal appeals and miscarriages of justice. It is important to understand what appears to be the core message of the book. The CCRC does not claim to be the perfect solution to the problem of miscarriages of justice. It is, after all, staffed by people who have to reach decisions. If, after reading this book, those who make applications to the CCRC are able to make better applications, to facilitate that

Book Review

efficient yet thorough review of the case, and then hopefully correct more miscarriages of justice, then the book must be considered a resounding success.