ISSN 1467-1069

International Journal of Clinical Legal Education

Articles

Clinical Practice

Issue 17 2012 pages 1–97

NORTHUMBRIA LAW • PRESS

INTERNATIONAL JOURNAL OF
Clinical Legal Education

Edition No. 17 Pages 1-97

Contributors' guide

Criteria for acceptance of a refereed article

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

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

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

Criteria for acceptance of an article for the Clinical Practice section

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

Form of manuscript

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

Note that papers submitted to the Journal will not be returned except by request and unless a postage paid envelope is provided by the author.

Footnotes and referencing

All articles should be footnoted – rather than end-noted. Articles which do not comply with this will be returned for re-formatting. Arabic numerals should be used for footnotes. The publishers are unable to check the accuracy of references and the onus of the accuracy falls on the author.

Citation style: Because the Journal accepts articles from different jurisdictions we recognise that citation styles will vary. The Journal will accept the use of any standard citation style (such as the Uniform System of Citation, published by the Harvard Law Review Association), but it is necessary that the style that is adopted by the author(s) is used consistently throughout the article.

Copyright

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

Submission of manuscripts

Send all material to the Editor, Jonny Hall, School of Law, Northumbria University, Newcastle upon Tyne NE1 8ST, United Kingdom. Alternatively material may be sent by email to jonny.hall@northumbria.ac.uk.

Yearly subscription rates (2 issues) in 2012

£50 Sterling – Organisations
£25 Sterling – Individuals
Please contact Ann Conway: +44 (0) 191 243 7593
E-mail ann.conway@northumbria.ac.uk
Northumbria Law Press, School of Law,
Northumbria University,
Newcastle upon Tyne NE1 8ST
United Kingdom.

The views expressed by contributing authors are not necessarily those of the International Journal of Clinical Legal Education.

321716K_3/12

Contents

Page

Foreword

Welcome to the seventeenth edition of the journal. Eagle eyed readers will have noticed that we have switched from describing the journal via season and year to using numbers for the journal. This is to assist librarians and others in tracking sequential volumes.

The IJCLE conference, Durham, England, 11-13th July 2012

A reminder of this conference in Durham. I look forward to seeing old friends and making new ones from around the World. For more information please visit www.ijcle.com.

In this edition

Ross Hyams and Faye Gertner's article recognises that the environment in which lawyers practice is changing rapidly and, in many jurisdictions, a multidisciplinary approach is becoming more important alongside a move away from the adversarial paradigm. They explore the benefits of students working in a truly multidisciplinary environment and some of the tensions – including the tension between the potential role of the lawyer as zealous advocate as against models that other professionals – such as social workers – follow. The authors also consider whether the student lawyer's ability to respect client autonomy can be undermined by working in an environment in which those such as social workers have a primary aim to protect the client's best interests (possibly undermining a client's freedom to choose unwisely).

Having explored how organisations might work together and some of the resourcing issues, the paper finishes by holding out the prospect of further research into the pedagogical benefits of establishing a fully fledged multidisciplinary clinic at Monash university through an initial pilot study.

Professor Tony Foley, Margie Rowe, Vivien Holmes and Stephen Tang describe their research into the challenge which new lawyers face in the transition from university to professional practice. The paper describes an important small pilot study undertaken by the authors into the experiences of eleven newly admitted lawyers in the Australian Capital Territory. The authors conclude from this early research that there are three factors that are important to developing professional identity. They go on to ask how clinical legal education programmes can assist students by beginning to address these factors prior to entering professional practice.

There is a surprising dearth of research in this area and this study provides an important wake up call to clinicians and the profession as to the need for far more investigation. For those of us who are clinicians, the more we know about the key issues for early practitioners, the more we can design clinic around assisting students to make the transition. This initial research adds to our understanding of how clinic can help prepare students to become successful reflective practitioners.

The clinical practice section of this edition of the journal focuses on Africa. There are two articles considering the (rapidly growing) Nigerian clinical experience. **S Mokidi and C Agbebaku** argue that there are significant deficiencies in the academic and vocational education for prospective lawyers

in Nigeria. They argue for the introduction of clinic at not just the final one year vocational study stage but also during the three year academic stage. They also recognise some of the barriers to such a project. Those barriers will not be unfamiliar to clinicians from a range of jurisdictions.

Kevwe Omoragbon's paper moves us from the general to the specific, as she considers the Women's Law Clinic at the University of Ibadan. The clinic is a collaboration between the law clinic and health care centres – particularly focused on improving healthcare by alleviating legal stressors. Inevitably these revolve around adequate maintenance, child custody issues and welfare. Clear benefits from the collaboration have arisen for students, medical professionals and of course clients.

It is interesting that in the Nigerian setting there is the move toward non-adversarial solutions to legal problems, adding further weight to Hyams and Gertner's point in their paper in this edition. It is clear that multidisplinary partnership is a growing trend and there must be scope for those pioneering these developments to learn from the experience and research being conducted in countries as diverse as Nigeria, Australia and the US.

Professor Stephen Rosenbaum also looks at the African experience. This time in Togo. He gives an in-depth account of his visit to the country as part of general efforts to increase access to justice through providing free legal assistance. His detailed diary cum essay gives an insight into the role an outside consultant can play when asked to assist for a short period in a developing country such as Togo. Clearly there are limitations to the role but there is a clear impression that Professor Rosenbaum was able to play a part in establishing a dialogue about the creation of student law clinics and other forms of free legal service. His paper ends with seven tips for the short term consultant.

I look forward to the opportunity to meet with many of you in Durham in July to continue sharing our experiences and insights from our practice as clinical educators.

Jonny Hall
Editor

Teaching professionalism in legal clinic – what new practitioners say is important

Tony Foley, Margie Rowe, Vivien Holmes, Stephen Tang

Tony Foley
ANU College of Law
The Australian National University
Canberra ACT 0200
Australia

tony.foley@anu.edu.au

Associate Professor Tony Foley teaches in the legal practice program at the Australian National University College of Law.

Margie Rowe has been the sub-Dean of the program since 2007.

Vivien Holmes teaches and researches in Legal Ethics in the program.

Stephen Tang is a qualified lawyer, registered psychologist and PhD candidate in Clinical Psychology.

Introduction

Anecdotal evidence suggests new lawyers may struggle as they begin legal practice. Little is known empirically about their actual experiences. This paper provides some insights into what occurs in this transition. It reports on a qualitative study currently underway tracking new lawyers through their first year of practice. Preliminary analysis of data from interviews and from workplace observations suggests clinical legal education can play a significant role in smoothing the transition and helping new lawyers develop their sense of professionalism. into their vocational training year. We track new lawyers in the context of their post-admission practice with a small cohort of recently admitted lawyers interviewed and observed in their day to day practice.[1]

We describe what these new lawyers say is important to an effective transition – developing autonomy, learning to deal with uncertainty and finding an accommodation between their developing professional values and those modelled by their firm and colleagues. Clinical programs offer opportunities for an early reflective exposure to these experiences.

Legal 'professionalism'

The notion of 'professionalism' involves the development of a 'professional identity', much in the sense used in the Carnegie Report:

> [Professional identity] which is sometimes described as professionalism, social responsibility, or ethics, draws to the foreground the purposes of the profession and the formation of the identity of lawyers guided by those purposes...[This includes] forming legal professionals who are both competent and responsible to clients and the public...[2]

While the Carnegie Report's focus was on an ideal legal education, developing a professional identity continues during a new lawyer's early exposure to practice. The experiences are in effect an apprenticeship – where certain cognitive, practical and formative milestones ideally need to be met. The Report's authors use the term 'professionalism' more or less synonymously with ethics – to connote both the need for competence as well as the need to act responsibly towards clients and the public. The inclusion of competence in the ethics equation is important. Lack of competence may not be 'unethical' in the narrower sense of immoral, but it is nonetheless unethical when it fails to deliver on professional responsibility.

Acquiring the skills of competent 'lawyering' requires grounding in both theoretical and applied knowledge that can only be gained in the actual practice of law. This is the combination that Schon[3] calls 'doing-in-action with the aid of knowledge-in action'. It is only through the process of 'learning to lawyer' that new lawyers can create themselves as legal professionals. 'Learning to

1 All participants completed timesheets during a discrete period (normally a week), showing how they spend their time at work, what type of activities they are engaged in, with whom they interacted and details of the contexts in which they work.

2 William M Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S Shulman, *Educating Lawyers: Preparation for the Profession of Law* (2007), 14.

3 Schon, D *The Reflective Practitioner* (1983), 141

lawyer' requires 'interactions with others as much as, if not more than, the knowledge [found] in texts', and as such can only really begin once the new lawyer is in some form of practice.[4]

Methodology

The eleven participants in this pilot project (4 males and 7 females) include newly admitted lawyers in private practice (small and medium firms[5], specialised family law and criminal law practices) and public practice (government legal department, legal aid and community legal practices). All participants were in practice in the Australian Capital Territory (ACT), an area in which Canberra, the federal capital of Australia is located. The ACT has a population approaching 350,000 and has approximately 1400 practising lawyers (in private and government practice). Participants were identified through a convenience sample that involved contacting a number of firms within the jurisdiction, as well as targeting new lawyers directly through notices in law society publications. Data collection began in 2009 and continued throughout 2010. Participants were tracked in their 'transitionary year' of practice which we took to be the first 12 months post-admission.

Ideally, participants were interviewed twice (early and late) in their transitionary year. Interviews were also conducted, where possible, with supervisors and with 'significant others' in the practice. Though not constituting a statistically representative sample, the experiences of these participants do provide some empirically-based insights into the lived experience of lawyers new to practice.

This paper is illustrated with extracts from interview data, principally using the comments of one respondent, 'Alison' as a case study.[6] 'Alison' is a lawyer in her late-twenties working in a private mid size firm specialising in a branch of litigation. She described her level of personal wellbeing and satisfaction during her first year as being 'up and down'. She routinely worked about 40-50 hours a week, and only sometimes took more work home. She felt most comfortable with the written responsibilities of her work, and felt less confident in oral tasks, particularly court appearances which with the nature of her practice were routinely required. She spoke positively of the training opportunities her practice allowed her in both internal and external programs. She had been rotated through various 'teams' in the practice, doing a variety of work in each. She was idealistically motivated; expressly saying 'I desperately want to have a career where I feel that I'm making a difference'.

Comments from her interviews and those with her supervisor illustrate factors and experiences which she said influenced her development. While her story is obviously unique, it does highlight the three situational factors which other participants also identified as important in gaining a sense of professional identity. The details of these factors emerged for us through a process of inference and inquiry carried out both before and during the data collection. Before we began we developed a number of hypotheses about what factors would be influential. These were based

4 Flood, J (1991) 'Doing Business: The Management of Uncertainty in Lawyers' Work' *Law & Society Review* 25(1) 41, 68.

5 The Australian Bureau of Statistics 8667.0 *Legal Practices Legal Practices, Australia*, 2001-02 makes a distinction between solicitor practices with 1-2 working principals, 3-5 working principals, and 10 or more working principals though it does not refer to these specifically as these small/medium/large firms, viewed 13 September 2010 at http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8667.0Main+Features12001-02.

We equate a small practice as having up to two principals and a medium practice as having up to five principals.

6 Names of participants are anonymised.

upon our own experience as legal practitioners and legal educators, and also from a review of the relevant literature. We hypothesised, for instance, that issues of acquiring competence and gaining autonomy would be core influences. Although intentionally guided by these pre-conceived ideas, we applied a data analysis approach based on grounded theory[7] to test whether participants identified such factors.[8] Competence and autonomy did emerge as important, but participants also highlighted exposure to situations which we termed 'dramatic learning events' as being particularly influential in their progress.

In a similar way, we found that participants placed particular importance on learning to deal with uncertainty. While we had assumed that learning to deal with the emotionality of practice would be important, we had also surmised that law graduates would not anticipate the extent of its intrusion into their legal work. We had assumed they would see the need to integrate the emotional and intuitive aspects of practice in order to make a successful transition to practice. However, the data analysis showed that dealing with emotions was only one aspect of uncertainty management and that this factor in itself featured far more prominently in what they told us.

From this combined process of inference and analysis we isolated the three factors described as important to a smooth transition. New lawyers said they needed exposure to experiences which allowed them to:

- Develop their confidence and competence in their practice by being permitted to balance personal autonomy with appropriate mentoring and supervision. Participants had much to say about their experience of surviving 'dramatic events';
- Realise that practice was more than a rational and rule-based activity, and one that of necessity involved persuasive uncertainty. Their responses often disclosed feelings of uncertainty about their role as lawyers, about the law itself and about how they were to deal with the complexity of 'real' people displaying 'real' emotions; and
- Find a comfortable 'value accommodation' between their own developing professional sense and the professional values modelled and practised by their firm.

Results

The importance of each of these factors can be best illustrated using interview comments from participants, principally Alison and her supervisor.

7 We depart from grounded theory, however, in that we acknowledge that we have brought a number of prior values, experiences and expectations as practitioners and legal educators to our preliminary conceptual development process. This prior knowledge was used in framing our overall research agenda, although the process of coding and reviewing the data was not driven by specific hypotheses or directions.

8 Glaser, G and A L Strauss *The discovery of grounded theory: strategies for qualitative research*. (1967); Strauss, A L and J Corbin *Basics of qualitative research: grounded theory procedures and techniques* (1990)

1. 'Controlled freefall': Acquiring competency and autonomy through controlled exposure to 'dramatic learning' events

The first group of necessary experiences we describe as 'controlled freefall'. 'Controlled freefall' is used to suggest that an effective transition to practice is aided by a work environment that meets the need for competence and autonomy, while exposing new lawyers to 'dramatic learning events' within a framework of close mentoring.

Why 'controlled freefall' experiences are a positive influencing factor

Professional competency is seen to emerge through a balance of autonomy and supervision. We found strong support in the literature for the need to find an appropriate balance between independence and control. Self-determination theory, for instance, draws a strong connection between the satisfaction of certain basic psychological needs (principally autonomy and competence) as one means to psychological health and well-being.[9] Acquiring such a sense of competence and autonomy was seen as crucial to gaining the 'essential nutriments' of psychological health.[10]

We see competency as a baseline professional duty for lawyers. The work that legal professionals do requires the resolution of legal issues, the creative documentation of transactions, the consideration of rapidly changing areas of law, and (at times) the conduct of controversial litigation.[11] Even routine and repetitive tasks require varying degrees of discretion, challenge, skill and expertise. The new lawyer must gain sufficient competency to begin to meet each of these basic requirements. Acceptance by a legal practice of incompetent work can constitute a breach of the practice's obligations to the court, and to its clients and can lead to disciplinary proceedings against the new lawyer.

'Autonomy' refers to action characterised by choice rather than by actual independence. 'Autonomy' in the context of legal practice involves the exercise of judgment or discretion to select the relevant knowledge and appropriate techniques for performing particular legal tasks.[12] Autonomy does not denote a completely free rein. Lawyers will remain subject to their clients' interests and demands, to instructions from their supervisors, and to external constraints of legality, procedure and shared professional norms. Legal practices must provide the necessary 'autonomy support' for new lawyers to acquire this capacity.[13] Such 'autonomy-support' involves giving them choice as to how to approach tasks where such scope is feasible, and providing a clear rationale when the choice is limited to ensure their perspective as to how things should be done is at least taken into account.[14]

9 Deci, E L and R M Ryan, *Intrinsic Motivation and Self-Determination in Human Behavior* (1985); Deci, E Land R M Ryan, 'Self-Determination Theory: A Macrotheory of Human Motivation, Development, and Health' (2008) *Canadian Psychology* 49(3), 182-185

10 Deci and Ryan, op cit, 2008, 183.

11 Nelson, R L *Partners with Power: The Social Transformation of the Large Law Firm* (1988)

12 Engel, G V (1970) 'Professional Autonomy and Bureaucratic Organization' *Administrative Science Quarterly*, 15, 12.

13 Sheldon K M and L S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) *Personality and Social Psychology* Bulletin 33, 883 at 884.

14 This analysis of the self-determination model as applied to law students is taken from Hess, G F 'Collaborative Course Design: Not My Course, Not Their Course, but Our Course' (2008) *Washburn Law Journal* 47, 367.

In two longitudinal studies, Sheldon and Kreiger show that enhanced feelings of autonomy and control are particularly important for the success of law students.[15] In the same way, new lawyers will only gain 'the inner resources to develop and follow' positive career motivations if their autonomy and competency needs are met:

> All human beings require regular experiences of autonomy, competency and relatedness to thrive and maximize their positive motivation. In other words, people need to feel that they are good at what they do or at least can become good at it ('competence'); that they are doing what they choose and want to be doing, that is, what they enjoy or at least believe in ('autonomy'); and that they are relating meaningfully to others in the process, that is, connecting with the selves of other people ('relatedness').[16]

The participants in our own project confirmed the importance of supervision which allowed this sense of autonomy and competence to grow. When questioned about this, participants consistently described an apparent symbiotic relationship between:

- an exposure to 'dramatic learning' events, even those in which they felt as though they were being 'thrown in at the deep end', and
- a mentoring/supervisory experience which provided a 'safety net' to ensure these experiences were generally positive.

Participants spoke of their development in two parallel ways – increasing their capacity for autonomous practice, whilst being well supervised and supported in their work especially in relation to difficult and unfamiliar tasks. The first twelve months of practice involved finding this balance between excessive hand-holding and unsupervised practice. Participants also related incidents of having 'survived being thrown in at the deep end' with close mentoring and supervision allowing them to 'swim rather than sink'.

This emergence of a growing sense of autonomy was seen as positive and necessary. One participant said, 'it's such a tremendous thing to be able to work independently.' Another felt her autonomy developed as a consequence of receiving direction and feedback about her work:

P: I'm a lot more autonomous now. I've got this one case that I'm working on which will come up for trial in February which is mine, instead of working with a senior lawyer. I am the lawyer in charge …

I: If you're more autonomous, [your supervisor] doesn't check your work as often?

P: No, she still checks everything. But I suppose there's a lot less comments back and that's not necessarily because I am doing it exactly the way she would have done it. She'll say 'that's different but it's alright; go and do it that way'. At the start [she would have said] 'this is the way you should do it until you get your feet a bit more'.

15 Sheldon, K M and L S Krieger, (2004) 'Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being' *Behavioural Sciences and the Law*, 22, 261; Sheldon and Krieger, op cit., 2007. See too Leah Wortham, Catherine F. Klein & Beryl Blaustone 'Autonomy-Mastery-Purpose: Structuring Clinical Courses to Enhance These Critical Educational Goals', paper presented at the Eighth International Journal Of Clinical Legal Education / Clinical Legal Education Conference, Newcastle upon Tyne, 8 July 2010.

16 Sheldon and Krieger, op cit, 2007, 885.

Effective supervision provided the safety net, even when it appeared to conflict with the new lawyer's own perceived competence in a particular task. This was recognised particularly when there was a change of supervisor:

P: Whereas before I got big ticks over everything, now I am actually getting more scrutiny again.

I: Is that good or bad?

P: Good, really good.

I: But it's making you feel less competent because you're getting more things picked up?

P: Yes, but then I feel like I'm learning more, rather than just flying by the seat of my pants.

For most participants, 'competence' meant feeling in control. They felt this sooner in relation to tasks like drafting documents or managing general correspondence. These were tasks that could be planned and were not immediately time-critical and so permitted research, review and reflection. In contrast, it was irreversible and 'on your feet' tasks, such as giving ad hoc advice or handling unexpected developments in court where they felt less competent and consequentially less autonomous.

Conversely, exposure to experiences outside their comfort zone caused their sense of autonomy to grow. Almost all participants reported instances of 'dramatic learning events' within their first 12 months of practice. These experiences often came unexpectedly and forced them to engage in tasks with which they did not feel immediately comfortable. One participant said:

> Getting up [in court] for the first time just for a mention was good. [Then] my first appearance in the Supreme Court was probably a bit of an accelerant 'cause I actually started to feel a little bit confident after that. … That was a terrific day; I got a real buzz out of that.

While these experiences were seen as crucial, they were insufficient to produce significant increases in competency and autonomy on their own. 'Reflective practice' involving reflective conversations with themselves or with others in the practice was also crucial. These conversations allowed a combined or gradual balancing of the known, safe and comfortable with exposure to the unknown and unfamiliar. Another new lawyer reported the effect of being allowed such exposure:

> [My supervisor] has tried to give me a variety of work [to] challenge and to stretch me – we've had some doozies though where I've done the wrong thing [as a result].

This is the combination of experiences we have described as 'controlled freefall'. The transition to effective practice will be hampered where such an exposure is missing or where it is unsustained after an initial period of development. We observed that where new lawyers had only intermittent exposure to such immersive learning opportunities, they reached a plateau in their development and saw a subsequent decrease in their feelings of competence.

This is well-illustrated by a new lawyer interviewed near the end of his transitionary year:

> I would probably say that there was a more noticeable change in the first six to twelve months when I was practicing, and then [it] becomes more gradual. Over the last six months, I would say that, yes, I have improved, but I am comfortable with most of what I am doing now so I don't really feel like I am learning as much as I was when I first started and everything was new. … I don't really feel like I've learnt that much in the last six months.

Where adequate supervision is also missing, development similarly slips. Another participant in a small firm said:

> It's rare that any of the other solicitors will look at or know about what I'm doing. So I am not really supervised – they are not really aware whether or not I'm doing well. It wouldn't really be that obvious to them.

Our first conclusion from this preliminary analysis is that it is crucial for new lawyers to be given exposure to such dramatic learning experiences if their sense of competence and autonomy is to grow.

2. 'Uncertainty Management': Learning to deal with uncertainty about the role of a lawyer, the law itself and dealing with real people displaying real emotions

New lawyers quickly made the discovery that uncertainty is a constant in legal practice. Their comments showed an increasing awareness that they needed to learn to manage such uncertainty. The uncertainty they face is essentially value neutral, it can be either positive in the sense of providing opportunities for change and strategic advantage, or negative as a source of confusion, alarm or chaos.

Why 'uncertainty management' exposure is a positive influencing factor

Uncertainty is often treated as something that should be eliminated or conquered. But in a contrasting analysis, Smithson provides a more positive view, suggesting that we are often blinded to the positive aspects of uncertainty:

> Readers having difficulty conceiving of positive aspects of uncertainty might wish to consider what freedom, discovery, creativity and opportunity really require, namely uncertainties about what the future will bring so that there are actually choices to be made. No uncertainty, no freedom.[17]

Smithson lists four everyday challenges that by their nature will require an appreciation and an acceptance of the positive aspects of uncertainty:

1. dealing with unforeseen threats and solving problems;
2. benefiting from opportunities for exploration and discovery;
3. crafting good outcomes in a partially learnable world; and
4. dealing intelligently and sociably with other people.[18]

A mix of these factors provide particular challenges for new lawyers and this is exacerbated as he legal profession gives little overt recognition to the value and risks of uncertainty:

> [I]n the discipline of law there is no coherent discourse or even conscious or structured consideration of uncertainty – despite the fact that uncertainty is pervasive. … In the case of law, the daily grist of making and interpreting ever-changing legal rules provides an endless source of [uncertainty for] practising lawyers

17 Smithson, M 'The many faces and masks of uncertainty' in Gabrielle Bammer and Michael Smithson (eds), *Uncertainty and Risk: Multidisciplinary Perspective* (2008) 13, 18.

18 Ibid 20.

and legal scholars.[19]

One exception is the analysis provided by Flood who sees managing uncertainty as a central role for lawyers.[20] He articulated two sources of such uncertainty – that due to incomplete grasp of knowledge, and that based on the *limits* of current knowledge itself.[21] A comparison he used is doctors-to-be who come to realise that 'feelings of uncertainty will *never* depart' and that at best they must learn to negotiate uncertain situations as their own experience grows.[22] The same realisations come later to lawyers-to-be given that 'the maw of uncertainty where [appellate judicial decisions] are rarely invoked, and where solutions are not always found but often created' is something they will only really confront once practice begins.[23]

For our participants their uncertainty arose:

1. where they were not uncertain about the law *per se* but about dealing more with more fluid interpersonal situations involving their clients or other lawyers,
2. where they were in fact ignorant of the specific law and had to find a means to reassure themselves, their clients and peers about this lack of knowledge,[24] and
3. where they knew the law but were uncertain as to its satisfactory application to their client's particular problem or situation.[25]

Our new lawyers found they needed to manage uncertainty both in resolving open conflicts where uncertainty was already present (in criminal matters, family law conflicts, commercial disputes etc) and in situations where there is no clear likelihood of resolution, but at best a hope of reaching an 'open ended truce'.[26] As Salacuse says, 'the challenge [for lawyers in these situations]…is not just 'getting to yes', but staying there'.[27]

Sources of uncertainty

Based on the interview data, we broke this uncertainty into three main categories:

- uncertainty about the lawyer's role,
- about the law itself, and
- about the need to deal with 'real' people displaying 'real' emotions.

19 Jones, J 'Certainty as Illusion: The Nature and Purpose of Uncertainty in the Law' in Gabrielle Bammer and Michael Smithson (eds), *Uncertainty and Risk: Multidisciplinary Perspective* (2008) 269, 269.

20 Flood, J (1991) 'Doing Business: The Management of Uncertainty in Lawyers' Work' *Law & Society Review* 25(1): 41. Flood draws on notions of uncertainty management developed by Fox who examined the training of doctors for practice, see Renee Fox, 'Training for Uncertainty' in Robert K. Merton et al (eds) The Student-Physician: Introductory Studies in the Sociology of Medical Education (1957).

21 Fox, op cit, 208-9.

22 Flood, op cit, 43.

23 Ibid, 44.

24 Ibid, 66 gives the example of lawyers in a US firm being uncertain as to just what letters of guarantee used in the UK entailed (the US legal system had no such equivalent). They overcame their uncertainty by showing their clients a dummy letter which they had patched together from extracts contained in a series of reported cases.

25 Ibid, 44.

26 Ibid, 69.

27 Salacuse, J 'Renegotiations in International Business' (1988) *Negotiation Journal* 4, 347 at 347.

New lawyers found the habit of constantly asking questions and waiting for further information to emerge was one strategy by which to confront the uncertainty which arose in these situations. When they felt less certain in 'controlled' situations, such as court work they were hampered because they had less time for reflection. Alison recognised this. She expressed anxiety about her performance in an urgent court application but also realised:

> I absolutely learnt a lot. I didn't even know how to talk to a registrar before then, What do I call you even, how much am I supposed to say to you, am I allowed to say [that the other party's] a jerk, how formal do I be? What's prejudicial and I am not allowed to say it? I just didn't know what I was doing, I had to guess and after that I thought, well, if I can handle that then, no worries.

Ideally, the practice in which new lawyers are based will provide them with opportunities to address these feelings of uncertainty through adequate mentoring and preparation. One supervising partner was alert to this:

> They don't get sent down to the court, without [preparation]. Before [X] went to court, we would practice. I would throw things at her which I thought the magistrate was going to ask her to make sure that she had the answers. She might say 'I've got to do [some type of matter] in court today', and I would say 'okay, let's sit down and do it".

Law students may find themselves well trained to think in terms of applying the law to concrete, well-defined problems (to 'pick out the issues from the facts, apply the law, and come to a conclusion') but much less prepared to deal with potential uncertainties, particularly those produced by the emotional aspects of practice. As Maharg and Maughan contend the 'academic stage is grounded upon technical rationality [which effectively] engineers out the affective'.[28] These 'affective' aspects involve the emotional and interpersonal aspects of practice which constitute an underlying element to most legal activities. Technical rationality may remain a critical part of legal practice but new lawyers must also learn to deal with the non-rational aspects. In this sense new lawyers need to learn to live with and adjust to the unknown.

For beginning lawyers the strength of the emotions involved may come as a surprise. Alison said:

> I entered into my law degree with the ambition of working in [an area of litigation] and I didn't have many illusions. I suppose the only real thing I wasn't expecting was the terror of the court work…I wasn't expecting it to be so painful. [Also] you think, yep I'm going to go to court and I'm going to win but you don't think of the poor client along the way who is actually having this traumatic time in their life and having every mistake they have ever made being stripped bare. I didn't expect the emotion behind it.

The emotional aspects are heightened in situations of complexity and where full communication is lacking. The lawyer must be open to the particular challenges this produces. Their and their client's motional reactions will influence their judgment and will create situations in which their rational-and-logical skills are insufficient for the task. Learning to manage this becomes a key

28 Maharg , P and C Maughan, 'Simulation and the Affective Domain' (2010), paper presented at ALT Annual Conference: Making A Difference, Clare College Cambridge, 29-31 March.

additional practice requirement.

As suggested, the uncertainty will be heightened when new lawyers need to undertake new and unfamiliar tasks. Alison recognised that, while she could handle written 'paperwork':

> Court work is another thing entirely, I feel like I have a bit dunce hat on my head and everyone can see it and they will either poke at me or pity me because of it. The [judges] have been really lovely, and I want to take them at face value and decide that they are just nice people, [but] part of me thinks they're thinking 'poor little girl doesn't know what she's doing'. I feel extremely incompetent.

The uncertainty we have described comes from anxiety about their professional development process (how do I become successful in my job? what do people expect of me? what do I need to learn?) as well as insecurity about knowing what their job requires (how do I find out this information? what is my client's problem?).

There is also an overlap between the requirement to have 'controlled freefall' experiences and the need to learn to accept and make use of uncertainty. Novel problems and challenging tasks, when supported by appropriate mentoring and supervision, will heighten uncertainty-related exposures. Firstly, there are situations where the new lawyer must confront 'known unknowns',[29] that is tasks and situations in which they know that they lack experience or competence (e.g. appearing in court). Secondly, there will be opportunities to discover 'unknown knowns',[30] that is where the new lawyer recognises that they are not in fact venturing into completely unchartered territory and that beneath the unfamiliar complexities are more familiar and flexible building blocks. A number of lawyers in our study reacted with joy and pride to moments when they realised they could in fact do something that they initially thought was beyond their reach. Thirdly, new lawyers must always confront 'unknown unknowns'; that is blind spots, surprises and unpredictable twists in the practice of law which will be entirely new to them.

The transition to a competent legal professional is marked not only by filling in gaps in knowledge and experience, but also by bringing to awareness what is already known. At the same time, new lawyers find they must remain comfortably alert to situations in which there can never be any certainty. It is in such situations that we concluded that new lawyers must learn to manage and make use of the effects of uncertainty in their practice as part of their growing sense of professional identity.

3. 'Value Match': Finding a comfortable value accommodation between one's own values and those modelled and practised by their practice

New lawyers consistently reported the need to be comfortable with the professional values modelled in their practice and to find a satisfactory balance between their own values and those practised by their colleagues.

Why finding a 'value match' is a positive influencing factor

The notion of 'values' has an obviously wide meaning. It can refer to personal values and the

29 Bammer, G and M Smithson, et al. The Nature of Uncertainty in *Uncertainty and Risk: Multidisciplinary Perspectives*. G. Bammer and M. Smithson (eds). (2008), 289.

30 Ibid.

need for the new lawyer to feel their personal values are aligned with those of the practice. Our particular focus is limited more to shared 'professional' values, in the sense of a shared 'concern' with professional responsibility.[31] The new lawyer will develop their own sense of this responsibility as they become more accustomed to practice. They will begin to develop their own 'ethical compass' to guide their professional behaviour. This compass will of course be refined and calibrated by the practice in which they work. The 'version' of professional responsibility articulated by the practice will reflect its own particular circumstances in terms of its history and its practitioners' interests,[32] the type of legal work they perform, its size and location, and the particular characteristics of its clientele.[33] It is in the intersection between these two that the new lawyer needs to find a comfortable match or at least an acceptable accommodation.

The practice's sense of professional responsibility will be reflected in its 'ethical infrastructure' – its stated policies and procedures and its unstated customs, work and management practices.34 These influences will provide direct and indirect incentives and disincentives to encourage the practice's new lawyers to act and behave in certain ways.[35] Their own behaviour will be subtly altered to adopt these shared values, attitudes and customs.[36]

In the process of developing and refining their own ethical compass, new lawyers may need to accommodate an underlying desire to make a contribution to the community, to contribute to what Hyams calls 'the interests of a substantive social value'.[37] Their practice may give them scope to do this, or it may frustrate their attempts to contribute to social justice.[38] Such frustration can cause the new lawyer 'a considerable level of disquiet'.[39] The championing of 'truth and justice' by law schools may have fostered a career orientation towards an altruism, and it may not be accommodated to the reality of practice.[40] Even new lawyers practising in areas with a conscious

31 Sullivan et al, op cit, Observation 3.

32 Nelson, R L Partners with Power: *The Social Transformation of the Large Law Firm* (1988).

33 This is illustrated vividly in research undertaken by Winter of mid-tier personal injury firm in Sydney, New South Wales with 'with strong Catholic foundations and an established reputation for personal client contact and service'. See Winter, R (2010) 'The Principled Legal Firm: Insights into the professional ideas and ethical values of partners and lawyers' *Journal of Business Ethics*, forthcoming, 4

34 See Chambliss, E and D B Wilkins, 'Promoting Effective Ethical Infrastructure in Large Law Firms: A Call for Research and Reporting' (2002) *Hofstra Law Review* 30, 691 and Parker, C, A Evans, L Haller, S Le Mire and R Mortensen (2008) 'The ethical infrastructure of legal practice in larger law firms: values, policy and behaviour'. *University of New South Wales Law Journal*, 3 (1).158-188.

35 The Queensland Legal Services Commissioner has an 'ethical culture check' which practices can use to assess their firm's ethical infrastructure. See the QLSC website http://www.lsc.qld.gov.au/537.htm

36 Briton, J (Legal Services Commissioner, Queensland), (2008) 'Incorporated legal practices: Dragging the regulation of the legal profession into the modern era' paper presented at the 3rd International Legal Ethics Conference, Gold Coast, 13-16 July .

37 Hyams, R (2008) 'On teaching students to 'act like a lawyer': What sort of lawyer?' *International Journal of Clinical Legal Education* 13, 21

38 Simon,W H *The Practice of Justice* (1998), 1.

39 Moorhead, R and F Boyle, 'Quality of Life and Trainee Solicitors: A Survey' (1995) *International Journal of the Legal Profession* 2, 217, 218

40 Evans, A and J Palermo, 'Australian Law Students' Perceptions of Their Values: Interim results in the first year – 2001 – of a three-year empirical assessment' (2002) *Legal Ethics* 5, 103. See too Seligman et al. 'Why lawyers are unhappy' (2005) http://www.austlii.edu.au/au/journals/DeakinLRev/2005/4.html and Schlitz, P J (1999) 'On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Profession'. *Vanderbilt Law Review* 52, 871

public service orientation (such as legal aid or community justice centres) may be disappointed when they find that they are at times forced to act as little more than 'agents of the state … rationing justice', rather than directly meeting social needs.[41]

New lawyers may of course find other means to express this commitment. Some of our participants said that where their paid work did not provide it they looked to satisfy this instead through pro bono work. Alison said:

> I do volunteer work [every week], which I love. [The pro bono practice] has more clearly articulated where they're going, they put out what their goals were and their purpose statement and it was something like 'to help people using your resources and compassion' and I saw it and thought that's what I want and that's fantastic and excites me.

Alison had expressed early disquiet about whether she could find a convergence between her own values and those modelled by her practice

> I am trying to figure out whether you can be ruthless and ethical or whether they are two separate things. Yes, [the practice partners] encourage you to be ethical by the letter of the law, [but] I have experienced instances where I was treated in a way which I felt was unethical, in a holistic way, or I was asked to treat somebody else that way and refused and felt the ire of [the partners] because I refused to do it.

When interviewed six months later she was even more convinced that the value match she had tried to accommodate was not working:

> I struggle with it [the way the firm operates], this is the area that I find problematic. I think it's meant to sound clever but [the way the firm operates] comes across as cunning. It feels manipulative and dishonest, even though, I am sure that's not the intention. It's probably what my goal [should be, that is being] more strategic about how I handle a case, it just doesn't sound it, that's all. And it doesn't feel it.

She subsequently left the practice. When interviewed later she was more explicit about the source of her discomfort:

> [T]o me it speaks to the culture of the firm, the direction that they're taking, the direction that they're willing to take, the actions that they're willing to take to get ahead, and I don't want to have a part of that.

But most other lawyers had achieved a satisfactory value match. One said:

> I think I fit in quite well. I've got friendships and relationships here. I've got a commitment to access to justice… but I think it's good that we're all here, we're all on the same page, it's about access to justice, it's not about money.

Another said:

> I want to be an ethical lawyer, money isn't everything and [they] agree – I'm not permitted to take short cuts.

41 Sommerlad, H 'The Implementation of Quality Initiatives and the New Public Management in the Legal Aid Sector in England and Wales' (1999) *International Journal of the Legal Profession* 6, 311

This is our third tentative conclusion – that new lawyers need to be able to develop their own sense of professional responsibility and to find a satisfactory match between their own values and those modelled in their practice.

How CLE programs can assist in developing legal professionalism

It is these three factors (balancing autonomy and supervision, managing uncertainty and finding a value accommodation) which were seen as important in developing a professional identity. Participation in legal clinic can provide a much earlier exposure to these experiences. Our preliminary findings have caused us to reflect more critically on the three clinical programs in which we are directly or indirectly involved:

- A Youth Law Clinic, operating from the Youth Law Centre in partnership with both Australian Capital Territory (ACT) Legal Aid and a national legal firm;
- A Community Law Clinical Program, operating in partnership with the ACT Welfare Rights & Legal Centre (a community justice centre); and
- A Legal Aid Clinic operating in partnership with ACT Legal Aid.

These programs are 'live client' clinics and so our focus has been mainly on the scope for exposure to such experiences offered by these programs. But we see an important role for other forms of clinic, particularly for simulation clinics as important means to provide similar exposure.

Legal clinics offer students a range of opportunities dependent upon the work the clinic undertakes, the experience and ability of individual students, the balance it strikes between student learning and client care, the needs of the community the clinic serves, the resources available and the attitude of the legal community in which the clinic operates. Each program affords different opportunities to teach and model approaches conducive to learning professionalism.

What contribution can clinic make to developing competence and autonomy?

As we have detailed, participants spoke of the benefits of autonomous practice supported and supervised by effective mentoring. However 'in a clinical setting, the concept of autonomy [which makes the presumption of] law graduates being able to work independently and be self-directed in tackling and completing tasks without direction or supervision' faces particular challenges.'[42] One is the need to ensure client care. Another is the need to overcome the learned dispassionate analysis, demeanour of non-involvement and neutrality which law students may bring with them as a consequence of their legal studies background. [43]

These challenges can be overcome in various ways, most notably through clinicians 'being less directional in the approach to problem solving, by encouraging initiative and showing that the tasks students are undertaking are valued.'[44] This may simply be through 'answer[ing] a question

42 Hyams, R (2008) 'On teaching students to 'act like a lawyer': What sort of lawyer?' *International Journal of Clinical Legal Education* 13, 21, 26

43 Maharg, P Transforming Legal Education, Learning and Teaching the Law in the Early Twenty First Century (2007),222

44 Hyams op cit

with a question', [45] in a way that encourages students to suggest their own solutions and learn for themselves. As Kerrigan highlights, clinics can offer unique opportunities for exposure to 'disorienting dilemmas' and these are very similar to the dramatic learning events we have discussed. Such dilemmas can start students on the path of self evaluation and lead to increases in their competence and confidence. Kerrigan gives as an example a client interview that goes 'horribly wrong', and where the student's sense of failure provides the 'disorienting dilemma' which can lead to a critique by the student and colleagues, not just of that interview, but of the way students communicate with clients and others about the law.[46] Similar dramatic leaps can come from experiencing a supervised court appearance (where the jurisdiction allows it), conducting a solo client interview or taking responsibility for preparing particular parts of a client's larger matter.

The benefit of this early exposure is to allow considerations of the exercise of good judgment to be part of student's development of a professional identity. Hyams refers to such judgment as an 'elusive quality' which is difficult to teach.[47] He suggests that one starting point may be to encourage students to take a holistic approach to their clients' problems and in the process consciously note and evaluate the factors that are influencing their own judgment. This approach can foster the 'potential to analyse critically rather than merely reproduce the discourse of professionalism' and so begin to develop a personal professional identity.[48]

What contribution can clinic make to dealing with uncertainty?

As we have detailed, participants reported learning to manage uncertainties similar in many respects to those faced by students in clinic. Clinic has a significant role to play in giving students the skills and confidence to deal with uncertainty. Contact with 'real' clients with 'real' problems can enrich student learning by highlighting that there are uncertainties over which the student has little or no control. Duncan says this 'realness' of practice produces much closer attention:

The motivating effect of taking on a real case is wonderful to see. I have seen students whose application in classes was poor putting vast amounts of work into preparing for their tribunal case, and every hour of work provides an hour with learning potential.49

The tools of reflection and collaboration can be successfully deployed to make students more comfortable with such aspects of uncertainty. Clinicians can facilitate collaborative reflection to encourage students to discuss the uncertainties they confront and reassure them that others are confronting similar concerns. Reflection can foster and encourage students to critically consider contextual and systemic issues. Reflection can take the form of spontaneous, informal, 'taking the teaching moment' discussions, as well as being embedded in a more formal learning structure. Collaboration with other students can make the most of these informal learning opportunities, as

45 Macfarlane, A and P McKeown, 'Clinical Practice:10 lessons for new clinicians' (2008) *International Journal of Clinical Legal Education* 13, 104

46 Kerrigan, K (2007) 'How do you feel about this client? - A commentary on the clinical model as a vehicle for teaching ethics to law students', *International Journal of Clinical Legal Education* 24

47 Hyams, op cit.

48 Maharg, op cit, 191

49 Duncan, N (2005) 'Ethical Practice and Clinical Legal Education' *International Journal of Clinical Legal Education* 7,11

students give each other feedback and share their experiences.

Clinic gives students the opportunity to also recognise the limitations of the law in the context of human problems. Students conducting client interviews may find that problems are often emergent; with sometimes both the student and the client not know the full issues until they are worked through – with issues continuing to emerge during the interview. This realisation requires flexibility on the part of the student and increased preparedness to keep asking questions. As a supervisor explained about our recently graduated lawyers:

> The thing they'll struggle with is [that] they think that most things are definitive, that there is a solution. And that that solution is to be found either by going through a text or going through a case, and it's not so.

Noone and colleagues note that clinicians themselves can operate as role models for students.[50] The clinician can model client interviews to give students the opportunity to see them deal directly with uncertainty. Students can learn that saying to a client 'I don't know but I can find it out' is a legitimate way of dealing with content uncertainty. Students lacking confidence in their own capacity to deal with client emotions can see the approach a clinical teacher takes to deal with such matters.

A clinical program can also provide opportunities to explore various paradigms of 'lawyering', such as those identified by Parker (adversarial advocate, responsible lawyer, moral activism and ethics of care).[51] Clinic gives students the chance to reflect about where they fit in these paradigms and consider what they think makes an ethical practitioner. Being aware that their behaviour as 'role models' is also being observed requires clinicians themselves to be more explicit about the role they are adopting and the type of lawyering they are displaying.[52]

What contribution can clinic make to finding a value accommodation?

As we have detailed, participants spoke of the need to find for themselves a practice which did not pressure them to suppress their values but allowed them to cultivate and develop their own ethical compass.

We agree with Hyams that 'learning by osmosis' or 'on the run' is no way to learn or acquire a sense of professionalism.[53] Expecting that ethical learning will naturally occur simply through exposure to real or realistic cases is misguided.[54] What is required instead is a much 'broader and deeper engagement with what it means to be a lawyer and the moral attitudes, decisions and outcomes implicit in legal practice'.[55] A well structured clinical exposure provides a pre-practice means to do this.

50 Noone, M A, Dickson J. & Curran E. (2005) 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice' *International Journal of Clinical Legal Education* 8,104

51 Parker, C 'A critical morality for lawyers: Four approaches to lawyers' ethics' (2004) *Monash University Law Review* 30,49-74.

52 Hyams, op cit, 24; Noone et al, op cit,106

53 Hyams, op cit, 29

54 Kerrigan, op cit, 7

55 Kerrigan, op cit.

Clinic plays an important role in engaging students in discursive discussion about the sort of lawyer they aspire to be, and where they see themselves fitting into the profession. Duncan argues that it is important that students are exposed to at least a simulation of the pressures of legal practice 'in an environment in which it is possible to explore the problems in principle…in order to provide them with a sound foundation in values which will strengthen their ability to deal with the vicissitudes of practice'.[56] This is a theme also echoed by Noone and her colleagues:

> The contest of views about what is ethical legal practice and the different lawyering paradigms provides fertile ground for debate and growth amongst students to which clinical supervisors can contribute with their blend of practice, academic rigour and reflection. In this way students begin to develop a deep understanding of ethical practice.[57]

Discussing professional values in a clinical setting can assist students to begin to identify their own professional sense, and so be better able to assess in the future whether a particular practice will suit their professional identity.

Pepper[58] stresses the importance of giving scope to students' intuition in developing their ethical judgment. Extrapolating to a clinical situation, students need to be encouraged to ask themselves 'Is this the right thing to do? Is there some perspective from which it is the wrong thing to do? Will it harm people who do not deserve to be harmed? Is it dishonest, even though not unlawful?'.[59] The opportunity to consider such questions and then have one's judgment exposed to discursive examination can provide invaluable preparation for acquiring an ethical intuition.

For many, it may seem to be asking too much of a clinical program that it play all these roles, particularly given the relatively limited time most students will spend in such a program.[60] But adding engagements in simulation clinics can extend the valuable exposure to the types of experiences our new lawyers have highlighted.[61]

Conclusion

Participants reported that a practice which allowed them to find a suitable balance between autonomy and supervision, which helped them to recognise and deal with the uncertainties of practice and which allowed them to find a comfortable value accommodation positively aided their development as professionals. An appropriate clinical experience can assist law students to be ready for these experiences long before practice.

56 Duncan, op cit, 17

57 Noonan et al, op cit, 111

58 Pepper, S L How to Do the Right Thing: A Primer on Ethics and Moral Vision (2010). University of Denver Sturm College of Law Legal Studies Research Paper No. 10-01. Available at SSRN: http://ssrn.com/abstract=1542170, accessed 30 August 2010

59 Pepper, op.cit.

60 In Australia at least, though this is less likely to be the case in the US for example.

61 We have now implemented such an approach in the Graduate Diploma in Legal Practice at the Australian National University based on and adapted from the program developed by Paul Maharg at the University of Strathclyde. The program of practical legal training exposes students to the experience of what it is to be a professional and what it means to be an ethical practitioner well before their admission to practice.

Multidisciplinary clinics – broadening the outlook of clinical learning

*Ross Hyams**
*Faye Gertner***

Introduction

Students exposed to the clinical legal education environment quickly acknowledge that clients' presentation of their legal problems is much more complicated, subtle and multifaceted than they could ever have believed was possible. They regularly report to their clinical supervisors that their classroom experience has not adequately provided them with either the practical skills or legal knowledge that they need in order to deal confidently and competently with the many factors and complexities underlying clients' legal problems. They report feelings of inadequacy in their dealings with issues that often form a deep-rooted subtext to clients' legal problems. These issues may be a mixture of psychiatric, financial, social, educational and ethnic or language factors.

In recognition of this inadequacy reported by clinical students, this paper focuses on the necessity of developing multidisciplinary legal clinics - law students working in a clinic together with students from other disciplines, such as social work, financial counselling and psychology. Professionals across a wide range of fields have increasingly recognised the advantages of multidisciplinary practice in teaching, scholarship and service delivery to clients[1]. A multidisciplinary approach to legal practice is becoming more relevant as legal systems change[2] to encompass processes and procedures of justice delivery which deviate from the traditional adversarial paradigm.

The aim of this paper is to investigate the challenges of establishing and working in such a clinic.

* Senior Lecturer, Monash University

** Director Monash Oakleigh Legal Practice, Monash University

1 See Schlossberg D "Promoting Justice Through Interdisciplinary Teaching, Practice, And Scholarship: An Examination Of Transactional Law Clinics In Interdisciplinary Education" (2003) 11 Washington *University Journal of Law and Policy* 195; Green B "Reflections On The Ethics Of Legal Academics: Law Schools As MDPs: Or, Should Law Professors Practice What They Teach? (2001) 42 S. Texas Law Review 301; Kritzer H " The Professions Are Dead, Long Live The Professions: Legal Practice In A Post-Professional World" (1999) 33 *Law And Society Review* 713

2 Potter D, "Lawyer, Social Worker, Psychologist and More: The Role of the Defence Lawyer in Therapeutic Jurisprudence" (2006) *Elaw- Murdoch University Electronic Journal of Law* Special Series 95.

Other writers have explored the integrated service model[3] in which clients can be referred from a community legal service to aligned services, often co-located in the same building.[4] However, such a service model is not a multidisciplinary environment. This paper will explore the perceived educational benefits to students of working in a genuine multidisciplinary environment, including exposure to a social justice agenda which, the writers contend, is currently lacking in legal education. Further, it will consider the perceived tension between the orientation of lawyers as "zealous advocates" and other caring professions. Finally, the paper will look at the practical aspects of forging effective alliances between organisations in order to create the appropriate environment for a multi-disciplinary legal clinic, including issues of resourcing. The paper will conclude that, despite the ideological and practical issues which need to be resolved in order to create an effective multidisciplinary clinic, law students would derive great benefit from involvement in such a clinic.

Why change clinical practices?

In order to maintain relevance, clinical legal education needs to teach about practices and processes that are going on "out there" in the legal system. It is clinicians' responsibility to ensure that legal clinics provide students with educational opportunities which will best enable them to take their place in the workforce. It has been long accepted that lawyers require an understanding of how to perform in teams within the legal profession.[5] However, there is also a burgeoning understanding that lawyers need to develop skills in working in multidisciplinary environments, as team members with non-lawyers such as social workers, psychologists, financial planners, interpreters and other professionals[6]. Currently, many clinical legal education units embrace the notion of "student teaming"[7] but it is rare to find student legal teams which encompass students from other disciplines, working together in a clinic.

There is no doubt that the call for multidisciplinary clinical legal education is a timely one. In Australia, initiatives such as Drug Courts necessitate lawyers working in a new non-adversarial environment, together with prosecutors, psychologists, therapists, support workers and other court officials in order to secure a therapeutic outcome for the defendant.[8] Indigenous sentencing courts around Australia require lawyers to work, often in a roundtable environment, with a magistrate, an Aboriginal Elder, the defendant's support people and indigenous court support

3 See Noone M "Towards an integrated service response to the link between legal and health issues" (2009) 15 *Australian Journal of Primary Health* 203; Clarke S & Forrell S (2007) "Pathways To Justice: The Role Of Non-Legal Services. Justice issues" Law And Justice Foundation of NSW: Sydney; Curran L " Making Connections: The Benefits Of Working Holistically To Resolve People's Legal Problems (2005) E law – *Murdoch University Journal of Law* 12

4 Springvale Monash Legal Service, operating since 1975 as a joint venture in clinical legal education with Monash University, Melbourne, is very successfully co-located with the Springvale Community Aid And Advice Bureau.

5 See Chavkin D (2002) Clinical Legal Education: A Textbook For Law School Clinical Programs. Chapter 9 – Collaboration.

6 King M, Freiberg A, Batagol B, Hyams R (2009) Non-Adversarial Justice, The Federation Press at 238.

7 Evans A & Hyams R, "Independent Evaluations of Clinical Legal Education Programs: Appropriate Objectives and Processes in an Australian Setting" (2008) 17 *Griffith* LR 52 at 72.

8 Moore D (2007) 'Translating Justice and Therapy: The Drug Treatment Court Networks' 47 *British Journal of Criminology* 42 at 48.

workers.[9] These modes of hearing are no longer pilot programs or idiosyncratic initiatives, but are becoming an integral part of the Australian legal system, as are many other types of problem-solving courts such as mental health courts, family violence courts, alcohol courts and neighbourhood justice centres.[10] All these courts have processes and requirements of teamwork which are a far cry from the traditional adversarial paradigm that law students are usually exposed to in their legal education.

Thus, clinicians need to acknowledge that the current style of clinical legal education does not prepare students very well for working in a multidisciplinary team environment. Students need to understand the language and philosophy of professionals in other disciplines; they need to have at least a rudimentary understanding of the fundamentals of other disciplines in which lawyers regularly intersect and interact.[11] It is exceedingly rare that a client of a legal clinic presents with a problem that can be defined strictly as "legal" only – more often than not, clients' legal problems are combined with a myriad of social, financial, psychological and other issues. Often, despite lack of training, clinical supervisors are able to identify these issues and refer clients to appropriate professionals. Whether clinic students have the skills to do this is debatable. Clinicians need to acknowledge that legal knowledge does not have hegemony over the resolution of clients' problems and that other professionals can assist towards a positive resolution of the issues that clinical clients present. Further, both clinicians and law students need to resile from the "superior" status that they give the legal system and accept that clients' problems may be better resolved by taking a multidisciplinary and holistic approach.

Educational Benefits of Collaboration in a Specialist Clinic

The majority of writings on multidisciplinary clinics relate to specialist clinics.[12] These clinics involve law students working with students from other disciplines – usually from the social sciences, in clinics that deal with domestic violence, children's interests and criminal defence.[13] St Joan[14] refers to the educational benefits of collaboration and the influence of social sciences to inform clinical legal education, specifically in the context of the domestic violence specialist clinic known as The Domestic Violence Civil Justice Project (DVCJP) established by the University of Denver College of Law. Having referenced the many writings by academics and clinical practitioners, she distils the essence of the influence of the social sciences on clinical legal education to include –

- strengthening the development of case theories;

9 Marchetti M & Daly K (2007) "Indigenous Sentencing Courts: Towards a Theoretical and Jurisprudential Model" 29 *Sydney Law Review* 415 at 421.

10 King et al, n 6.

11 Id.

12 See Schlossberg D "An Examination of Transactional Law Clinics and Interdisciplinary Education " (2003) 11 *Washington University Journal of Law & Policy* 195; Benson S "Beyond Protective Orders: Interdisciplinary Domestic Violence Clinics Facilitate Social Change" 14 *Cardozo J. L. & Gender* 1; Bratt C "Beyond The Law School Classroom And Clinic – A Multidisciplinary Approach To Legal Education" 13 *New Eng. L. Rev.* 200 1977-1978; Enos V & Kanter L "Who's listening? Introducing Students to Client-Centred, Client-Empowering, and Multidisciplinary Problem-Solving In A Clinical Setting" 9 *Clinical L. Rev.* 83 2002-2003.

13 St Joan J "Building Bridges, Building Walls: Collaboration between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality" (2000-2001) 7 *Clinical L Review* 403 at 415.

14 Id.

- appreciating and enhancing the psychological dynamics of the lawyer-client relationship, and
- modelling effective interviewing and counselling skills.[15]

The impact of this influence can be seen when a multidisciplinary clinic attempts to explain and understand its role and function in relation to clients and to the students who work together to provide services to the clients. One of the fundamental concerns when establishing a multidisciplinary clinic is to ensure that it serves its purposes, which must be clearly defined and understood by all participants, including the students and supervisors. Where quality service delivery to clients and long term educational benefits to all students involved are two of the goals, the multidisciplinary clinic must develop and implement a rigorous and effective training program to achieve the outcomes sought.

The study of law does not guarantee students a particular perspective or understanding about social justice and certainly does not usually deal in the social sciences. The training provided to students at a multidisciplinary clinic needs to be specialised in subject matter and skills as well as philosophically relevant. The pedagogical underpinnings of the Domestic Violence multidisciplinary clinic described by St. Joan firstly involved the provision of information (about Domestic Violence) to students. Professional skills and interdisciplinary collaboration are also taught during an intense orientation period and throughout the students' time at the clinic. In addition, case reviews with the students occurred regularly. Students were provided with written materials, but the focus was on discussion and reflection.[16] The role of specialised training that evaluates processes and methods of collaboration in addition to the training of students in traditional lawyering skills ensures that students are encouraged to reflect and provide input. Specialised training in collaborative processes itself has tangible pedagogical benefits for students.

St Joan identifies two distinct styles of collaboration that emerged which she describes as "side-by-side" and "hand-on-hand" styles. The first involves the law and social work students working separately on different matters for the one client. The second style involves the students working together at the same time and place on the same or different issues for the one client. Research showed that most students drew from both styles depending on their need at a particular time.17

The "side-by-side' style enabled students to be more efficient and effective with their time and enabled law students to work separately or together with social work students as required - however there was always the risk of "triangulation" where the client is part of a three-way relationship.[18] This is less likely to occur in the "hand-in-hand" style.

The flexibility afforded by collaboration is evidenced by the fluidity of adapting and adopting the different styles of collaboration at different times in attempting to fulfil different needs. Allowing students to work matters out for themselves allows them to develop a style of working with others that best suits their personality and interpretation of their respective roles. However, supervisors having provided clear guidance and ongoing training as to the expectations and framework of the clinic ensures that students are clear about their boundaries and the goals and aims of the multidisciplinary clinic.

15 Ibid at 405.

16 Ibid at 418.

17 Ibid at 417.

18 Ibid at 418-419.

The importance of clear boundaries from a pedagogical perspective is that the multidisciplinary clinic has an established and apparent framework for its operation. However, there must be sufficient flexibility within it to provide guidance to students and supervisors whilst also enabling students to engage in ways that is most meaningful for them individually -- ultimately this ensures the maximum benefit for the client. From a pedagogical viewpoint, students being encouraged to participate in, reflect upon and contribute to the methodology and operating systems of a clinical framework with a sound educational objective would serve to only enhance their experience.

In St. Joan's paper, students identified various benefits of collaboration, including provision of improved client services; a broadened student perspective; and the advantage of sharing the experience of caring about a client.[19] Social work students stated that they had helped the law students deal with their emotional needs and that they had learnt more about the law and the legal system.[20] The social work students also indicated that they felt there was a power imbalance in favour of the law student at times. St Joan explains that, as the clinic is primarily a law clinic, clients generally perceive lawyers as being more authoritative than social workers and that lawyers are seen to be more devoted to the client's case than a social worker.[21] These matters go to the very core of the issues that underlie multidisciplinary clinics. Changing a client's perception of different professionals and their role will alter only with their own individual experience. Social worker and law students' perceptions and understanding of each other and the role that they each play in relation to a particular client will be reinforced or re-evaluated based on experience. This is augmented by formal teaching and a developing understanding (based on knowledge) of the other's role and guiding philosophy.

The Social Justice Agenda

For law students, there is much more to be gained from multidisciplinary practice than the mere acquisition of multifaceted skills. Working in a multidisciplinary team exposes law students to a social justice agenda which is enriched by their participation and interaction with students and professionals of other disciplines. It is rare for law students, within the context of a classroom, to be taught to both question and practise law within a broader social justice framework. Legal clinics provide law students with the opportunity to place law in its social milieu and multidisciplinary clinics expand the opportunities for students to perceive law in a much broader social context. The myriad of factors (social, financial, psychological and the like) which lead clinic clients to experience legal problems are often implicit in the way a client presents to legal clinic. Multidisciplinary practice makes these factors explicit.

Rand[22] believes that law students' concept of social justice must not occur as a by-product of their exposure to clients, but must be "strongly held and operational."[23] He complains that the US *Model Rules of Professional Conduct* does not provide enough guidance as to concepts inherent in

19 Ibid at 420.

20 Ibid at 421.

21 Ibid at 422.

22 Rand S "Teaching Law Students to Practice Social Justice: an Interdisciplinary Search for Help through Social Work's Empowerment Approach" (2006) 13 *Clinical Law Review* 459

23 Ibid at 463.

social justice.[24] This complaint is echoed by Aiken and Wizner in their comment that there are no ethical or professional rules governing lawyers' ability to simply possess adequate professional skills when dealing with clients, except a very general rule requiring lawyers to be "competent".[25] Certainly the same can be said of the rules governing professional interactions within Australia. In Victoria (the writers' jurisdiction) the most recent professional conduct rules[26] require practitioners to serve their clients "honestly and fairly, and with competence and diligence",[27] but this is as far as the Rules take any concept relating to the pursuit of social justice or fairness. Accordingly, it is difficult for law students to evolve a social justice agenda in their understanding of law, as often the social justice perspective is not made explicit in classroom studies and will only be implicit in their dealings with clients in a clinical environment. The same may be said of practitioners - if they have had no exposure to social justice issues during their legal education and professional conduct rules provide no further guidance, it is difficult to imagine that a social justice perspective to their legal work will simply emerge out of nowhere.

It may be argued that is not necessary for lawyers to approach their professional role with a social justice perspective. Even if one accepts this contention, the fact still remains that a lawyer working in a multidisciplinary environment is at the very least required to understand the professional mindset of the other disciplines (such as social work) who see *their* professional responsibilities as including a social justice agenda. Considering the increasing requirements on lawyers to work in collaborative teams and non-adversarial environments, which require an understanding of other professionals' perspectives and skills, the fact that both law students and lawyers receive little or no direction as to social justice issues does not augur well for lawyers' ability to operate professionally and competently in the future.

If, as Anderson, Barenberg and Tremblay contend, both social workers and lawyers "strive to hold fundamental society values and promote public service"[28] then law students have much of value to learn from working with other disciplines such as social work. There is a strong social justice and client empowerment tradition in social work studies going back at least a century[29] which can enrich law students' interactions with their clinic clients. Obviously, there are tensions between social workers' broader social agenda understanding of their role with clients compared to the traditional notion of lawyers as zealous advocates, which will be discussed in the next section of this paper. However, despite perceived ideological differences between the two disciplines (which the writers of this paper believe can be quite adequately resolved) interdisciplinary collaborations between social work and law students have shown that the law students' interactions with their clients become more nuanced, subtle and comprehensive because of their interactions, observations and modelling of social work students' approaches to clients.[30]

24 Ibid at 473.

25 Aiken J & Wizner S "This Isn't Law, It's Social Work" (2003) 11 *Washington University Journal of Law and Policy* 63 at 66.

26 *Professional Conduct and Practice Rules* 2005 (Vic).

27 Ibid Rule 2.1.

28 See Anderson A, Barenberg L & Tremblay P "Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting" (2006 – 2007) 13 *Clinical Law Review* 659 at 665.

29 Rand, n22 at 480.

30 Anderson et al, n28 at 689.

Tension between Orientations of Lawyers and Other Professionals

Whilst there is no doubt that members of different disciplines – law and social work – want to work in the best interest of their clients, how this is achieved will vary. The underlying philosophies and professional rules that govern each profession will at times come into conflict, especially in a multidisciplinary context. How these differing approaches can be reconciled is one of the challenges facing multidisciplinary clinic students and supervisors alike.

It may be that the tension of competing and sometime inconsistent focuses of the different disciplines can cause disruption to the provision of quality service to clients. In an educational setting, however it can also provide the opportunity to explore the reasons for the disparity between the two professions and the possible alternatives to resolve the differences, whilst at the same time improving each discipline's understanding of themselves and each other.

Anderson et al acknowledge that interdisciplinary collaboration by social workers with lawyers provides lawyers with skills that will enhance their ability to provide a quality service to their clients.[31] They also raise the question of the impact of the different orientations of lawyers, who typically are zealous advocates for their clients and social workers - who attend to the larger moral community and social justice concerns.[32]

The issue is whether a lawyer's zealous advocacy for their client, when working with a social worker, is diluted. The question which must be answered is whether a lawyer's zealous advocacy decreases when confronted with the broader community orientation of a social worker, especially when working together in an interdisciplinary clinic. What impact or conflicts do the two disciplines' ethical/professional rules face in situations where there is multidisciplinary collaboration?

Whilst we may be tempted to focus on "zealous advocacy" seemingly as the only position for lawyers to adopt, Parker & Evans posit the view that there is more than one ethical position for lawyers to adopt.[33] These positions include the moral activist view where the lawyer's role is to do "good" because it is the right thing to do in the greater interests of social and political justice and relational lawyers who integrate their personal ethics with legal practice and present an outlook that might be considered more holistic.[34] In the context of a multi-disciplinary clinic these alternate views of a lawyer's "ethical" position and the impact it may have on practice and interactions with members of other disciplines may well inform tensions and ways to resolve them, should they become apparent. Many US writers take their starting position as the Model Rules of the profession,[35] whilst Parker and Evans challenge us to go beyond the professional rules of practice in our perception of lawyering and its ethical intersections.

Anderson et al's position is that the focus on "conflict" between the professions is overstated; rather that collaboration provides an opportunity for the client's goals and options to be fully

31 Ibid at 661.

32 Ibid at 663.

33 Parker C & Evans A (2007) Inside Lawyers' Ethics, Cambridge University Press, Port Melbourne at 37

34 Id.

35 For example, Rand n22.

explored by their lawyer through legal means and through "zealous advocacy with third parties"[36]. This position does not appear to sit easily with St Joan's styles of collaboration – where the social work and law students are more like "partners" than one practitioner who accesses other disciplines on an "as needs" basis.

There are similarities and differences between the disciplines that will create a pull and push situation in a multidisciplinary clinic. Both social work and law are professions that strive to help their client, at times in similar ways – advocating, advising and facilitating resolution. Shared values are apparent[37] yet there are distinctions and tensions which are also are important. The professional orientation and focus of the two disciplines provide the potential friction, which is neatly summed up by Galowitz:

> There is an inherent tension between a lawyer's and a social worker's ethical responsibilities. The lawyer's responsibility is to advocate zealously for the client's wishes, while the social worker's is to safeguard the client's best interests.[38]

Accordingly, as Galowitz points out[39] that tension may emerge in relation to the different disciplines' approach to clients' instructions. Lawyers usually see their responsibilities towards clients instructions quite clearly – providing advice and guidance and then being bound by the client's instructions, regardless of whether the individual lawyer believes those instructions to be in the best interests of the client or not. By comparison, social workers will generally look at clients' issues more holistically[40] and will often see their involvement in terms of an "intervention" in an attempt to resolve issues in the best interests of the client. Stanger uses the example of child delinquency proceedings.[41] She opines that social workers would approach the matter with an attempt to determine the problem in the best interests of the child, family and the community,[42] whereas traditionally a lawyer would see their role as advocating specifically from the instructions of the client. Despite this, where detailed guidelines and protocols are put into place to assist both supervisors and students in dealing with the client and each other, the tensions between the disciplines, as well as any impact on clients, can be minimised. Ongoing dialogue, both informal and formal, between the students and supervisors, case reviews and detailed orientation and training are all tools that can be used to acknowledge and understand the competing and sometimes inconsistent approaches and aims of the two disciplines.

It is unrealistic to ignore the tension that might arise between disciplines of a multidisciplinary practice, but it is also not helpful to overplay it. Rather, any friction in the way the disciplines approach mutual clients should be acknowledged and energy directed towards striving to work within those differences. Resolving differences and overcoming any professional tensions can be achieved by the mutual understanding of one another's professional roles and expectations

36 Anderson n28 at 665.

37 Id.

38 Galowitz P "Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship of the Relationship" (1999) 67 *Fordham L Rev* 2123 at 2140

39 Ibid at 2141.

40 Peters J " Concrete Strategies For Managing Ethnically Based Conflicts Between Children's Lawyers And Consulting Social Workers Who Serve The Same Client" (1991) *Kentucky Children's Rights Journal* 15.

41 Stanger L "Conflicts Between Attorneys And Social Workers Representing Children In Delinquency Proceedings" (1996) 65 *Fordham Law Review* 1123

42 Ibid at 1125.

from those roles, having clear policies and protocols in place and ensuring that there is open communication.[43] This is the key beyond any other factor. The issue of whether law students lose their "zealousness" and begin to view their professional role more holistically as a result of working with social workers or whether social workers lose their broader perspective of an issue can become minor compared to the possibility of poor or confused service delivery – which has the potential to completely undermine any attempts at a successfully functioning interdisciplinary clinic.

Anderson et al pose the question of whether lawyers will be "tainted" and therefore less able to properly undertake their obligations and responsibilities as lawyers, if they adopt the social workers' approach of 'what is in the best interests of the client' as opposed to ensuring that a client's decision is fully respected.[44] Ultimately, based on their experiences in the interdisciplinary clinic, the authors conclude that this is not likely to happen. In fact, the lawyers were able to synthesize various approaches and without compromising their fundamental obligation to the client, were able to provide their clients with more layered and informed assistance in the client making their decisions on how to proceed in their matters.[45]

Much published work that considers interdisciplinary clinics focus on those combining lawyers and social workers[46], but one of the most influential writings on multidisciplinarity in clinical legal education by Schlossberg examines an interdisciplinary clinic with a small business and law focus.[47] A number of interesting concerns unique to small business, as compared to social worker, matters are discussed. Schlossberg gives consideration to the educational aspect of clinics for the students involved. She emphasises the differences in culture and training between different disciplines and points out that in successful social justice collaboration, emphasis must be placed on group dynamics, the value of listening and mutual respect. She also acknowledges that there is a perception that law students are arrogant and that this will impact in their dealings with other disciplines.[48]

Some of the tensions that exist between disciplines can be explained by the difference in training and emphasis on preparation for work. Whilst it may be trite to state that law schools traditionally only teach law, there is generally little focus on practical skills whilst in business school an obvious feature is the preparedness of students for working in their chosen field.[49]

Accordingly, it is important to acknowledge that underlying tensions between disciplines may always be a characteristic of multidisciplinary clinics. What is important is the acknowledgment that such tensions exist and why – which means consideration must be given to the background

43 Anderson n28 at 667-668.

44 Ibid at 679.

45 Ibid at 689.

46 See Galowitz P "Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship of the Relationship" (1999) 67 *Fordham L Rev* 2123; Zawisza C & Beckerman A "Two Heads Are Better Than One: The Case-Based Rationale For Dual Disciplinary Teaching In Child Advocacy Clinics" 7 *Fl. Coastal L. Rev.* 631; Faller K & Vandervort F "Interdisciplinary Clinical Teaching Of Child Welfare Practice To Law And Social Work Students: When World Views Collide" 41 *U. Mich. J. L. Reform* 121 2007-2008.

47 Schlossberg D "An Examination of Transactional Law Clinics and Interdisciplinary Education" (2003) 11 *Washington University Journal of Law & Policy* 195 at 212.

48 Ibid at 214.

49 Ibid at 216.

and theories underlying each of the disciplines, understanding and respecting each other's viewpoint and contribution in achieving an outcome for a client, and having a system in place that encourages discussion and collaboration in developing solutions to problems that emerge.

Forging an Effective Alliance between Organisations

Whilst there are different models for collaborative clinics, the question of how to best ensure a co-operative and effective clinic essentially relies on several key points. According to Eckel and Hartley,[50] the main challenges for collaboration are for the participants to reconcile organisational goals and to develop clear and compatible expectations. Central to this is the need to address the participants' disparate sets of values and assumptions and to ensure that there is, at least, respect for the each participant's viewpoint.[51] At a practical level, the parties to the joint effort need to regularise processes and procedures and to understand and reconcile their own and their collaborating parties' set of norms and expectations.[52]

When forming partnerships in a collaborative environment, the parties must develop a common set of rules which are derived from each party's previously formulated rules. This set of rules must be embraced by both parties through negotiation. Further, new rules must be created that will deal with new situations that come up as a result of the collaboration. [53]

Eckel and Hartley's basic premise is that where parties (usually organisations) come together in a collaborative fashion, they have chosen each other because they share common ambitions and objectives. There is recognition of the inherent tensions between the interests of the individual partners and as a collective. There is a personal commitment between the participants based on face to face interaction rather than strict adherence to policy and protocols, based on mutual trust and respect and a sense of common purpose. Finally, there is the capacity and desire to establish a "shared identity" which reduces the chance for conflict and misunderstanding.[54]

There are a variety of models for collaborative and interdisciplinary clinics and different names given to them – interdisciplinary collaborative,[55] curricular joint ventures (CJV),[56] interdisciplinary clinic,[57] interdisciplinary or multi-professional collaborations in transactional law clinics[58] or multi-disciplinary practices,[59] all of which have their own meaning as ascribed to them by the authors. Despite the varying nomenclature, they all struggle with similar issues in resolving the differences and tensions between the participating parties and in creating structures and rules that better equip that venture to work effectively towards the aim of providing valuable experience to

50 Eckel P & Hartley H "Developing Academic Strategic Alliances: reconciling multiple institutional cultures, policies and practices" (November/December 2008) *The Journal of Higher Education Vol* 79 No. 6, 613.

51 Ibid at 615.

52 Ibid at 616. For a definition of organisational culture see 616.

53 Ibid at 617.

54 Ibid at 632.

55 Anderson n28.

56 Eckel n50.

57 See St Joan n13.

58 See Schlossberg n47.

59 Trubek L & Farnham J "Social Justice Collaboratives: Multi-disciplinary practice for people" 7 *Clinical L Review* 2000-2001.

the students and an improved service to the clients.

Amey and Brown[60] put forward the proposition that interdisciplinary collaborations work through three stages to achieve collective thinking on behalf of the participants. Based on a case study conducted over a period of 18 months, the authors examined the creation and development of an interdisciplinary team and examined strategies, leadership, resolution of differences and conflict and setting of goals.[61]

The initial stage of the interdisciplinary collaboration was identified by the participants (as a group) functioning and thinking independently. Each group put forward its own view as the dominant one and the leadership was traditional in the sense that it was leadership from the top down.[62]

The second stage was marked by the groups reaching an agreement and understanding of some of the goals and values and being more able to work parallel with one another. It also found groups, (whilst still sticking to their disciplines) more able to acknowledge the importance and contributions of the work being done by each other. The nature of the leadership altered as was demonstrated by being more facilitative and inclusive in style.[63]

The third stage, which the authors note was never completely achieved, would be evidenced by the groups acting as a collective and the ideas and implementation of those ideas being shared by all members. The collective would be dominant in the mindset of the participants. The interaction and dialogue would lead to new knowledge, ideas and solutions being devised and implemented, leading to fundamental change. At this third stage, challenges would only serve to make the members of the collaborative work better together through listening, learning and reflection.[64]

The essence of a successful alliance appears to lie in a range of factors, including the nature and philosophies of the parties concerned. Values and goals need to be well communicated and shared amongst all disciplines involved in the collaboration. There needs to be the capacity to make and adapt to rules and the desire and ability to evolve together, striving to achieve particular goals. Any alliance will not be without issues that need resolution, but the best path to success will necessarily require the parties to participate with a maturity that enables them to change and grow, without it being perceived as a weakness or defect when changes are made.

Resourcing Issues

There is no doubt that the costs of establishing any form of clinical program will be very substantial, even prohibitive. The simple start-up costs of a clinic that operates on a two days per week basis may be in excess of AUS $100,000. There is then the ongoing commitment to both administrative and professional salaries, in addition to the myriad of outgoings required to maintain a legal office. Even if there is a solid clinical infrastructure already existing, there will be costs associated with expanding clinical programs to enable a multidisciplinary practice to function effectively. We would not be the first to point out that law school deans are often not

60 Amey M and Brown D "Interdisciplinary Collaboration And Academic Work: A Case Study Of The University – Community Partnership (Summer 2005) *New Directions For Teaching And Learning* (102) 23.

61 Ibid at 24.

62 Ibid at 25–26.

63 Ibid at 28.

64 Ibid at 28 – 29.

particularly encouraging of clinical expansion,[65] but as Evans and Hyams note, there will be many collateral outcomes of clinical programs that are especially apposite in a multidisciplinary practice – for example, research and teaching collaborations which emerge from the clinic, the increase in student satisfaction across a number of University faculties and the benefit to the University of increased benevolent interactions with the community.[66]

However, as Schlossberg[67] points out, because most academic departments or faculties are quasi independent institutions within their University, this leads to competition for limited resources and does not encourage multidisciplinary collaboration. Further, questions arise as to which faculty or department should bear the brunt of sustainability. These are issues that need to be resolved before the doors open to the first client and cannot be left to be resolved "on the run".

An underutilised resource, certainly in Australia, is University alumni. Whilst approaching alumni for donations towards particular clinical projects may be appropriate, it is not a strategy that will ensure long-term sustainability of the multidisciplinary clinic. Rather, alumni can be a great source of wisdom, knowledge and ideas and may also be of great assistance in making connections with appropriate funders. Accordingly, it may be appropriate to establish a multidisciplinary clinical advisory board with members being alumni of the various University faculties involved in providing direction and support for the multidisciplinary clinic. In this regard, the clinic creates a stakeholder network[68] which can be called upon to provide assistance in a multitude of ways with the ongoing sustainability of the clinic. As there are various faculties involved, it would be possible to draw upon a multitude of disciplines and potential funders by establishing such a stakeholder group. Arguably, the ongoing sustainability of a multidisciplinary clinic may rely on the existence of such a group, especially if there is an external review process in place which may seek to evaluate the clinic simply on the basis of resource or cost implications. If such an evaluation is imposed upon the clinic, the ability to call upon an established alumni network for support and direction would be invaluable. This has certainly been implemented in the past with great success in established clinics.[69]

The way forward

The clinical team of the faculty of Law, Monash University in Melbourne, Australia has formulated and commenced the implementation of a research project relating to the development of a multidisciplinary clinic. The clinic has both a service orientation and a research objective. The aim is to research whether students receive a better quality education when involved in a multidisciplinary clinic. The research will attempt to clarify whether there is a measureable difference between single service as opposed to multi-service delivery. As far as we understand, in Australia it has not yet been researched (from a law faculty perspective) as to how a legal clinic can deliver more effective legal and social services. The pilot project has been created in conjunction with other stakeholders within the University (the schools of Medicine, Business and Economics, Arts, Social Work) who are also part of the multidisciplinary clinic pilot program at Monash

65 Evans and Hyams, n7 at 59.

66 Ibid at 60.

67 Schlossberg n47 at 212.

68 Evans and Hyams, n7 at 79.

69 Id.

Oakleigh Legal Service, a well-established legal clinic which has been in operation in conjunction with the Faculty of Law since 1979.

It is anticipated that a successful research funding grant will enable the clinical team to conduct empirical research as to the efficacy of multidisciplinary service delivery on pedagogical objectives – that is, whether there are benefits to students of a combined legal/social orientation to the acquisition of lawyering skills. Further, the research aims to determine the challenges to pedagogy encountered by teachers involved in the multidisciplinary clinic and to discover how these challenges might be resolved. In this way, a multidisciplinary clinic has been established without an initial exorbitant financial outlay, as it is drawing upon a 30 year established infrastructure which only has to make minor alterations to its practices and procedures in order to enable a pilot multidisciplinary practice to commence. As such, this is a low-risk method of piloting the concept which can involve discovering the difficulties and/or benefits associated with multidisciplinary practice and resolving them, prior to committing large resources to establish and sustain a purpose-built clinic.

Based on the results gained from the pilot project and as part of the Monash University Faculty of Law long term vision, it is hoped ultimately to establish a new Integrated Clinical Services Suite[70]. This would be presided over by the Faculty of Law as a permanent multidisciplinary clinical practice and would provide a holistic legal, medical and financial-related advice service to low income clients. Clinical services would be delivered through supervised later-year students of the Faculties of Law, Medicine, Business and Economics and Arts, with services made available to non-English speaking clients/patients through a partnership with students studying language translation and interpretation. By focusing on assisting low income clients/patients and meeting their needs in a fully coordinated manner, academic staff and students involved in the practice would deliver 'whole of person' services to the community on a permanent basis.

Conclusion

Legal educators ignore the changing landscape of the legal system to their students' peril. The need to understand team work and to function professionally in a multidisciplinary environment is an essential skill for today's law graduates. As discussed above, there are a number of issues, both ideological and practical, which require resolution in order to establish and maintain an effective multidisciplinary service. These issues are not insurmountable, but they require identification and open communication in order to resolve them.

The writers maintain a robust belief that law students will derive educational advantage from participating in a multidisciplinary setting. However, direct empirical evidence is needed to put that belief to the test. Our expectation is that the Monash University Faculty of Law multidisciplinary clinic pilot project will provide the data to demonstrate the pedagogical value of students incorporating multidisciplinary ideologies and practices in their clinical work. If results are positive, as expected, we would hope to make multidisciplinary practice in clinical legal education the rule, rather than the exception. These changes are timely, given the transformations

70 Idea proposed by Dr. Adrian Evans, Associate Professor, Faculty Of Law, Monash University

in ideology and practice being experienced over recent years in the Australian legal system. These changes are also necessary in order for law graduates to be better equipped to practise effectively in a changing legal environment.

Clinical Practice

Legal Clinics and Professional Skills Development in Nigeria

*S.K Mokidi and C.A. Agbebaku**

Introduction

The educational sector has a direct bearing on the social, economic, political and scientific development of a nation hence there have been increased anxieties, in recent times, about the deteriorating state of Nigeria's educational system. The growing concerns stem from the quality of our university graduates, which has become less than satisfactory and the law graduates are no exception. Thus there is a growing demand for reforms not only in the training of lawyers but of the entire educational system in Nigeria.

The declining professional skills of lawyers has taken an alarming trend over the last decade with the result that, clients most often do not get value for money paid for legal services and society does not also feel the much needed impact of lawyers. The present situation is attributed to a number of factors ranging from inadequate curriculum, inadequate manpower and training facilities both in the universities and the Nigerian Law School, to unfavourable government educational policies.

The challenges confronting the 21st century Nigerian lawyer are growing every day. Some fifty years ago not many people in Nigeria knew about the computer or knew about Deoxyribonucleic Acid (DNA) test or how to apply it in evidence. Today the computer is a necessary household facility in Nigeria; today we are faced with the problem of how to apply electronic generated evidence. The modern lawyer must be relevant to his[1] society and so should be concerned not only about representing his client in court and making money for himself but with how the law can be used to resolve disputes peacefully, redress injustice and help in the emancipation and social well-being of the less privileged in his society.

There appears to be a consensus of opinion among Nigerians that the present method of training lawyers has become inadequate and that if the modern Nigerian lawyer must confront these challenges, there is a need to overhaul the entire legal system particularly the method of training. Bayo Ojo, writing on the need to reform legal education said "I would like to reiterate that there is urgent need to reform the whole system of producing lawyers in the country…For the past four

* Lecturers, Faculty of Law Ambrose Alli University Ekpoma, Nigeria. This paper was first delivered at the International Journal of Clinical Legal Education Conference in Newcastle upon Tyne, July 2010.

1 All references in this piece indicating the masculine gender are intended to refer equally to the feminine unless the context clearly indicates otherwise

decades or so, there had been no review of legal education programme inspite of the fact that the country has undergone profound changes"[2]

Some opinion writers have advocated increase in the length of training, and continuous legal education as antidotes to the problem of declining legal skills while others suggest a review of the entire legal education curriculum to reflect the changing face of the legal profession. One of the advocates of a review of the legal curriculum and the teaching methodology, in our Universities is Ernest Ojukwu[3].

This paper, synthesizes the various views that have been articulated on how to reform legal education in Nigeria with the objective of developing the professional skills of lawyers at a formative stage. It traces the history of the legal profession in the country and the society's expectation of lawyers. Drawing from our experience on the students' 'law offices' in our university, this paper posits that introduction of the clinical method of training at the academic stage of our legal education can help to arrest the current unacceptable trend of declining skills.

BRIEF HISTORY OF LEGAL PROFESSION IN NIGERIA

Due to Nigeria's historical nexus with Britain, the legal profession in Nigeria is historically connected with the English legal system and legal profession. Before, the advent of colonial rule, the various ethnic nationalities that existed in the territory now known as Nigeria had their traditional methods of dispute resolution and maintenance of law and order. With the annexation of Lagos and the introduction of colonial rule all that changed. In 1861 Lagos become a British colony. Until the amalgamation of 1914, Nigeria consisted of the Northern and Southern protectorates and the colony of Lagos.

When Nigeria came under British tutelage with the attendant social-economic changes, the British Government needed to establish and assert its authority in order to protect its commercial interest. The result was the introduction of the English common law with its methods of dispute resolution and adjudication, which were alien to the indigenous people. The laws applied were meant to secure economic and commercial advantages for the colonial power. This no doubt accounts for why the first set of indigenous lawyers in Nigeria came from the early coastal settlements, which were mainly trade centres[4] and the predominance of foreigners on the Bench, in the pre-independence era[5].

Before the attainment of Nigeria's independence in 1960, there existed no institutions for the training of lawyers in the country and Nigerians had to travel abroad, particularly England for legal training. In England, they were trained either as barrister or solicitors. A three-month post-call practical course and one year pupilage in a law chambers was required for a Barrister who

2 The Punch, October 2, 2006 p.42. Bayo Ojo was a former president of the Nigerian Bar Association and former Attorney General of the Federal Republic of Nigeria. Similarly, in Vanguard, 12 May, 2006 p.34 while writing on the need to shift focus from litigation to lawyer's development he opined that the legal education curriculum either in the University or Law school is no longer broad and good enough.

3 Ernest Ojukwu is the Deputy Director of the Nigerian Law School, Enugu Campus and the President Network of University Legal Aid Institutions (NULAI Nigeria).

4 Balogun H. Aderinsola, "Upsurge of Lawyers in the Last Two Decades: Challenges, Problems and Solutions" Being a paper delivered at the 1999 Nigerian Bar Association Annual Conference held at Kwara Hotel Ilorin, Nigeria.

5 Kehinde Sofola SAN, Keynote Address at the Nigerian Bar Association 1999 Annual Conference, Ilorin, Nigeria

intended to practice in England, but it was not a requirement for lawyers who did not intend to practice in England. On coming home, the English trained lawyer enrolled at the Supreme Court and practiced as Barrister and Solicitor. It is on record that the first indigenous lawyer to enroll at the Supreme Court was Christopher Alexander Sapara Williams.

The English trained lawyer who then came back home to practice law had some deficiencies:

1. While in England he studied as either a barrister or solicitor but on coming home he was faced with a fused profession.
2. In England he studied the English legal system and constitutional Law but on coming home he found that Nigeria was a federation. He had no knowledge of Nigerian customary law, which is an integral part of our legal system.
3. Until 1967 there were no mandatory courses of lectures for aspirants and a university degree was not also required and as earlier stated they were not required to do the one year mandatory attachment to chambers for those who wished to practice in England.

It was as a result of these deficiencies that the E.I.G. Unsworth Committee was set up in April 1959 to deliberate on future of the Nigerian Legal profession and made recommendations. The committee, among other things, recommended the establishment of the Nigerian Law School at Lagos for practical training and examinations. Following the enactment of the Legal Education Act of 1962 the Nigerian Law School was established in 1962 in Lagos and it took off in January 1963 with an initial eight students.

As earlier observed, in the colonial era there were no formal institutions for the training of lawyers. In 1961, the first law faculty was established at the University of Nsukka and this was followed by the establishment of law faculties at the University of lfe (now Obafemi Awolowo University) in 1961, Ahmadu Bello University Zaria in 1962 and the University of Lagos in 1965. With the establishment of these pioneer law faculties and the Nigerian Law School the stage was set for the training of lawyers in Nigeria.

DO WE NEED A REFORM OF LEGAL EDUCATION?

The Nigerian Universities Commission (NUC) and the Council for Legal Education ('Council') control legal education in Nigeria and it is in two stages. The first stage is the academic training at university while the second is the vocational training at the Nigerian Law School. The academic stage involves the acquisition of university education leading to the award of Bachelor of Laws (LL.B) degree.[6]

The LL.B is a five-year program for those students who entered university through the University Matriculation Examination (UME) and four years for those who entered through the direct entry.[7] At the academic stage the focus is on stuffing the student with legal principles and basic tools of

6 To ensure minimum standards the NUC designs a uniform curriculum, which the Council approves for all faculties of law.

7 To qualify for admission by UME to study law the candidate must possess a minimum of the senior secondary school certificate or its equivalent with at least five credits at a sitting; for the direct entry he must have a minimum of GCE 'Advanced' level or its equivalent. Prior to the NUC report on minimum academic standard for legal education from 1990/1991 academic session the LL.B programme was four years for those who entered by UME and three years for direct entry.

legal analysis. According to NUC in its minimum academic standards for law "Academic legal education should therefore act, first, as a stimulus to stir the student into the critical analysis and examination of the prevailing social, economic and political systems of his community and, secondly, as an intellectual exercise aimed at studying and assessing the operation, efficacy and relevance of various rules of law in society." The above encapsulates the basic objectives of the LL.B programme of the various law faculties in Nigeria.

In line with the objectives and in accordance with the NUC prescribed curriculum, all the law faculties in Nigeria must teach twelve core courses- Law of Contract, Criminal Law, Legal System, Constitutional Law, Torts, Commercial Law, Equity and Trust, Evidence, Land Law, Company Law, Jurisprudence, Legal Methods- and a compulsory Long Essay. There are also compulsory non-law courses like Use of English, History and Philosophy of Science, Logic and Philosophic Thoughts, Nigerian People and Culture, and Introduction to Computer application. In addition, there are optional law and non-law courses from which the law student is expected to choose to make up the required credit load.[8] As submitted by Onalaja, the curriculum is sufficient and capable of delivering a sound academic legal education because this stage is concerned primarily with the search for principles and not to teach students all the knowledge that they would require to practice"[9]

On successful completion of the LL.B programme, the law graduate proceeds to the second stage, which is the one-year vocational training at Nigerian Law School. The training at the Nigerian Law School is expected to equip the student with requisite practice skills to meet the needs of a fused profession and to effectively function in a globalised world. Towards this end, procedural courses are taught in the Law School. The courses are Legal Drafting and Conveyance, Civil procedure, Criminal Procedure, Company Law, Commercial Practice, Law of Evidence and General Paper which consists of professional ethics, law office management, legal skills and solicitor's accounts. At the end of the course and on passing the prescribed examination, the Council of Legal Education issues the law graduate with a qualifying certificate. He is then called to the Nigerian Bar, if he is certified and found fit and proper by the Body of Benchers.

We have seen the circumstances that led to the setting up of E.I.G. Unsworth's Committee that recommended the establishment of the law School. The Unsworth report was to serve as a blue print for tackling the challenges of the legal profession then, and for shaping the future of the Nigerian Legal profession. The question is whether that report of 1959 can still serve the needs of the legal profession for the 21st Century? Aderinsola is of the opinion that it cannot.[10] Ernest Ojukwu opines that although the "Nigerian Law School is supposed to be a school of practical studies, but with no properly formulated objective it is impossible to determine if its outcomes are meeting any set goals."[11]

There is a general consensus that there is a sharp decline in basic professional skills of entrants in

8 The optional law courses include Customary Law, Intellectual Property Law, Revenue and Taxation law, Oil and Gas law, Labour law, Administrative law, Law of Banking and Insurance, International law, Legal Drafting and Conveyance and in some cases procedural laws like Civil and Criminal Procedure.

9 Onalaja M.O., "Problems of Legal Education in Nigeria" in The Guardian December 13, 2005 p.68

10 Aderinsola, supra note 3

11 Ojukwu Ernest, "Crisis of Legal Education in Nigeria: Need for Reform or attitudinal Change? in Niki Tobi ed. A living Judicial Legend: Essays in Honour of Justice Karibi Whyte (CON) (Lagos, Florence & Lambard, 2006) p. 249 at 252.

the legal profession in recent years, and this is glaring in their performance in court, preparation of legal documents and offering of professional advice, ethics etc. Yet the quality of justice we get depends on the quality of lawyers we produce. We must concede, as observed by Justice M.M. Akanbi (rtd) at the 1999 NBA annual conference in Ilorin, Nigeria, that just as the training of a child starts from the cradle in the home and the schools he attends in his formative years, so does the training of a lawyer and acquisition of professional skills start from the university and the law school.[12]

The patent deficiencies in some of our young lawyers are directly related to their training both at academic stage and the law school. At the university in the majority of cases, no attention is ever paid to the teaching of practical skills because it is generally believed that 'academic legal education is concerned primarily with the search for principles and practical training should be left for Law School. This is not just the only problem. The major problem is that the much of the quality of teaching is diminishing and some of it is grossly inadequate. It is either that 'handouts' prepared in form of lecture notes are sold to students or the teaching is merely reduced to dictating of notes copied obviously from books without any attempt to update them or both. The result therefore, is that there is little or no time for meaningful interaction between the students and the teachers.[13] Whereas in times past, tutorial classes were reserved for interactive engagement between the teacher and the students this is hardly the case today.

Another problem is that teaching at the law faculties of our universities is still restricted to the traditional subjects, which limits the student's scope. In today's globalised world the lawyer is more exposed to diverse societal challenges than our great forebears. Today much attention is being given to human right issues; attention is shifting to alternative method of dispute resolution, information technology, e-commerce, e-law, and Internet law etc. These are emerging trends and specialist areas, which ought to be introduced in our law faculties rather than slavish adherence to the traditional subjects. Clement Akpamgbo a former Attorney General of Nigeria seems to have echoed this view when he said: "Tomorrow's lawyer, if he to be relevant cannot just be a lawyer familiar with rules of procedure of our courts with smattering knowledge of substantive law… he should be familiar with the various regional economic treaties and conventions and their implication for trade and business in the African region".[14]

The law school that is assigned the role of practical training of the lawyer has not fared better. What has emerged over the years is that the teaching method is not remarkably different from what is obtainable in the universities. There are hardly moot/mock trials and only a few students participate, if they are held at all. The tutorial classes are conducted at the approach of the examinations and tailored towards the students passing the prescribed examinations.

In the course of training at the law school students are sent on law offices and courts attachment to familiarize themselves with general office work, legal practice, legal research and appreciate the ethics of the profession thus exposing them to practical skills but each of these attachments do not normally exceed six weeks. Experience has shown that students see the period as an opportunity to read the voluminous notes they received in school and, in the absence of close monitoring by the Law school, the students do not take the attachments seriously. The result is that most students

12 A paper presented at the 1999 NBA Conference held at Ilorin, Nigeria

13 Ojukwu Ernest, supra note 10.

14 Address at the Law Teacher's Conference, on 27th April, 1992, at Ogun State University, Ago-Iwoye.

gain nothing from the exercise.

THE LAWYER AND SOCIETAL CHALLENGES

Law is an instrument of social engineering. Indeed, the legal profession plays a dominant role in any society because all human activities revolve within a legal framework. Lawyers are known to have and still make tremendous contributions to the social, political and economical development of their societies. As observed by Bayo Ojo, lawyers in the United States, for instance, were in the forefront of the struggle for constitutionalism and feature prominently in the chronicles of the American Revolution[15]. Emphasizing the importance of lawyers in the society Newton D, in an address at the Columbia University in 1993, stated: "One of my deepest conviction is that so far as the institutional progress of a people is concerned its salvation lies in the hands of the profession of the Bar"[16]

Indeed, the public repose much confidence in the lawyer as the 'learned man' to help advise government, commerce, industry and private citizen; he is seen as a defender of human rights and promoter of the rule of law. Olisa Agbakoba, former president of the Nigerian Bar Association captured the challenges facing the modern lawyer in Nigeria when he said:

"Our great forbears in this profession did not have to contend with the challenging realities of the internet and globalization, they lived and practiced our profession before deregulation economic and political reforms, and fast spaced transnational environment that we must live with in today's Nigeria. Our practice environment changes around us by the minute. The challenges that confront us as citizens and professionals are evolving rapidly. If we are to approach anywhere close to the respect that our great professional forbears commanded in their time, then we have to go the extra mile to renew our profession and build a 21st century Bar for the Nigeria of tomorrow."[17]

If the institutional progress of a people depends so much on the lawyer then he must be a part of the society he lives and understand it if he is to be able to participate in its development and the economic and social well being of its members. The modern lawyer must be sufficiently equipped in knowledge and skill to assume his role and it is submitted that the training of the Nigerian lawyer must go beyond the traditional functions and incorporate those areas that will bring social changes. Otherwise, as suggested by Karibi-White such a training is bound to be myopic and likely to deal with societal problems in a truncated manner[18].

What we have tried to do so far in this rough historical excursion is to show why the existing legal curriculum and teaching method can no longer meet the needs of the 21st century legal profession. To continue to maintain it will merely lead to producing what Sam Amadi referred to as lawyers "simply trained to function as bricklayers whose mind [is] the 'job' of adding one block after another, without a clear vision of what edifice is being constructed"[19].

15 Bayo Ojo supra note 1

16 Cited in Onalaja M.O., supra note 8

17 Agbakoba O., "Re-imagining the 21st Century Nigerian Lawyer" in Vanguard, 6 October, 2006 p.44

18 Karibi-Whyte JSC cited in Nuhu Mohammed Jamo, "Upsurge of Lawyers in the Last Two Decades: Challenges, Problems and Solutions being paper presented at 1999 NBA Annual Conference held in Ilorin

19 Amadi S, legal Education, Public Interest Lawyering and Social Justice in Nigerian Bar Journal vol 2 No.2 2004

LEGAL CLINICS AND PROFESSIONAL SKILLS

A good cause also needs a good lawyer. A good advocate can deploy his good skills to turn an otherwise bad case to good against a weak advocate. The impact of globalisation is changing the face of legal practice and Nigeria as an emerging democracy must begin to think of what role it wants lawyers to play in its political, social, cultural and economic development. Today, issues like high-jacking, kidnapping, piracy, delay in administration of Justice, human rights abuses e.t.c, stare us in the face. An understanding of these problems can help us reshape and redefine the structure and contents of our legal education.

Faced with these numerous challenges, the lawyer should have the requisite skills to function effectively. It is generally agreed that the legal curriculum is such that the university training is theoretical and not practice oriented, yet good knowledge of principles is not sufficient to prepare the students for today's legal practice when eventually called to Bar. This underscores the need for introduction of a practice oriented method of training at the various faculties of law because a lawyer must be well equipped to apply knowledge of principles to solve legal problem.

Legal skills refer to the ability to apply knowledge of law to solve legal problems. The basic skills that a lawyer requires are in the area of advocacy, legal drafting, negotiations, legal research, management and verbal communication. To understand the role law clinics will play in these, we must consider the goals of clinical legal education. Clinical education requires the student to learn by doing; it therefore requires his active participation. The objective is to train lawyers who will be highly skilled, effective and responsible in whatever capacity they find themselves. Through the student's active participation in the process of learning, he is exposed not only to legal skills but also to the essential values of the legal profession: provision of competent representation, promotion of justice, fairness and morality; continuing improvement of the profession, and professional self development.[20]

At this stage a brief consideration of the activities of students' 'law offices' in the faculty of law, Ambrose Alli University Nigeria will, by way of analogy, help us understand how law clinics would help in skills development.[21] In the faculty of law students are encouraged to join any of the student operated 'law offices' and 'counsel' in these offices 'practice' before 'courts' in the University[22]. The students take on live cases affecting students and in the process are involved in extensive research, drafting, and legal representation in court. Where the matter is purely civil and the need for litigation arises, pleadings may be filed and the students may consider it necessary to consult with their staff adviser or legal practitioners.[23] Decisions of the 'Courts,' in cases affecting law students only, are transmitted to faculty of law management for enforcement while those involving other students are sent to University management through the Dean of Students' Affairs

20 Margaret Martin Barry et al, Clinical Education for this Millennium: the Third Wave, 7 Clinical L. Rev 1, 13 (fall 2000)

21 Student 'Law Offices' which operate only in the faculty of law are neither law clinics nor products of law clinic in the faculty. They are formed and managed by law students but are required to be registered with the Law Students Association (LAWSA). They are named after notable legal practitioners and jurists.

22 The courts are the LAWSA Jural Court, the Students Union Government High Court and the Supreme Court, which are manned by students except that the dean of law is the chief justice of the Supreme Court.

23 They also provide legal representation in matters like violation of dress code which are considered as quasi criminal and prosecuted by the LAWSA Attorney General

for enforcement[24].

Unfortunately, because the management of these 'law offices' is left in the hands of students much of the emphasis is on advocacy such that little attention is paid to developing other legal skills. Again, because membership is voluntary and no academic credit is attached the level of participation by students is low. However, experience has shown that students who are members of these 'law offices' form the nucleus of those that do represent the faculty in moot trial competitions. The success the faculty has recorded in national and international competitions can be attributed to the skills gained from the students' participation in these 'law offices'. The experience gained at this formative stage has also helped a good number of them in legal practice; some have turned out to be notable human rights crusaders[25].

We have also found that since the establishment of the faculty law clinic a greater number of our student clinicians, who are enthusiastic about the programme, are members of these students' law offices notwithstanding the fact that the law clinic is open to all students in year three and four who offer legal practice as a course.[26] The point being made here is that drawing from the gains of these campus law offices we can safely say that there is a need to introduce some form of practical training at the university stage in the training of our lawyers. Indeed this is the objective of setting up law clinics in the Universities– expose students in their early life to practical training and experience about the justice delivery system.

The training of our lawyers should focus on achieving public good. Our personal experience reveals that a good number of those who aspire to study law in Nigeria, do so because of the notion that a lawyer is influential and 'a big man' in the society and not because of any commitment to development of his society through promotion of rule of law, protection of human rights or service to the less privileged in the society. The introduction of clinical legal education in law faculties will change this attitude and lay the foundation for law students to carry with them throughout their professional careers as attorneys a great sense of professional commitment to the ethics and values of public service.[27] The recent experience from the prison visits undertaken by the clinicians in the faculty reveals that with proper training we can have lawyers whose main focus will not only be litigation but service delivery to their community[28].

Lawyer's skills are acquired through practical experience and that experience can as well start at the Universities rather than wait for the one-year vocational training at the Nigerian Law School. Law Students should have that opportunity of familiarizing themselves with general office work,

24 The "Cases" are usually disputes emanating from Union and associations' elections, violation of dress code, issues bordering the running of the Students' Union Government and other matters, whether contractual or tortious between students. They do not accept briefs involving students and non-students.

25 It is on record that the faculty of law Ambrose Alli University participated at the All African Human Rights Moot Court competition 1999, won Justice M.M. Akanbi's Interfaculty Debate 2002, James Iboris' cup for Advocacy 2002, Wole Olufon CLASFON best Advocate prize five consecutive times, National championships of the Phillips C. Jessup International Law Moot court competition 2003, 2004 and 2005, and represented Nigeria in World Championship in Washington, D.C April 2005 and 2006

26 Legal Practice 1 and legal practice 2 are compulsory elective for law students in year 3 and 4 respectively.

27 See Yemi Akinseye – George, "Legal Aid and University Law Clinics in Nigeria" in Nigerian Bar Journal vol 2 No. 2 (2004) 173 at 175.

28 The enthusiasm displayed by the students during the visits and follows up amply demonstrated their commitment to access to justice for the less privileged.

legal practice, legal research, and inculcate the ethics of the legal profession.[29] Herein lies the justification for the introduction of clinical education in our faculties. Law clinics will fill the lacuna in the legal curriculum for the following reasons:

- Law clinics provide legal services to the poor who would not ordinarily have been able to access justice. Through contact with clients, the participants are able to internalise the value of public services.[30]
- By meeting with and relating to people of differing backgrounds and perspectives, participants are able to understand their viewpoints and beliefs particularly in a multi-ethnic and cultural society like Nigeria. This will help the lawyer in actual practice.
- Participation in law clinics enables the law student to inculcate the spirit of legal research thereby constantly updating his knowledge of law.
- Clinicians, through full involvement in the management of the clinics are able to acquire basic skills in drafting and law office management.
- Serving as paralegals will integrate the students into the real workings of the legal profession.[31]
- Interactive teaching methodology enables student to have a better understanding of the subject. Again by observing and experiencing it the student is placed in a better position to remember what he was taught.

Envisaged Problems

There is no gainsaying that clinical education offers the students a unique opportunity to learn and develop practical skills. However, the introduction of clinical education in the faculties of law in Nigerian Universities will meet with certain challenges. A law clinic may be the type that deals with 'live – client' or moot/ simulation clinics; it may even be a specialized one. Although each of these has its distinct features, they share certain characteristics. The characteristics include the use of the interactive method of teaching and supervision by a clinical instructor who is an experienced practitioner.

First, a 'live-client' clinic is likely to face resistance from qualified legal practitioners who will see the clinicians as encroaching on their territory. The functions of the live-client clinic include interviewing and counseling of clients, mediation and where necessary preparation of court processes under the supervision of a qualified legal practitioner. In some jurisdictions it may involve actual legal representation in courts. In Nigeria, a law student cannot represent the client in court and cannot frank any legal document for filing in court. The reason is that only persons whose names are on the legal practitioners' role can practice as a barristers and solicitors in Nigeria[32].

29 See National Needs Assessment for the Justice Sector, NBA programme Unit (NBA 2007)

30 Legal Clinics: Serving people, improving justice, Manual of Open Society Justice Initiative p. 4

31 See National Needs Assessment for the Justice Sector, NBA programme Unit (NBA 2007) 22

32 See section 1 of the Legal Practitioners Act Chapter L11 LFN 2004. There is even the raging controversy on the issue of courtroom attendance by law teachers in view of sections 172 and 209 of the 1999 constitution of the Federal Republic of Nigeria. See particularly Giwa A.O., "Law lecturers and Courtroom Attendance" in Nigeria Bar Journal vol. 1 n0. 4 (2003) 505 and Taiwo, E.A. "Public Officers and Private Practice: The Legal Issues Arising Under the 1999 Constitution of Nigeria" in Nigerian Bar Journal Vol.3 No.2 (2005) 26.

Another challenge is how to overcome the traditional methods of teaching that our law teachers are used to. This will involve retraining of our teachers or employing non-academic professionals with the attendant financial implications. According to Sam Amadi[33] "if we intend to run effective clinical programs in Nigeria… we should be willing to retain the services of non-academic professionals who have special and consummate skills to expose students to the 'practical' of public interest lawyering in their legal education".[34] It is doubtful whether the universities are prepared to shoulder the additional financial burden of employing non-academic professionals.

Implementation of clinical legal education requires some basic infrastructures. One of the reasons for the falling standard of University education in Nigeria is lack of adequate infrastructures. For a sustainable clinical education there must be provision of audio-visual aids, adequate classrooms and furniture, information technology and adequate teaching aids including textbooks. One major problem Nigerian public universities are facing is inadequate funding and the internally generated revenue will be grossly inadequate to meet these essential requirements.

The present legal curriculum is inadequate and does not accommodate most of the practice-based subjects. For an effective clinical programme, there will be the need for curriculum development which shall include procedural courses, moot trials, research methodology and also accommodate emerging trends and specialist areas like Alternative Dispute Resolution, Mediation and Conciliation, information technology etc.

CONCLUSION

We proceeded on the premise that the declining skills of lawyers in Nigeria is attributed mainly to the training method. We tried to argue that the practice of law is becoming globalised and new issues are emerging that pose a challenge to the 21st Century Lawyer. The 21st century lawyer must not be estranged from his community and must be prepared to undertake public service and thereby foster professionalism. We submitted that the skills of the modern lawyer can be developed at the formative stage and clinical legal education will enable the lawyer to acquire the requisite skills early in life to face the challenges of the future. Though we conceded that the introduction of clinical legal education in Nigerian law faculties will meet with some challenges, it is submitted that they are not insurmountable.

33 Amadi Sam Supra at 156

34 In view of the restrictions on private practice by lawyers in public service, it is even doubtful whether the academic lawyer who supervises the students can impact the much-needed skills since he is not involved in everyday practice.

Interface of Law and Medicine in Clinical Legal Education:

Success story of the Women's Law Clinic in improving the health of women and ensuring women's access to Justice in Nigeria*

Kevwe Omoragbon **

Specialist law clinics now operate both in the developed and developing world. The historical background of these specialist law clinics can be traced to the United States. They also abound in South Africa, Europe and are fast emerging in several African countries. It is however outside the scope of this paper to describe the wide variety of specialist law clinic models that exist in other countries.

At present in Nigeria, there are seven Nigerian Universities with law clinics. These law clinics in enhancing the social justice frontier have developed projects addressing specific problems; making them specialists in service delivery[1], but the Women's Law Clinic, is the only gender specialist law clinic.

Introduction of Clinical Legal Education to Nigeria

The objective of legal education in Nigeria is stated in the approved minimum academic standards in law for all Nigerian Universities as:

A law graduate must be able to use law as a tool for the resolution of various social, economic and political conflicts in society. The training in law is specifically aimed at producing lawyers

* Being a paper presented at the Seventh International Journal of Clinical Legal Education held at Murdoch University, Perth, Western Australia, July 9-10, 2009.

** Kevwe Omoragbon is a Clinician in the Women's Law Clinic, University of Ibadan and Lecturer in the Department of Public and International Law, Faculty of Law, University of Ibadan, Ibadan, Nigeria

1 Gbenga Oke-Samuel (2008) 'Clinical Legal Education in Nigeria: Development and Challenges' *Griffith Law Review* Vol. 17 No. 1 p.146

whose level of education would equip them properly to serve as advisers to governments and their agencies, companies, business firms, associations, individuals and families etc. The activities of governments, companies and individuals are expected to be carried out within the legal framework. Therefore, the output or end result of the law program should meet the needs of such agencies and institutions as international organizations, academic teaching and research institutions, federal, state and local government bodies, various industrial, commercial and mercantile associations and various social, family and domestic groups.[2]

David McQuoid-Mason and Robin Palmer argue that skills training and social justice work are fundamental to Clinical Legal Education.[3] Clinical Legal Education is distinguished from traditional legal education because it goes beyond theoretical content of the law to give students the opportunity to acquire the necessary skills for legal practice in addition to inculcating values like involvement in pursuit of social justice and display of professional responsibility.[4] Prof. Yinka Omorogbe, the director of the Women's Law Clinic has also noted that in Africa, the provision of legal services and access to justice for the people is the driving force for the establishment of the legal clinics.[5]

The need to improve legal education was the major focus of the Nigerian Association of Law Teachers Conferences in 1979 and 1986.[6] In 2001 Nigeria hosted the first British Nigeria Law forum in Abuja which was sponsored by the British Council and the Department for International Development (DFID). A follow up legal education forum on the 29th – 31st January 2002 was also facilitated by the British Council.[7]

The result of the lattermost meeting was a general call by stake-holders that legal education be reformed in Nigeria and that law faculties, the Nigeria Law School and the National Universities Commission should begin to explore opportunities to introduce clinical legal education in their programmes.

A few faculties of law which are Faculty of Law University of Ado – Ekiti, Ekiti State, and Nigerian Law School Enugu campus took up the challenge leading to the British council-facilitated study tour of four clinics in South – Africa in April 2002.

In June 2003 the Open Society Justice Initiatives hosted the 1st All Africa Clinical Legal Education Colloquium in Durban and the Law Faculties of the following Nigerian Universities participated in the programme, namely: Nigerian Law School, Enugu campus, University of Ado – Ekiti and

2 Nigerian Universities Commission (Lagos), 1989). This was repeated in 2004 Draft Benchmark and Minimum Academic Standards of the National Universities Commission. The National Universities Commission is the regulatory body for university education in Nigeria. Its benchmarks provide a means for the academic community to describe the nature and characteristics of programs in a specific subject; they also represent general expectations about the standards for the award of qualifications at a given level and articulate the attributes and capabilities that those possessing such qualifications should be able to demonstrate. (Paragraph 1.12004 NUC Benchmark for Academic Standards)

3 David McQuiod-Mason and Robin Palmer (2007) African Law Clinicians Manual (draft) p.10

4 David McQuiod-Mason and Robin Palmer (2007) African Law Clinicians Manual (draft) p.10

5 Yinka Omorogbe (2007) Welcome Address delivered at the Inauguration of the Women's Law Clinic, Ibadan, July 18. p.1

6 Adeniran Olu (2001) 'Benchmark-style Minimum Academic Standards in Law: Perspectives from Nigeria', paper presented at the Legal Education Forum, Abuja, 29 – 31 January

7 Ernest Ojukwu, (2007) NULAI Nigeria 2004-2006 *Activities Report*, 'Development Towards Introducing Clinical Education in Nigeria NULAI Nigeria' p. 5

University of Ibadan.

Nigerian delegates on return from the 1st All – African Clinic Legal Education Colloquium came together and formed the Network of University Legal Aid Institutions (NULAI) Nigeria to provide a vehicle to educate for the introduction and development of clinical legal education in Nigeria.

NULAI Nigeria in partnership with Open Society Justice Initiative, hosted the 1st Nigeria Clinical Legal Education Colloquium from 12th – 14th February 2004 at Abuja. At the end of the colloquium participants supported the introduction of clinical legal education in Nigeria and resolved as follows:[8]

- The introduction of clinical legal education in Nigeria should be informed by a coherent philosophy that addresses the needs of the faculties, the students, institutions and processes of governance, and the communities in which all these co-exist.
- Clinical legal education can reinforce the mechanisms for the delivery of primary legal needs and assistance in Nigeria. In this context it is necessary to be clear as to the nature of legal needs and services to which clinical legal education may be relevant. Clinic would be supervised by faculty lecturers who are legally qualified as lawyers.
- Clinical legal education should seek to give students skills in understanding the institutions of governance and equip them to learn as users of and interlocutors with these institutions. For this purpose it is necessary for Nigerian Law Faculties to consider introducing perfective courses into their curriculum.
- The introduction of clinical legal education in Nigeria should be preceded and supported by the development of a curriculum for clinical legal education and the skills of interested faculty through training and exchange with similar programs elsewhere.

This paper deals with the collaboration/partnership that exists between law and medicine in Nigeria with particular reference to the Women's Law Clinic of the University of Ibadan, and examines the following issues: (a) the background to the Women's law Clinic and an overview of her activities; (b); rationale for the collaboration between the law clinic and medical discipline; (c) the selection of target women's groups; (d) the objectives of the collaboration; (e) the benefit of the health-legal partnership to students; (f) the challenges encountered.

Background of the Women's Law Clinic, University of Ibadan

The Women's Law Clinic is a project of the Faculty of Law, University of Ibadan which was set up to totally transform and impact the teaching of law while increasing awareness of the rule of law and human rights in Ibadan and its environs. The Clinic is an initiative of the Consortium for Development Partnerships (CDP)[9] and is under the CDP project on 'The Rule of Law and Access to Justice'. A planning conference was held in April 2005 to deliberate on issues militating against women's access to justice and the commencement of the Women's Law Clinic. The Clinic was

8 Ernest Ojukwu, (2007) NULAI Nigeria 2004-2006 *Activities Report*, 'Development Towards Introducing Clinical Education in Nigeria NULAI Nigeria', p. 7

9 The Consortium for Development Partnership (CDP) at inception in 2007 was co-ordinated by the Northwestern University, Illinois. It is now being co-ordinated by the Council for Development os Social Science Research in Africa (CODESRIA)

subsequently inaugurated on the 18th of July, 2009 amidst wide publicity at local and national levels, in print and electronic media.

The goals of the Women's Law Clinic are threefold. First, to train law students in the practice of law utilizing techniques of clinical legal education; secondly, to provide free counselling and legal aid to indigent women in and around Ibadan; and thirdly, to undertake research on women's access to justice and to collect and disseminate information in this and related areas.

Pruitt has rightly noted that the best lawyers are made not by legal education, but rather through the training they receive; they become the best lawyers by practising law.[10] Law Clinics give the students exposure to the legal problems of their community and ultimately, help to make them more empathetic, responsible and rights-conscious citizens.[11]

Women were specifically chosen as the target in the establishment of the law clinic because the majority of the poor worldwide are women, who remain at the bottom rung of the ladder. This is a recognized fact, and a reason why gender issues feature prominently in development programmes worldwide.

Women in Africa are generally grouped or fall into three categories[12]:

1. Women who don't know their rights at all.
2. Women who know their rights but don't know where to go to access justice.
3. Women, who know their rights, know where to go to access justice but don't have the means or financial capability to access justice.

A planning conference which was set up prior to establishment of the Clinic also noted that women face innumerable barriers in society, some of which are ostensibly for their protection, and identified the following as some of the issues affecting women's access to justice:[13]

Legal Barriers

The legal barriers include evidentiary requirements in rape, domestic abuse, inheritance and other such matters that make it difficult for women to prove their cases or defend against charges brought against them. It covers evidentiary requirements that favour men and discriminate against women and the customary laws that favour men and discriminate against women. The failure by courts and other adjudicatory tribunals to follow standards set forth by the international community on women's rights is also a note worthy barrier.

10 Lisa Pruitt (2002) 'No Black Names on the Letterhead? Efficient Discrimination and the South African Legal Profession' 545 (23) *Michigan Journal of International Law* 553 p.599

11 Yinka Omorogbe (2007) Welcome Address delivered at the Inauguration of the Women's Law Clinic, Ibadan, July 18. p.1

12 Elisabeta Olarinde (2005) Fundamental Observations on barriers to Women's access to justice at the Planning conference prior to the establishment of the Women's Law Clinic, Ibadan, Nigeria, April 24 – 25 p.25

13 Consortium for Development Partnership (CDP) planning conference towards the establishment of the Women's Law Clinic, Ibadan, April 2005

Institutional Barriers

Institutional barriers consist of the lack of enabling environments where women can seek redress for violations of their rights including lack of non adversarial fora and too many formalities in the available fora. It also includes the limited access to courts in rural areas and the failure of law enforcement agencies to enforce the rights of women in domestic, rape, or similar matters because of biases or due to a lack of funds or personnel.

Informational Barriers

Informational barriers touches on the lack of research and documentation of access to justice issues for women, lack of understanding of legal institutions and processes by poor women and the inadequate information for women about their rights.

Cultural, Religious and Traditional Barriers

The cultural, religious and traditional barriers includes the marginalization and feminization of issues affecting women, so that issues affecting access to justice are viewed as women's issues rather than societal issues. It also covers the stigmatization of women who raise claims, in particular those who confront their husbands or other male members of their community.

The activities of the Women's Law Clinic over the past two years include provision of free legal aid; organizing outreaches and sensitization drives which take place in various communities, markets, religious organizations and hospitals; establishment of mobile clinics at health centres and communities; organizing symposia and training workshops; media programmes; referrals and collaborations with other organizations.

The Rationale for the Collaboration between the Law Clinic and the Medical Discipline

Collaborations between Law Clinics and Health care givers are a very common phenomenon in the United states. Dr. Barry Zuckerman, a renowned paediatrician observed that his skills as a doctor were not enough to keep his patients healthy. He founded the Medical-Legal partnership in 1993 and then began bringing poverty lawyers into the medical setting to help families. He testifies to the results achieved thus: "We've seen the impact that lawyers can have on the health and well-being of the children and families we treat"[14]. He gave instances of areas addressed which have greatly improved his patients' health and well being when he rightly pointed out that:

> "When lawyers secure improved housing conditions or access to food and utilities for patients, families are more likely to get and stay healthy. The expansion recognizes that integrating lawyers into health settings is a medical intervention that works in all clinical and disease populations".[15]

14 Barry Zuckerman (2008) Chief of Paediatrics at Boston Medical centre and founder of National Centre for Medical-Legal Partnership viewed from site http://www.hdadvocates.org/programpolicy/cmlpc/index.asp accessed on May 28, p.1

15 Barry Zuckerman (2008) Chief of Paediatrics at Boston Medical centre and founder of National Centre for Medical-Legal Partnership viewed from site http://www.hdadvocates.org/programpolicy/cmlpc/index.asp accessed on May 28, p.1

In Nigeria, this collaboration is relatively new and is being championed presently by the Women's Law Clinic. The innovation was as a result of our first referral by the University College Hospital shortly after the Clinic's inauguration. The client visited the Clinic accompanied by her social worker. She was just recovering from a psychological and emotional breakdown which was a consequence of her matrimonial challenges. Her doctor noted that she may not completely get over her medical problems if the legal issues were not addressed. Our intervention gave her confidence and strength which led to her healing, regaining/ resumingher job, communication with her children which she had been denied and of course her total recovery.

This is the only referral received from the health profession in two years as it was observed that due to the high number of patients seeking medical care, doctors are unable to form close knit enough relationships with their patients which will allow them to recognise that their medical condition is as a result of unresolved legal problems.

This propelled the Clinic to reach out to women at the health centres. The first attempt was an outreach and sensitization drive which involved just speaking to the women, telling them about the existence, activities and areas of operations of the clinic. This yielded minimal results as we noticed that although the women were very enthusiastic, they cooled off on getting home, some of them not wanting to wash their dirty linen in public, and changed their minds from coming to the Clinic.

The Clinic then embarked on another approach- the mobile clinic approach. This involves taking the Law Clinic to the health centres and receiving clients on the spot. This made the enthusiastic women come out immediately for a case by case analysis of their various legal issues. The aim of the mobile clinic concept is also to enable women who for reasons of distance or lack of means of transportation would have been unable to benefit from the clinic. The clinic on a weekly basis takes mobile file cabinet, files and all other materials used in the clinic, to the health centre. The health centre on their part provides a make shift office space and allocates some time for a brief talk to the women before the commencement of medical consultation. Women receive counselling and free legal aid alongside receiving medical attention. Due to the high number, women who are expected to wait for their turn to see a doctor have the opportunity of receiving legal services first and vice versa.

The most common medical conditions resulting from unresolved legal issues are stress and/or high blood pressure. The clinic follows up case work regularly some of which could take between a few weeks to several months. In some cases this involves direct contact with the client's doctor in order to monitor improvement in the state of her health. In other cases, the testimony and medical report of the client helps us ascertain progress in her health condition.

The Aim of the Health- Legal Collaboration

Nigeria has a population of about one hundred and thirty million people with a life expectancy of 53.3 and a literacy rate of 55.6%. The infant mortality rate is 89.5 per 1000 births.[16] This infant mortality rate is as a result of inadequate medical care mostly due to poverty, ignorance and cultural beliefs.

The aim of the Health-Legal collaboration is to reduce maternal and infant mortality through

16 Bruce Thom (1999) Geographica: The Complete Illustrated reference to Australia and the World, random House Property Ltd, Australia p.341

the use of a free legal aid scheme, improve women and children's health condition by securing adequate maintenance, welfare and child custody. It aims to "improve health outcomes by alleviating legal stressors".[17]

The Clinic employs a multidisciplinary and holistic approach to provide legal advocacy in a medical setting for clients. Many legal related issues can affect the health of low-income families and many of the problems that affect the health of children and families have legal remedies. The collaboration helps patients resolve problems that could adversely affect their health or access to healthcare.

To date about 90 clients have applied for legal aid at the law clinic out of which about 20% are as a result of the collaboration with the Community Health Centre.[18] A majority of the cases are claims for maintenance and child welfare/custody. Others include landlord/tenant relationships, and employee/employer relationship. These claims are mostly by women who have no form of marriage under Nigerian law[19] but have merely cohabited for over 10 years with the union producing 3-5 children. It is noteworthy that although domestic violence was present in most of these cases, the women never sought any form of legal action in this regard. Out of the over 90 cases brought to the Clinic, only one client sought relief in respect of domestic violence. [20]

Lack of women's empowerment, poverty and ignorance have been identified as reasons for women's inability to care for their children. Many of these children lack medical attention, drop out of school and are malnourished as a result of wilful neglect and abandonment by their fathers. The Clinic employs the use of alternative dispute resolution mechanisms in addressing the legal issues. A letter of invitation is sent to the respondent in the first instance as the clinic upholds the principle of fair hearing. The Clinic then helps the parties arrive at a concrete resolution on the amount of monthly maintenance to be paid to each child, where it would be paid, when payment is due, custody of the children and what happens when either party defaults.

Clients receive a range of legal services, including legal advice, referrals, and representation in court. The result of the progress made on client's case work showed a remarkable improvement in the client's circumstances- children's health condition improved steadily and they were better taken care of, they went back to school and in most cases the clinic helped both parties reconcile their differences and re-unite. This also gave the children a better environment to grow and improve academically.

The Selection of Target Women Groups

The selection of women at health centres was prompted by the first referral and by the clinic's experience with other forms of outreach programmes. The health centres are about the only place where you can have a large audience of grass root women who come mainly for child related issues such as immunization, ante-natal and post-natal services. It is also one of the only few places

17 Wood (2004), The Law and Health project: Land of Lincoln Legal Assistance Foundation viewed from site http://www.lri.lsc.gov/practice/healthdetail T107R1.asp and accessed on May 28, 2009

18 70% of clients came as a result of media sensitization on both television and radio while 10% are referrals

19 Under Nigerian Law, three forms of marriage are recognized- Customary marriage in accordance with the various customs that abound in Nigeria, Islamic marriage, and Marriage under the Marriage Act otherwise known as Statutory marriage.

20 The bill on Violence Against Women is yet to be passed into law, therefore domestic violence is still regarded by the police as private family matter for which women are told to go back home to settle their differences

where women are seated orderly and are willing to learn from medical talks given by the clinic matron or other nurses on duty. Speaking to these women about benefitting from another kind of 'clinic' which may jettison the need to seek medical care, not only arouses their enthusiasm but also encourages them to come forward for a free legal aid which will in turn improve their health condition.

Benefit of the Health-legal Collaboration to the Students and the Medical Profession

It has been said that the best lawyers are made not by legal education, but rather through the training they receive; they become the best lawyers by *practising* law.[21] The benefit of the health-legal partnership to students cannot be over emphasized. The role of students working in the law clinic is vital to the delivery of legal services to the less advantaged women who benefit from the access to justice scheme while at the same time promoting their medical health status and that of their children. According to David McQuiod Mason:

> The well supervised use of law students will significantly ease limitations under which most of the general programmes in Africa work; it is only through student programmes that there is any possibility in the near future for legal services becoming widely available to the poor, among other landmark relevancies.[22]

The students have not only acquired fundamental lawyering skills but have also mastered skills of effective communication, complex decision-making, problem-solving, ethical behaviour and more specific professional skills.[23] They also earn credits for participating in the Clinic and are assessed based on their performance.

Medical personnel learn to listen for non-medical information patients bring them and to better screen for potential legal problems. They also discover that this collaboration which improves health has helped to also achieve their objectives.

Challenges of the Health-Legal Collaboration

Ignorance of the Law

The generality of women who have no form of marriage are ignorant of its consequences.[24] The major consequence is that they have no legal remedy except as regards the children of such union. The Child Rights Act protects the best interests of the child and makes it an offence for a parent

21 Lisa Pruitt (2002) 'No Black Names on the Letterhead? Efficient Discrimination and the South African Legal Profession' 545 (23) *Michigan Journal of International Law* 553 p.599 as quoted by MA du Plessis (2008) 'University Law Clinics Meeting Particular Student and Community Needs' *Griffith Law Review* Vol. 17 No. 1 p.126

22 David McQuiod-Mason (2000) 'The Delivery of Civil legal Services in South Africa' *24 Fordham International Law Journal* 5111 p.24

23 Anne Hewitt (2008) 'Producing Skilled legal Graduates; Avoiding the Madness in a Situational Learning Methodology' *Griffith Law Review Vol. 17* No. 1 p.93

24 There are three types of marriage recognized under Nigeria law. The first is marriage under the Marriage Act which provides for a one man one wife relationship to the exclusion of all others. The second is marriage under customary law which varies from custom to custom and permits a man to marry more than one wife. The third is Islamic marriage.

or guardian who denies a child the basic necessities of life including food, shelter and education.

High Level of Illiteracy

The high level of illiteracy stems from the fact that culturally, women are seen as home makers rather than professionals. The consequence of this illiteracy is a lack of knowledge about their rights as highlighted in the earlier part of this paper.

Funding

Law clinics cannot function effectively without funding. Lack of funding leads to delay in expediting casework which may sometimes lead to denial of justice for clients. It also stalls staff development and hinders mobility to community health centres. This challenge greatly affected the Women's Law Clinic in 2008 and 2009.

Inability of Government to Domesticate International Conventions

Although the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) has been ratified by Nigeria, it is yet to be domesticated. This can be attributed to various cultural and religious practices, and the complexities involved in domestication.[25]

Unwillingness of the respondent to honour the Letter of Invitation

The Women's Law Clinic can only successfully handle casework if the respondent voluntarily and willingly honours the letter of invitation sent to him. Where he fails to do so, the Clinic cannot compel an appearance. This may prevent the client from getting justice on a particular matter.

Denying the Paternity of the Child

In child welfare issues, where a man denies the paternity of a child in a bid to shy away from his parental responsibility, the clinic's only option is to refer the parties for a DNA test. This may lead to delays and cost implications that may hinder access to justice.

Lack of Infrastructure

A legal-Health partnership can only function effectively with a well equipped law office located at the community health centre. It therefore poses a challenge where the health centres themselves have insufficient space and facilities for medical work itself before thinking of facilities for a law office.

Community Patronage and Support

Another factor that can pose a challenge to success of the Health-Legal collaboration is a lack of support and patronage from the community where the law clinic is based. The process of gaining the confidence of the community is not always easy. While law students are usually enthusiastic

25 The procedure for domestication in the 1999 Constitution of Nigeria provides that, *'No treaty between the Federation and any other country shall have the force of Law except to the extent to which any such treaty has been enacted into law by the National Assembly'*. For a treaty to enacted by the National Assembly, it must be passed by a majority of the thirty-six Houses of Assembly in the thirty-six states of Nigeria.

about the introduction of law clinics at health centres, many observers sometimes react to them with scepticism. If clinics are able to hold out and justify their existence by rendering useful service to their communities, public support will only be a matter of time.

Capacity Building

The lack of trained and experienced clinicians is another challenge. This can however be overcome by sending members of the academic staff for training by institutions locally and abroad that have acquired experience and expertise in the delivery of clinical legal education. The opportunity to observe the actual operation of law clinics will go a long way in stimulating the interest of aspiring clinicians.

Conclusion

This paper has examined the linkage and synergy between the legal and medical profession through the instrumentality of Clinical Legal Education. Lessons drawn from the Health-Legal collaboration of the Women's Law Clinic, University of Ibadan can be applicable in law school clinics in any part of the world. This sort of collaborative effort helps to promote interdisciplinary study. It is important that law students be encouraged to participate in community service as students benefit from the experiential learning. It is hoped that other law clinics will take a leaf from the Women's Law Clinic's book, improving on our strengths and learning from our weaknesses.

Clinique ToGo:

Changing Legal Practice in One African Nation in Six Days

Stephen A. Rosenbaum[*]

Chers confrères, Chères consoeurs,[1]

With honour and humility I accepted an invitation from the U.S. State Department to participate as a technical advisor in a weeklong rule of law[2] seminar in Togo, with attorneys, judges, law professors and students. My mission was to explain various models for delivery of free legal services and assist in developing proposals for establishing a bar association pro bono[3] programme

* Lecturer, University of California, Berkeley School of Law; Adjunct Professor, Golden Gate School of Law; and Chercheur Associé, Université d'Artois, Faculté de Droit. Mr. Rosenbaum is a periodic recipient of U.S. State Department Speaker Specialist grants and coordinator of the Francophone Africa Law Project (FALP). In 2011-12, he is serving as a Legal Education Advisor to the American Bar Association Rule of Law Initiative in Cairo, Egypt and Doha, Qatar. The author is indebted to Miliette Marcos, FALP Project Attorney, for her invaluable research assistance and editorial suggestions, and to Judge Paul Fogel, Ret., who introduced him to the Speaker Specialist Program. He also thanks Savannah Blackwell, J.D., Berkeley Law, Class of 2010, for research assistance on an earlier draft. An abbreviated version of this article was published in 6 *Publicist* (Berkeley Journal of International Law) (2010), *on-line journal*, http://bjil.typepad.com/publicist/vol-6-fall-2010/.

1 This is the traditional French salutation made to audiences in seminar or conference settings, after greeting the "*Honorables Invités.*" Its translation seems to lie somewhere between "Dear Colleagues," "Dear Comrades" and "Dear Brothers and Sisters."

2 Rule of law (ROL) programmes have been conducted in newly "democratic" countries by governmental, non-governmental, inter-governmental and private agencies. In David Tolbert & Andrew Solomon, *United Nations Reform and Supporting the Rule of Law in Post-Conflict Societies*, 19 Harv. Hum. Rts. J. 29, 30-33 (2006), two international jurists provide a definitional framework and application of a term that refers to core elements of judicial and legal reform: "Despite the ubiquity of its usage and the importance of the idea, the rule of law, much like the concepts of 'justice' or 'transitional justice,' is endowed with 'a multiplicity of definitions and understandings'… and "' is not a recipe for detailed institutional design [but] an interconnected cluster of values.' (*citing* Professor Gerhard Casper)." *Id.* at 31.

3 An abbreviation of *pro bono publico*, this term refers to legal services performed voluntarily and without payment as a public service. It is derived from Latin, meaning "for the public good". Black's Law Dic. (9th ed. 2009) Volunteer legal services may go by other names. For example, in South Africa, the term is *pro amico, see infra* note 38, and in Lesotho, it is *pro deo* counsel. Adam Stapleton, *Introduction and Overview of Legal Aid in Africa*, in Penal Reform Int'l and Bluhm Legal Clinic, Access to Justice in Africa and Beyond 13-16 (Nw. U. Sch. of L., ed. 2007) (hereafter Access to Justice in Africa 3, 14. "…[F]or the Christian lawyer, the issue is not so much about pro bono aspirations or improving our professional image. It's more about the pro *Deo duty* we owe to God." Christian Legal Society. http://www.clsnet.org/legal-aid/programs/pro-bono-pro-deo-or-both. (last visited 12 Oct. 2009).

in conjunction with the nation's principal law school.[4]

When the State Department first invited me to participate in its speaker specialist programme, I admit that for me it was all about having a glimpse of an otherwise inaccessible part of the world and the attendant cultural, professional and intellectual exchange.[5] Only after my initial programme visit did I become familiar with the concept of "rule of law" (*l'état de droit*), as well as the related concepts of access to justice and the law and development movement. [6] This was to be the focus of my journey to Togo.

Beyond expressing a desire to discuss this general theme, no one at the State Department or the Embassy in Lomé, Togo explicitly informed me at the time of the invitation about the rationale for the seminar, its timing or how it corresponded to foreign policy or public diplomacy objectives in West Africa. While this seemed like a lot to accomplish in one week, the scenario was consistent with my experience on earlier sojourns.

Typically, the consultant's scenario is broadly sketched by the embassy public or cultural affairs attaché. These diplomats assume that American jurists have something of interest to say to our counterparts in developing democracies and that this is accomplished by a series of lectures or informal visits in small groups.

In Togo, the Embassy had reason to believe that the overall theme of legal aid to the indigent, particularly as it involved clinical legal education and pro bono service, was suitable for a programme speaker. Whether the suitability was informed by discussions with the Togolese or by what was in vogue with Foreign Service colleagues in other African capitals or Washington, DC, I do not know. I was not given any background documentation beyond the standard State Department country report.

4 The Project was funded by the U.S. Department of State, which awarded me a U.S. Speaker and Specialist Grant through its International Information Programs division. Letter of 24 May 2007 (on file with author). For an account of a part-time ROL speaker who has obtained personal satisfaction and professional success, see, Amelia Hansen, *The Missionary: It's His Calling*, Calif. Lawy. 20 (Aug. 2009). Judge Clifford Wallace of the Ninth Circuit Court of Appeals has been speaking and consulting for a number of years in Asia, the Middle East, Pacific Islands and Africa. He quips: "No one will remember my [judicial] opinions. But I think they will remember my contributions abroad." *Id*. at 22.

5 I had previously lectured in other French-speaking African states on such themes as judicial independence, human rights and alternative dispute resolution. *See, e.g.*, Stephen A. Rosenbaum, *Supporting Democracy: Senegal Needs U.S. Help as it Races to Reform Juridical Institutions*, DAILY J.(27 Sept. 2000). Since 2000, I have been awarded eight grants for rule of law projects in francophone Africa, *viz*., Senegal, Guinea, Chad, Central African Republic, Togo and Cameroon.

6 It appears that I am in good company in my ignorance. See, Leah Wortham, *Aiding Clinical Legal Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 Clin. L. Rev. 615, 617 (2006) (confessing unfamiliarity with Law and Development Movement (LDM) scholarship until far into her experience with clinical education outside the United States). Scholar Erik Jensen cites several works "[f]or those who are interested in the great historical debates about the definition of rule of law." Erik G. Jensen, *Justice and the Rule of Law*, *in* Charles T. Call, Ed., Building States to Build Peace (2008) 138, n. 16. *See also*, Ryan S. Lincoln, *Rule of Law for Whom? Strengthening the Rule of Law as a Solution to Sexual Violence in the Democratic Republic of the Congo*, 26 Berkeley J. Gender, L. & Just. 139, 150, 160 (2011) for a discussion of "thin" and "thick" definitions. The term "is notoriously difficult to define, and often means different things to different people. Many approach the rule of law from a visceral perspective, what Jane Stromseth calls the problem of 'I know it when I see it.'" (*quoting* Jane Stromseth, David Wippman & Rosa Brooks, Can Might Make Rights?: Building The Rule of Law After Military Interventions 56 (2006)). *Id*. at 150.

It was through my perusal of the relevant literature that I assumed the immediate need for legal aid was among prison detainees. Only after arrival in Togo did I learn that the nation had an inoperative legal assistance statute that had been on the books for decades. The statute, Ordonnance No. 70-35, Article 10[7] provided legal aid to the indigent but required the executive to issue an implementing decree. The legal community had also crafted a recent judicial modernisation plan. I was also informed, once in Togo, about a new cooperation agreement between the principal law school and largest local bar association. In addition to this administrative framework, there existed an informal pro bono effort by members of the bar to make *ad hoc* visits to the prison to obtain some releases. These efforts represented the totality of the Togolese indigent legal services programme.

The United States supports democratisation efforts in countries like Togo, which are transitioning from autocratic one-party states with under-developed judicial procedures. Typically, the American government contributes its resources to nations which display a modicum of stability and targets a mid-level elite receptive to reform. Given its history of political and electoral abuse and violence,[8] Togo was not well placed to request financial or material aid from foreign governments or non-governmental sources at the time of my impending visit.[9] Nonetheless, the on-site diplomatic corps endorsed an initiative to address the lack of a genuine legal assistance scheme and to improve Togolese citizens' access to justice. There was a lot of hope riding on the upcoming elections.

In this diary *cum* essay, I describe (1) the background for the visit, (2) the series of exchanges with my hosts, (3) the objectives and means for structural change in the spheres of education and practice, and (4) the Togolese legal and political culture. The image of "Cook's tour" [10] or "summer vacation" [11] applied to the visiting consultant needs to be laid to rest. I hope, instead, to capture some of the flavour of the experience, reflect on the capacity of short-term consultants to have an impact on legal reform, and offer some advice for those who are similarly engaged in ROL support and solidarity activities.[12]

7 Organisation Judiciare Ordonnance No. 78-35, art. 10 (09/07/78) in *Journal Officiel de la République Togolaise* (No. 21 (bis) 11 Sept. 1978)).

8 The violence in Togo had not totally abated. *See, e.g.*, U.S. Dep't of State, *Country Reports on Human Rights Practices* (Mar. 8, 2006)

9 The Bureau of Consular Affairs' succinct, unflattering (and constant) description reads: "Togo is a small West African country with a stagnant economy in a state of political uncertainty." http://travel.state.gov/travel/cis_pa_tw/cis/cis_1041.html#country. (last visited 15 July 2010).

10 Commentators first applied this term in the late 1960s to the short stints at African universities made by American law professors "arriv[ing] in foreign territory unencumbered by any significant understanding of the local language, law, polity, economy, or culture." Kirsten A. Dauphinais, *Training A Countervailing Elite: The Necessity Of An Effective Lawyering Skills Pedagogy For A Sustainable Rule Of Law Revival In East Africa*, 85 N.D. L. Rev. 53, 72 (2009)(citations omitted). Professor Dauphinais is mindful that not every expert who visits [East] Africa can stay long term. Still, "the Western law professor involving him or herself in this process must nurture an ethos the opposite of cut and run." *Id.* at 105.

11 Professor Richard Wilson refers to the "how I spent my summer vacation developing clinics in [insert developing country name here]" phenomenon. Richard J. Wilson, *Western Europe: Last Holdout in the World-wide Acceptance of Clinical Legal Education*, 10 German L.J. 823, 823 (2009) (brackets in original).

12 Self-criticism is still in order. I must neither become (nor be perceived as) just another privileged overseas traveler – a charge that can be leveled against the legal elites in the countries I visit when they travel abroad in "study tours." See *infra* note 132. As for the "privileged" part, one disability rights colleague characterizes these visits as "grueling" and underpaid. (Telephone Conversation with P.B., 11 Aug. 2010).

Préparations

The scope of the programme had been defined broadly with a focus on the mechanisms for reform. Thus, as was the case with my previous visits to other countries, I was free to exercise virtually independent judgement about the project format and the content of my remarks. It was important to me that I not be viewed as yet one more speaker on the circuit—much less the Great White Saviour— jetting in and out, offering standard bromides for reform.[13] A criticism of "access-to-justice" or ROL programmes is their failure to "overcome transplant, formalist, and prescriptive criticisms of the 1960s law-and-development movement…"[14] This failure is most acute where the justice system is inoperative in rural areas or for poorer citizens. Such methods have also been less effective where justice is obtained through informal dispute mechanisms, social movements, or political struggle.[15] Modern programmes have evolved, however, and are distinguished by three characteristics: the involvement of practitioners (in addition to academics); participation of multinational actors, together with those from the United States; and an effort to work in partnership with African educators and practitioners to develop suitable institutions.[16]

The programme in Togo harnessed the effectiveness of this last change, in particular.

Direct communication with embassy staff is essential. I immediately contacted the relevant

13 What comes to mind is the image of former Treasury Secretary, university president and presidential advisor Lawrence Summers, who reportedly "'blew into Jakarata for a few hours,' after which he climbed the stairs to his plane, looked out over the unwashed, and said, 'Indonesia needs the rule of law.'" Jensen, *supra* note 6 at 122.

14 Jeremy Perelman, *The Way Ahead? Access-to-Justice, Public Interest Lawyering, and the Right to Legal Aid in South Africa: the Nkuzi Case*, 41 STANFORD J. INT'L L. 357, 398 (2005) (footnote omitted). For a discussion of the rationale and criticism of ROL programmes, *see generally*, Erik G. Jensen, *The Rule of Law and Judicial Reform: The Political Economy of Diverse Institutional Patterns and Reformers' Responses, in* BEYOND COMMON KNOWLEDGE: EMPIRICAL APPROACHES TO THE RULE OF LAW 336, 348 (ERIK G. JENSEN & THOMAS C. HELLER, eds., 2003); *See also* THOMAS CAROTHERS, AIDING DEMOCRACY ABROAD: THE LEARNING CURVE 164 (1999) and Jensen, *supra* note 6. For an overview of ROL and LDM critiques, as seen through the lens of a clinical law professor, see Wortham, *supra* note 6 at 632-53. With regard to early investment in post-liberation African legal education and leadership development, *see* Thomas F. Geraghty & Emmanuel K. Quensah, *African Legal Education: A Missed Opportunity and Suggestions for Change: A Call for Renewed Attention to Neglected Means of Securing Human Rights and Legal Predictability*, 5 LOY. U. CHI. INT'L L. REV. 87, 88-89 (2007) *See also*, Dauphinais, *supra* note 10 at 55-80 (history and criticism of LDM in East Africa). "'American legal assistance was characterized in part by a rather awkward mixture of goodwill, optimism, self-interest, arrogance, ethnocentricity, and simple lack of understanding. . . . [T]he law and development movement was . . . flawed and rather inept . . .,' displaying a 'missionary spirit.'" *Id*. at 73 (*quoting* JAMES GARDNER, LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA 4-5, 13 (1980).)

15 Perelman, *supra* note 14 at 398. (footnote omitted).

16 "Culturally-competent collaboration" should be the aim of every visiting consultant, whatever length the visit. It is the mantra of everyone who has taught and thought about this subject. *See*, e.g., Geraghty & Quensah, *supra* note 14 at 88, Wortham, *supra* note 6 at 640, Dauphinais, *supra* note 10 at 103-06, and Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Strivng for Effective Cross-Cultural Collaboration*, 14 CLIN. L.REV. 465, 496-97 (2008). One commentator writes: "The setting for today's law and development [movement] is quite different...the consensus is far stronger in favor of reform and the legal approaches identified with the United States, including the core idea of a strong and independent judiciary. Lawyers do not have to fight for their role this time. Economists have come to see the importance of legal institutions to the markets that they now promote [footnote omitted]." Bryant G. Garth, *Building Strong and Independent Judiciaries Through The New Law and Development: Behind The Paradox of Consensus Programs And Perpetually Disappointing Results*, 52 DEPAUL L. REV. 383, 385 (2002). However, Dean Garth notes that the legal reform initiative process "is a hegemonic one that focuses on the business of exporting and importing [by power elites] on debates and issues that have salience in the north (here in the United States) at a particular time and place. We export our own palace wars" *Id*. at 395-96).

personnel in Togo and was able to correspond frequently by email with the Political Affairs Officer (PAO) and her assistant. Neither had a background in law. Both were generalists responsible for a number of portfolios in a small embassy. Since they were deferring to the local bar association for programmatic detail and leadership, the Embassy was either hesitant, or unable, to provide all the information needed to refine the topic, gauge expectations and determine logistics. My attempts to communicate directly with the bar association, however, were frustrated both by poor Internet connection[17] and a lack of detail in the information the association sent my way. Despite my difficulties with communication, it became apparent that the two broad objectives for the Togolese were: (1) develop a bar association pro bono programme to facilitate delivery of legal aid to the indigent;[18] and (2) establish a clinical education component at the capital's law school.[19]

It is now standard advice that the visiting legal educator or consultant prepare by immersing herself in the law, customs and culture of the country of destination before arrival.[20] One should expect no less of the very short-term visitor—even if the guest's preparatory efforts are not reciprocated by the hosts.[21] In my case, the overall agenda was clear about the request for technical assistance. However, there was no specification of the pressing legal need to be met by this aid. I took it upon myself to fill in the gaps. The literature suggested that unnecessary pretrial detention and prison conditions would be a priority. Togo, like many other African nations, had a history of detaining its citizens for unwarranted periods of time, and in overcrowded and unsanitary conditions.[22]

To ensure access to justice in Togo, it was essential to first understand what the existing system

17 Internet communication outside the embassy can be problematic. To minimize interrupted or delayed service, many professionals have a United States- or France-based email address (e.g., <yahoo.com> or <yahoo.fr>). However, their use of email may be limited by power outages, lack of computer access or customary correspondence practice. The heavy reliance on email exchanges for business correspondence that we have come to know in the United States has not taken hold in most of Africa.

18 For a history of free legal aid services in the United States and the intersection with international human rights law and procedures, *see generally*, Stephen A. Rosenbaum, Pro Bono Publico *Meets* Droits de l'Homme: *Speaking A New Legal Language*, 13 Loyola L.A. Int'l & Comp. L. J. 499 (1991). *See also* Access to Justice in Africa, *supra note* 3 at 13-16 (analysing difficulties concerning *pro bono* schemes in Africa).

19 For a brief discussion of legal aid clinics in Africa, see David McQuoid-Mason, *The Supply Side: The Role of Lawyers in the Provision of Legal Aid – Some Lessons from South Africa*, in Access to Justice in Africa, *supra note* 3 at 111-113. See also, Carothers, supra note 14 at 167 & 169 (noting that legal education may also be a focus of US aid providers).

20 *See, e.g.*, Maisel, *supra* note 16 at 492-94 and Dauphinais, supra note 10 at 103-05. Professor Stuart Cohn writes: "As obvious as this recommendation appears, I have been told in more than one country of visiting 'experts' who arrive knowing practically nothing about where they are, and who deliver set lectures that barely, if at all, touch local concerns. It does not matter how technical the subject matter: an instructor's failure to know local laws, history, and culture undermines the effectiveness of the presentation." Stuart R. Cohn, *Teaching in a Developing Country: Mistakes Made and Lessons Learned in Uganda*, 48 J. Legal Educ. 101, 107 (1998). These visitors "are engaging, even if they do not realize it, in a form of anthropological encounter." Maisel, *supra* note 16 at 495 (quoting University of Malta Senior Law Lecturer David Zammit).

21 This point was brought home to me just a few days before my departure for Togo when I attended a San Francisco bar association presentation by Stephen Mansfield, one of the first prosecutors at the International Criminal Tribunal for Rwanda. Mansfield related that when he had arrived in Kigali years earlier for an undertaking much more ambitious and consequential than my upcoming workshops, he found there had been almost no preparation by the embassy or local authorities. Stephen Mansfield, "War Crimes Investigations & Tribunals: Lessons from Cambodia & Rwanda," San Francisco Legal Aid Society (25 Sept. 2007).

22 *See, e.g.,* Yao Dzidzinyo Claude Bouaka, Garanties des Droits des Détenus au regard des Articles 7, 9 et 10 du Pacte International relatif aux Droits Civils et Politiques: Une Analyse Juridique de la Situation des Droits de l`Homme au Togo (Verlag 2003) and U.S. Dep't of State, Country Rep. on Hum. Rts. Practices – Togo (25 Feb. 2009), *avail. at* http://www.state.gov/g/drl/rls/hrrpt/2008/af/119029.htm. (last visited 15 July 2010).

provided. Exercising my own initiative about the nature and scope of the assignment led to library and Internet research. The irony was that I was probably better positioned than my prospective Togolese hosts to access the texts which are fundamental to reforms in African legal education and practice of law. Whether due to the cost of printing, or transportation and communication obstacles, the very codes, reported appellate decisions and international accords on which African jurists rely actually may be unavailable to the judges and lawyers themselves. [23] During an earlier State Department visit to Guinea, for example, I discovered a curious collection in my hotel gift shop: copies of legal codes on the bottom of a display case, mingled with local crafts and trinkets. While these "goods" were being offered to tourists, Guinean judges bemoaned their lack of access to legal materials.

My research[24] fell into three main topical areas: approaches to clinical education[25] with an emphasis on developing countries; [26] model civil law statutes for free legal services delivery; and reform campaigns aimed at reducing prison populations. [27] Email exchanges with embassy contacts from an earlier visit to Senegal, visits to websites operated by prison reform advocates and French-language jurists, [28] and materials housed in the Boalt Hall[29] law library[30] formed the bulk of my research.

23 Professors Geraghty and Quensah, *supra* note 14 at 90, describe in graphic terms how "African law schools are starving," and no less so when it comes to library collections, legal information, technology and (updated and relevant) course books. *Id*. at 90, 97-99, 102. Professor Dauphinais also writes about insufficient quantities of local statutes and other legal materials amongst students and lawyers. Although their articles focus on law schools in African Commonwealth nations and Ethiopia, the analyses and recommendations from Geraghty and Quensah and Dauphinais are equally apt in francophone Africa. Dauphinais, *supra* note 10 at 104.

24 Only after my trip did I discover some of the most insightful and useful articles on topic – some of which had not yet been written.

25 "Clinical education" encompasses many meanings, ranging from "in-house, live-client" settings in law schools to field placements or externships to simulation classes. AALS Section on Clinical Legal Education, *Clinicians' Desk Reference* (Apr. 2009), n. 2. "Applied legal education" may be a more useful term insofar as it describes "a reflective and experiential learning process without the economic and efficiency pressures of the workplace, to help students understand how the law works in action while providing sorely needed pro bono representation to the poor." See, Center for the Study of Applied Legal Education, http://www.csale.org/need.html (last visited 9 Aug. 2010).

26 See, Richard J. Wilson, *Three Law Schools in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 Clin. L. Rev. 515, 517 n.5 (2002) on the term "global south" in lieu of what he deems to be the more pejorative and imprecise "developing" country or "Third World."

27 See Paddington Garwe, *Developments in Penal Reform in Africa*, in Access to Justice in Africa, *supra* note 3 at 33-35. Interestingly, "[p]risons have not been a target of U.S. rule-of-law assistance, despite the horrendous state of prisons in most transitional societies and governments' interest in receiving external aid to improve them." Carothers, *supra* note 14, at 167. According to Carothers, founder and director of the Carnegie Endowment's Rule of Law Project, the potential for criticism from Congress or human rights groups "has scared away most U.S. officials." *Id*.

28 L'association des des cours judiciaires francophones, for example, maintains a website, www.ahjucaf.org (last visited 9 Nov. 2011) and reference materials on court-related developments in the francophone world.

29 The law school has since been re-branded as "Berkeley Law." *See* University of California Berkley Law, Memorandum from Dean Christopher Edley (24 Apr. 2008), *avail. at* http://www.law.berkeley.edu/identity/edley-letter.html (last visited 19 Dec. 2010). However, references to its former name are still permitted, at least in-house, notwithstanding the new name and public image. *Id*.

30 The library has small collections on African human rights and Togo. Surprisingly, the Togolese Constitution circulates for only one week, even for faculty. Fortunately, I was granted an extension. It is ironic that the Constitution was probably more readily available (and in demand) in the U.S. than Togo.

My contacts at the Global Alliance for Justice Education (GAJE)[31] provided a referral to Thomas Geraghty, the Associate Dean and Director of Northwestern University's Bluhm Legal Clinic. The Clinic had recently helped to facilitate a conference on African legal aid in the criminal justice system, organised by Penal Reform International. [32] Professor Geraghty[33] was kind enough to quickly ship copies – in English and *French* – of a just published collection of detailed papers presented at that conference.

A clinical attorney affiliated with Stanford Law School, who had helped establish a community law clinic in Ghana,[34] provided some sample interview simulations that she used with her students before they departed for a mini-semester in Accra. I was considering introducing my Togolese workshop participants to simulation exercises, should the opportunity present itself.

Lastly, a *pro bono* specialist[35] described for me the workings of a sophisticated computerised network of U.S.-based firms. These firms are matched with legal services and public interest lawyers in search of co-counsel or for referrals on matters they are unable to handle.[36] Of course, to be of value would require adapting this concept to a country where a six lawyer *cabinet* constitutes a

31 Law teachers, judges, legal practitioners and activists from five continents convened in 1996 to form an organisation to promote "socially relevant legal education." With members from over 50 countries, GAJE facilitates cross-national educational exchange programs and joint research projects. Its goals include support for "innovative justice education, especially in developing countries" and serving as a teaching methodology and materials clearinghouse. http://www.gaje.org (last visited 26 June 2010). For more about GAJE and the building of a worldwide movement to "advanc[e] the cause of justice through legal education," *see* Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 Washington Univ. J. L. & Pol'y 111, 131-38 (2008).

32 PRI is a NGO working in partnership with governments on penal and criminal justice reform throughout the world, including the development and implementation of human rights instruments relating to prison conditions and reduction in the use of imprisonment. http://www.penalreform.org (last visited 12 July 2010). It was the chief sponsor of a conference, attended by researchers and practitioners from 21 African countries, held in Lilongwe, Malawi, in November 2004. A conference drafting committee produced the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and a Plan of Action. The Committee was chaired by Malawi's Justice Rezine Mzikamanda. Professor Geraghty served as the only non-African member of the Committee and Northwestern University law students supported the work with their note-taking. The Declaration and Plan of Action are *reprinted* in Access to Justice in Africa, *supra* note 3 at 39-50.

33 I later learnt that Professor Geraghty has an interest and expertise in African legal education, a field in which the Bluhm Center's international human rights students have been active. *See*, *generally*, Geraghty & Quensah, *supra* note 14.

34 Danielle Jones, Supervising Attorney, Stanford Community Law Clinic. The Stanford Community Law Clinic serves low-income clients in and around East Palo Alto on mostly employment, housing and criminal-record-clearance matters. Stanford Community Law Clinic, http://www.law.stanford.edu/program/clinics/communitylaw/ (last visited 12 July 2010).

35 Julia Wilson, Executive Director, Legal Assistance Association of California. LAAC is an organisation of non-profit legal services that assists and strengthens its members in their work providing legal assistance and equal access to justice to low-income Californians. http://www.calegaladvocates.org/ (last visited 13 Mar. 2009).

36 *Id*. *See also* Pro Bono Institute, http://www.probonoinst.org/ (last visited 13 Mar. 2009).

large firm[37] and where there is no real *pro bono*[38] tradition, much less a codified ethical standard for representing the unrepresented.[39] In addition, the structural benefits of a United States *pro bono* operation, such as furnishing malpractice insurance or training in specialized practice areas, would be irrelevant in the typical West or Central African setting.

However, the specialist's other advice about establishing a legal services or clinical office made perfect sense, notwithstanding the smaller scale and less developed legal infrastructure: (1) Begin with a small pilot project; (2) Select an advisory board; (3) Establish a protocol for case acceptance and attorney or professor oversight; (4) Form partnerships with other lawyers, judges and NGOs; and (5) Conduct an evaluation after a fixed period of time. As for concerns about infrastructure, it would be, in large part about the physical and material aspect.[40] Not surprisingly, lack of funding and staffing is a huge obstacle for legal clinics in developing countries.[41]

My investigation had thus equipped me with the basic Constitutional text; statutes from neighbouring nations; reports on Togolese politics, African legal reforms and prison conditions; and press clippings. Armed with this information, I came to understand the expansive scope of the project. Email exchanges in the weeks just before departure confirmed the mission was overly ambitious: a three day conference to (1) draft a statute establishing free legal services for the poor; and (2) design a clinical legal education programme at the University of Lomé faculty of law. Again, it was important to avoid an in-and-out visit complete with a one-size-fits-all reform agenda.

Conference work was to occur in small groups, book-ended by formal plenary sessions., but it was unclear whether I was expected to facilitate any of these sessions. An email from the PAO

37 For countries without large elite law firms, the clearinghouse model is one option: a central agency assigns cases to *pro bono* members of the bar. In addition to matching clients with *pro bono* attorneys, these entities monitor the quality of the work and provide training and support to participating attorneys. Thomas Geraghty, Geoffrey Anderman, David Hamsher, Sha Hua, Nadia Majid, David Sanders & Katherine Shaw, *Access to Justice: Challenges, Models, and the Participation of Non-Lawyers in Justice Delivery*, in Access to Justice in Africa, *supra* note 3, at 53, 80 (*citing* Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. Rev. 1 (2004)).

38 *But see*, David McQuoid-Mason, *The Supply Side: The Role of Lawyers in the Provision of Legal Aid – Some Lessons from South Africa*, in Access to Justice in Africa, *supra* note 3 at 101. Professor McQuoid-Mason writes that South Africa, as a result of British influence, has a tradition of lawyers doing some non-mandatory *pro bono* or "*pro amico*" work. Law societies in some African countries are making this compulsory for their members. *Id*. Under the South African model, an attorney may make a *pro amico* agreement with a client to work for free until a judgement is issued or a settlement reached. "Legal Beagle,"*DURBS Magazine* (June/July 2006), *avail. at* http://durbs.kwazulunatal.com/number13/page11.shtml (last visited 6 Aug. 2010).

39 *See, e.g.*., American Bar Association, Model Rules of Professional Conduct, Rule 6.1, (amended 1992)(*avail. at* http://www.abanet.org/cpr/mrpc/rule_6_1.html) (last visited 6 Aug. 2010): "A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should... provide a substantial majority of the...hours without fee or expectation of fee to persons of limited means...In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means."

40 *See supra* note 23 and *infra* notes 104-06 and accompanying text (describing poor physical state, materials and staffing of campuses and government buildings).

41 One long-time observer of clinical education in South Africa remarks: "…virtually all clinics rely to some degree on short-term grants. As a result, their staff must constantly engage in time-consuming fundraising, they suffer from rapid turnover as grants come and go, their case priorities are often set by the funders rather than community needs, and they have insufficient faculty to provide high quality education for their students [footnote omitted]." Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa*, 30 Fordham Int'l L.J. 374, 388 (2007).

suggested that workshops, at least as conducted in most American "break out"[42] settings, were not a well-established mechanism in Africa; past experience told me as much. Yet, it seemed the Embassy anticipated a series of lectures from me or even some skills simulation sessions.[43] In attempting to meet the expectations of sponsors and target audience, the consultant must be prepared for an alternate scenario or improvised presentations. Aware of this reality, I departed for Togo with a tentative agenda and an open mind.

Le Long Voyage

My journey had really begun before physical departure, with the research and ruminating. While it takes about a day and a half to travel to Lomé, with stopovers and time zone changes, the distance is as much cultural as it is spatial or temporal. The adjustment to the formalities, lack of amenities, slavish adherence to bureaucratic protocols, and the pace of daily life outdid the effects of jet lag.

My experience was also coloured by my rapport with my immediate hosts. They would be my guides, mentors, minders and tutors. The PAO was an ex-Peace Corps volunteer married to a musician from neighbouring Benin. She seemed to be a less conventional diplomat than her assistant, a long-time Embassy staffer and Togolese national with a daughter attending college in the United States. To be sure, they represented an elite sector of society, with slightly more mobility than the jurists I would encounter. Eventually, after my visit, both had left their jobs in Lomé, the PAO for another diplomatic post and the assistant had left for a life in America.

Our interactions would reveal a mix of American and local interests, which did not necessarily fall along predicable lines of nationality, race or diplomatic status. That is, a foreign service officer might express views at odds with the current American administration, while an African national could staunchly defend the U.S. government's position. Outside the Embassy walls, the nation's politics dominated discussion. My visit coincided with the Togolese electoral campaign, which the national television station covered extensively. The two-week campaign period had been launched he day I arrived and voters were presented with 395 party lists of candidates from at least 32 parties.[44] Elections have a different significance in post-colonial Africa than in western democracies and the excitement was palpable.

Walls were plastered with partisan posters. My hotel appeared to be the headquarters for the European Union election observers, with many olive green trucks lined up in the front parking lot. I actually awoke one morning to find a photocopied letter slipped under the door of my room. It was a "Call to the Nation" from the President, urging a peaceful balloting: "*Togolaises, Togolais, Mes très chers compatriotes....Vive la démocratie! Vive la paix!*" [45] An enlarged version of the letter was mounted conspicuously on an easel in the lobby. One would be unlikely to encounter a similar display of civic boosterism at an upscale tourist hotel, or indeed any hotel, in western countries.

42 While I acquiesce to the popular "break out" for the convening of small groups, I eschew the equally popular "report-back" for what is adequately described as a "report."

43 It is commonplace at conference workshops for clinical educators, such as those sponsored by the American Association of Law Schools or the Clinical Legal Education Association, to actually introduce a pedagogical concept through simulation or role play.

44 *Une campagne blanc, rouge, jaune*, Republic of Togo, 1 Oct. 2007, http://www.republicoftogo.com/central.php?0=5&s=83&d=3&i=1058 (last visited 2 Oct. 2009); http://www.state.gov/g/drl/rls/hrrpt/2008/af/119029.htm (last visited 9 Aug. 2010).

45 Letter from Faure Gnassingbé, President of Togo, to Togolese citizens (Oct. 2007) (on file with author).

Anticipated with a mix of celebration and angst, this represented much more than an exercise in the right to vote freely. This tangible symbol of democracy meant the government could effect change through the political process, and opposition parties could have a chance at power.

In Togo, and the rest of post-liberation Africa, this process of *alternance*, or change in leadership, is itself a confirmation of belief in the rule of law. Togo has a long history under one-party rule. For over thirty years, an autocratic head of state, Son Excellence, Eyadema Gnassingbé, governed the country. Today, the dynasty continues with his son, Faure [46] Like his father before him, he is addressed as His Excellency and his photo hangs on the wall of every commercial establishment. Despite this tradition of praise and obedience, the election raised expectations of democratisation in Togo. The previous general elections, in April 2005, resulted in widespread violence, condemnation by African leaders[47] and a loss in foreign aid. The political elite were keen to avoid a repeat scenario. Although the electoral campaign and the results would not have a direct impact on the seminar and its outcome, it formed an important backdrop. Legal reform in general and access to justice in particular would figure as important components of a genuine democracy.

1° Jour

On the first programme day in Lomé, I held two key preparatory meetings: one with the president of the local bar association and the other with the Ambassador.[48] The bar association was officially in charge of the impending workshop. Characteristically, the bar was neither sufficiently staffed nor financed to independently plan or organise this kind of event. *Le Bâtonnier* , or Bar President[49] is a very prestigious position in Togo, as elsewhere in francophone Africa.[50]

In the upcoming seminar discussions, beginning with the meeting at the bar headquarters, participants frequently invoked Article 10 of *Ordonnance* No. 78-35. This sole existing statute addressing subsidized legal assistance states:

> Legal assistance may be granted, by decision of the jurisdiction handling the matter, to parties proving their indigence. The particulars of the assistance are governed by *décret*. [51]

Article 10, and the failure to appropriate funds and implement the law by executive decree, assumed an almost exaggerated importance. Two other documents also appeared central to the

46 Kaniye S.A. Ebek, *The Succession of Faure Gnassingbé to the Togolese Presidency – an International Law Perspective*, 2005 Nordiska Afrikainstitutet.

47 U.S. Dep't of State, Background Note: Togo, http://www.state.gov/g/drl/rls/hrrpt/2006/78762/htm (last visited 2 Aug. 2010).

48 David Dunn.

49 Maître Alexis Aquereburu, Bâtonnier, Ordre des Avocats du Togo.

50 On a subsequent visit to Africa, I appreciated even more the deference typically accorded the bar president. My table partners at a lavish cocktail hosted by the local bar president in Douala, Cameroon were young, but accomplished, lawyers. Although they were jovial and informal, they were not on a first name basis with the Bâtonnier. They were overly complimentary, bordering on obsequious. But, in the interest of improving my cultural competence, I must set aside my narrow American judg[e]ment about this form of interaction.

51 Art. 10, para. 2, *supra* note 7. Somehow this key text failed to turn up in my library research. The Constitution contains only vague and indirect references to access to justice. Constitution de la République Togolaise, arts. 11 (prohibiting favouritism or disadvantage due to economic status); 15 (banning arbitrary arrest or detention); 16 (right to counsel at time of preliminary investigation).

debate. First the Ministry of Justice had issued a draft judicial modernisation programme[52] a little more than two years earlier, noting that the legal aid fund allegedly created in 1978 never received any government appropriations. [53] Second, the nation's largest bar association and law school had entered into a partnership agreement or memorandum of understanding earlier in the year. The document envisioned such activities as continuing education of the bar, theoretical and practical training of students; attorney-taught courses and curriculum planning and student externships (*recevoir en stage…des étudiants*).[54]

The modernisation programme had the potential to serve as a springboard for a fully developed legal assistance operation. There was no indication, however, that the modernisation planning document would be translated into reality.[55] Curiously, prior to my arrival, no one made reference to the modernisation plan, the law school-bar association agreement or the longstanding legal assistance statute. [56] The modernisation program's coordinator, Judge Hohueto, was actually present at the meeting with bar members that afternoon, but she did not appear to have a leadership role in the planning of the seminar, much less the implementation of any future legal reform.

In what constitutes a *pro bono* tradition in Togo, members of the Lomé bar association have occasionally visited the local prisons *en masse*. This effort to clear the legal backlog would occur during an annual holiday as an act of charity or concurrently with the opening of a new term of the Supreme Court, the *rentrée solonelle*. These *journées de consultation juridique gratuites*, sometimes underwritten by the American Embassy, were an ad hoc practice that had the potential for something more formalised.

Having received local perspective and background from bar president Aquereburu, I next met with Ambassador Dunn. The practice of setting up a briefing with the ambassador, particularly if he has a professional interest in a visitor's area of expertise, is not unusual in a small country. Meeting embassy expectations about a programme and its results can be challenging. The objective may be as simple as creating a space for discussion and reflection, or the objective is not articulated at all, except in the broadest of terms.[57] These expectations must also be reconciled with one's own

52 Ministere de la Justice, Republique Togolaise, Programme National de Modernisation de la Justice 2005-2010 (Amended Final Draft, Aug. 2005)(on file with author).

53 ROL scholar Erik Jensen notes that "[p]ublic cynicism will grow if rules are introduced without attention to pace, sequence, local context, and of course implementation." Jensen, supra note 6 at 122. "[T]too many rules in low-capacity regimes can undermine public support and state legitimacy." *Id*.

54 Protocole d'Accord de Partenariat entre Le Barreau de Lomé et l'Université de Lomé. (18 Jan. 2007)(hereafter "Protocole de Partenariat")(on file with author). The *stage* in Anglophone Africa might be referred to as articling or pupilage, particularly if it takes place after law school graduation.

55 Jensen appropriately cautions that "[p]lanning documents, government edicts, the passing of laws, or representations made by a key political, legal, or economic actor over a meal are often taken at their face value as demonstrating elite commitment [footnote omitted]." Jensen, *supra* note 6 at 134. The Togolese modernisation programme, like the much-discussed Article 10 and the bar-faculty accord, was by no means a demonstration of any commitment to legal reform.

56 I say this not to chastise the hosting embassy staff or host country representatives, but as an acknowledgement that some of the obvious background materials for a visit may not be provided to the visitor.

57 On the other hand, in preparing for a subsequent two-country visit, the State Department forwarded me the embassy email messages which described the programme objectives. Although almost identical enough to be formulaic, the two emails did display a desire by embassy staff to link the programmes to larger themes important to the United States and the host country—at least on paper. (Email from Steven Lauterbach, 30 June 2010)(on file with author).

personal or professional objectives.

To meet the Ambassador I entered a newly constructed facility. It was spacious, light and filled with potted plants and works of art. Located on the outskirts of Lomé, its main feature, like most post-9/11 U.S. embassies, was security. As is typical, the majority of employees were nationals of the host country. From airport expediter to assistant planners and programme coordinators, these are well-paid, desirable jobs. Ambassador Dunn and I spoke about the need for legal reform and what that might entail. He clearly cared about institutionalising rule of law principles and leveraging U.S. funds to do so. Acting on this interest, the Ambassador would appear at the opening of the seminar the next day along with Togolese Justice Ministry and bar association officials to speak on the issue.

2e Jour

My work began in earnest in the conference room of Ghis Palace, a modest hotel by U.S. standards, situated on the outskirts of the city. A smart hand-painted banner announcing the seminar was hung across the front of the room, reading: "Legal Aid and Strengthening of the Rule of Law in Togo." Long rectangular tables were joined together horseshoe-style. Young men arrived wearing wide neckties and pointy fashionable shoes, as did women in western and traditional dresses, together with some older men in dark suits. Ardent mid-level and junior jurists (including the daughter of the current, or perhaps former, prime minister) were seated around the horseshoe, but it was not clear whether the more senior men would remain for the work that needed to be done after the plenary. [58]

The plenary session[59] was opened by Le Bâtonnier. In his remarks, President Aquereburu acknowledged the ineffectiveness of legal aid in Togo, in spite of measures provided in Article 10. Not as much attention was given to the concept of legal assistance itself as to its legal underpinnings or to the precise term of art, which varied from *l'aide juridique to l'assistance judiciare* to *l'aide juridictionelle*[60] The Bâtonnier expressed hope that the seminar work would establish the necessary support for implementing a legal aid programme for the poor.

In another set of opening remarks, Ambassador Dunn noted how the United States, along with bilateral and multilateral partners, had participated in the process of modernisation of Togo's courts. He told those assembled that his Government—that would be mine—sought to establish a judicial system that protects and respects individual and group liberties, as well as fundamental rights .[61]

58 More than one participant later expressed regret on their evaluation forms that more senior attorneys did not attend the seminar. Another thought the workshop sessions were very useful. Fiches d'Evaluation (on file with author). Many of the younger lawyers later stated their unhappiness with the location of the seminar. *Id*. *See infra* text accompanying notes 130-31. Although lunch and a stipend were provided, the cost of transportation outside the city centre was significant.

59 A young conscientious law graduate, Darius Atsoo, prepared an almost contemporaneous summary of proceedings on his laptop. *See, Rapport Général du Seminaire: Aide Juridictionelle et Consolidation de l'Etat de Droit Au Togo* (2-4 Oct. 2007) (hereafter *Rapport Général du Seminaire*) (on file with author). I afterwards received periodic requests from Me. Atsoo for me to friend him on Facebook – even before I had joined myself.

60 Me. Amazohoun, a young lawyer and one-man human rights NGO, had his Dalloz Dictionary handy to look up cross-references for the various terms, which seem to be interchangeable.

61 *Rapport Général du Seminaire, supra* note 59 at 2.

Following Dunn's remarks, the cabinet attaché from the Justice Ministry[62] described the seminar as part of a vast and ambitious programme of justice modernisation and reiterated that the essential subject was legal aid. He thanked President Gnassingbé for "nourish[ing] his people with the hope of a promising future through the legal system" and emphasised that justice is "at the heart of the new societal contract" to which Togo had subscribed. Despite this ceremonial endorsement by the Justice Ministry, the next speaker, Judge Agbetomey of the Supreme Court, was among many to note that the Executive had never adopted an implementing degree for Article 10.[63] The usual round of comments and questions followed. Hands were raised and the moderator called on three people at a time. Each person began by thanking the speaker for valuable remarks and then delivered a lengthy comment or posed a question.

In response to Agbetomey's address, seminar participants suggested that consumer-friendly orientation and assistance booths be stationed in strategic locations, possibly in courthouse lobbies. They also agreed to implement specific recommendations at the end of the seminar, which would serve as the foundation of a *décret* implementing Article 10. This decree would address such matters as the definition of indigence, legal aid eligibility, amount of legal aid, qualifications for assistance and the procedure for requesting aid.[64]

Professor Kpodar of the law faculty was among the few speakers to offer concrete suggestions. Legal aid, he declared, is at the heart of human rights protection but could not be effective if citizens' access to justice in their own country is not facilitated by the State through adequate human and financial resources. He urged that assistance be made available to the most impoverished in order to avoid the "ill-fated effects of private justice" that result in violence.

Kpodar suggested that the concept of legal aid to the indigent be sufficiently publicized[65] and integrated into general university programmes, and law school programmes in particular. He called for the creation of a Centre for Law and Reflection, under the supervision of lawyers, judges and university faculty. The centre would be staffed by students preparing for their CAPA[66] or for the national judiciary college, the Ecole Nationale de la Magistrature.[67]

It is not clear whether the centre Kpodar proposed would be more inclined toward service than scholarship. Nonetheless, the ability of law school faculty to run such a legal clinic themselves is

62 *Id*. at 2-3 (representing the Attorney General and the Ministry of Justice).

63 Remarks of Judge Pius Kokouvi Agbetomey, Togo Supreme Court. *Id*. at 3.

64 *Id*.

65 Professor Frank Bloch argues that before legal aid is made readily available, the people must first be made aware of their rights. Bloch, *supra* note 31 at 118. The so-called "street law" courses offered in many U.S. law schools are a good model for supporting law students who in turn provide lay outreach and community education courses to members of marginalized communities. Wortham, *supra* note 6 at 660. *See also*, Philip F. Iya, *Fighting Africa's Poverty and Ignorance Through Clinical Legal Education: Shared Experiences with New Initiatives for the 21st Century*, Int'l J. Clin. Legal Ed. 13, 17-19 (Nov. 2000)(law school involvement in community outreach programmes).

66 The CAPA (Certificat d'Aptitude à la Profession d'Avocat) is the postgraduate legal qualification needed to practise law.

67 Remarks of Prof. Adama Ferdinand Kpodar, Assistant Dean, Faculty of Law, Univ. of Lomé. *Rapport Général du Seminaire, supra* note 59 at 3-4.

highly questionable, given their theoretical training and orientation. [68] In the end, the support of senior faculty would be essential[69] to the survival of any curriculum change made to accommodate the clinic, particularly those changes that might involve a reallocation of teaching resources and other funds or the awarding of academic credit. [70]

In remarks entitled "The Necessity of Teaching Legal Aid to Students," Maître Attoh-Mensah echoed Professor Kpodar's emphasis of the need for State financial aid. He defined legal aid as a subsidy granted by the State to allow its poorer citizens to exercise their legal rights in legal matters (*mâtière gracieuse ou contentieuse*). [71] He recommended that judges, lawyers and other legal professionals familiarise themselves with the free legal aid concept at an early stage in their training so they could integrate it in their professional lives. [72] He argued that the Bar's recognition of legal aid as a necessity for improving access to justice was an important step in the struggle to provide assistance to the underserved. To capitalise on this momentum, Attoh-Mensah asserted that the political and legal authorities should be encouraged to implement an adequate means to provide effective legal aid.

Attoh-Mensah also affirmed the importance of teaching about legal assistance to CAPA students and endorsed Kpodar's proposal of a legal aid outreach campaign amongst law students. In addition, he said students should be allowed to participate in the preparation of case files for

68 For example, Professor Peggy Maisel posits that the "lack of capacity stems initially from the fact that virtually none of [the] South African law professors had the opportunity to participate in clinics themselves while in law school. Therefore, they were forced both to establish law clinics and to create a related curriculum without having had any personal experience of what a clinic looked like or how it operated [footnote omitted]." *See* Maisel, *supra* note 41 at 409-10. This point was driven home when some colleagues and I formed the Projet Clinique Juridique Berkeley-Goma and attempted to link a private university law school in the eastern Democratic Republic of the Congo with legal assistance to survivors of gender-based violence. While expressing interest in a practical and service-orientated delivery model, the faculty's proposal was grounded more in research, data collection and publication than the practise of law and assistance to traumatised clients.

69 Wortham, *supra* note 6 at 668. On more than one programme visit, my embassy interlocutors have cautioned that the senior faculty (or attorneys) may express interest in a proposal but will try to delegate follow-through to less influential junior faculty (members of the bar). This phenomenon is not unique to African universities and professional associations. Professor Wortham observes that while senior faculty may be dubious about new pedagogy, such as the clinical model, students will almost always happily embrace the change. *Id*. at 681.

70 Professors Geraghty and Quensah explain that African law schools, like their American counterparts before them, may need to hire recent graduates to teach in clinical programmes. Besides the know-how and enthusiasm they will bring to the job, these junior faculty members will be less expensive. Geraghty & Quensah, *supra* note 14 at 103. While the majority of existing African law school-affiliated clinics do *not* award academic credit, *id*. at 101, this is not necessarily a deterrent to student enrolment. For an account of the challenges in implementing clinical curriculum in a relatively new African university, see T.O. Ojienda & M. Odour, *Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya* Int'l J. Clin. Legal Ed. 49 (June 2002). *See also*, Iya, *supra* note 65 at 16-24 (genesis and application of clinical legal education in Africa and experience in different countries).

71 Remarks of Sylvain Attoh-Mensah, Member of the Bar and RADAR (Réseau contre les arrestations et les détentions arbitraires). *Rapport Général du Seminaire, supra* note 59 at 4-5.

72 Lawyers may graduate from the faculty of law without any training in human rights laws and practices or the "knowledge and requisite skills in contemporary and innovative approaches to rendering legal aid." Nchunu Justice Sama, *Providing Legal Aid in Criminal Justice in Cameroon: the Role of Lawyers* in Access to Justice in Africa, *supra* note 3 at 161-162. Inculcating students with the concept that social justice work is a part of professional obligation is an important objective of transformative legal education. See, Bloch, supra note 31 at 116, 126.

hearings and to organise *pro bono* legal intake days in collaboration with the bar association.[73]

Lastly, he proposed the establishment of a legal assistance fund administered by a committee of judges, lawyers and others. The funding source could be the appellate court fines and interest on fees deposited by court clerks in bank accounts. Attoh-Mensah's remarks elicited favourable comments. Some participants noted that an effective aid programme would permit eradication of the unseemly practice by which lawyers "sell their wares" (*démarchage*) in the the Lomé courthouse corridors.[74]

I spoke next, offering a way to put these ideas into action by presenting American legal aid options and those that have prevailed in certain African countries. [75] It remains surprising that a white American lawyer from a common law regime has something to say to French-speaking, [76] black African jurists working in a Germano-Roman civil law system. Yet, these differences failed to raise large obstacles to communication despite their divisive potential. To the contrary, I felt a bond that was both professional and personal. [77]

In the same vein, one might ask why a former French colony would look to the United States for technical assistance? Our language, legal and educational systems, and culture are so distinct from what these nations inherited from France, and continue to rely on in government, schooling, commerce and public discourse.[78] Notwithstanding their linguistic and legal legacy, and mostly positive diplomatic and economic relations with the French, the Togolese may experience a lingering distrust or even rejection associated with their ex-coloniser. [79] The U.S. system, putting aside our own history of hegemony, does provide an instructive model for examining

73 *Rapport Général du Seminaire, supra* note 59 at 4-5. The lack of hands-on training for African law school students was made vividly clear in the handling of Malawi capital crimes cases some years ago. Of 91 cases, it was reported that "out of the seven lawyers in the [defence counsel] department, three had just been recruited from university and their first trials were capital cases (footnote omitted)." Stapleton, *supra* note 3 at 15. The inexperience was compounded by the fact that most of these lawyers had just met their client for the first time "minutes before the trial began." *Id.* Although a similar critique can be made about neophyte or overworked American criminal defence counsel for the indigent, the consequences are obviously different for a misdemeanor, or even felony, than for a crime that could result in the death penalty.

74 *Id*. The public's ignorance of their rights, along with the perception of lawyers "as some sort of money-grabbers, rather than as professionals disposed to provide legal aid...," has also been a barrier to accessing legal services in neighbouring countries. Sama, *supra* note 72 at 160.

75 *Rapport Général du Seminaire, supra* note 59 at 5-7.

76 Language is itself a wonderful vehicle for bonding. If the American consultant can bridge the language gap—one of my strongest assets – she or he may well be a winner in public diplomacy. While my communications outside of embassy staff are always in French, I try to sprinkle in a few greetings or other phrases in the so-called national (ethnic) languages that audience members have in common – be it Ewe, the Togolese native tongue, Wolof or Chadian Arabic.

77 But see, Haider Ala Hamoudi, *Toward a Rule of Law Society in Iraq: Introducing Clinical Legal Education into Iraqi Law Schools*, 23 Berkeley J. Int'l L. 112, 120, n. 46 (2005) (fact that U.S. consultants were ethnically Iraqi was critical to gaining trust of their hosts).

78 Professor Dauphinais notes that the end of colonialism actually allowed for the advent of a legal culture and innovative educational methods – such as those established in the United States – that offer something other than those "received" from the former colonial power and ill-suited to contemporary social needs. Dauphinais, *supra* note 10 at 67-69, 87-88.

79 It remains to be seen whether France can "reinforce [its] place," in the words of the Foreign Minister, in language, ideas, art and science with the recent creation of the Institut Français. The agency is to oversee 143 cultural centres throughout the world. Bernard Kouchner, "La culture française a les moyens de rayonner à l'étranger," *Le Figaro*, p. 21 (22 July 2010).

contemporary judicial and legal educational innovations – beyond the general *caché* associated with Made in America. [80]

There was a long period of incubation before the American institutions of democratic governance and due process protections took shape, I explained to the audience. The Supreme Court required 170 years to clearly define the contours of the Sixth Amendment to the U.S. Constitution – a fundamental provision of the Bill of Rights establishing the principle of legal assistance to those accused of committing a crime.[81] Extending the right to counsel for the indigent can be a long process in the making for a relatively young government and legal regime. In Togo, the practices and funding would take time to catch up with the legal texts. This slow development of a right to representation contrasts with the civil law system of stipulated rights inherited from the French colonial empire.

I went on to describe a second unique method of the American legal system that could be instructive in Togo's struggle to provide services to the indigent: the development of clinical programs. Through these programmes, law schools have set up clinics permitting students to work under the supervision of lawyers, or skilled teachers, and hold them accountable to indigent clients.[82] Indeed, clinical education has developed elsewhere in Africa, in Anglophone countries[83] and in legal regimes with no longstanding clinical or practice-orientated tradition. [84] Although the

80 In addition to clinical legal education and *pro bono* representation, the themes of an independent judiciary, mediation and alternative dispute resolution are also popular and have made up the core of my other African programme visits.

81 Gideon v. Wainwright, 372 U.S. 335 (1963).

82 A trend that began in the United States and moved to post-Soviet Europe is now enshrined in European Union higher education curriculum policy. *See generally*, Lusine Hovhannisian, *Clinical Legal Education and the Bologna Process* 12-17 (Public Interest Law Institute, 2006), *avail. at* http://old.pilnet.org/index.php?option=com_content&view=article&id456:pili-papers-no2&catid=122:featured (last visited 21 Nov. 2011). The so-called Bologna Process is an attempt to make EU higher education systems more compatible, competitive and quality enhanced. *Id.* at 16.

83 In conversations on a subsequent visit to Cameroon, my interlocutors suggested that the dominant French-speaking civil law regions of the country might be more receptive to the concept of *pro bono*, and perhaps clinical education, if they saw successful models in English-speaking western Cameroon, with its common law tradition – or perhaps even neighbouring Nigeria, which now boasts six law faculty legal aid clinics. *See*, Sama, *supra* note 72 at 156, 158 (noting common law practice of assigning defence counsel in capital cases and early 21st century bar association experience with public legal aid centres, in partnership with the British Council). *See also*, Network of University Legal Aid Institutions, Open Society Justice Initiative & Open Society Institute, *Clinical Legal Education Curriculum for Nigerian Universities' Law Faculties/Clinics* (Oct. 2006).

84 This is not just about North meets South, *i.e.* First World meets Third World. There are a number of countries without a vigorous tradition of public interest lawyering, much less law school preparation for this kind of practice or practical training. *See, e.g.*, Peter A. Joy, Shigeo Miyagawa, Takao Suami & Charles D. Weisselberg, *Building Clinical Legal Education Programs in a Country Without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study*, 13 Clin. L. Rev. 417 (2006). Professor Grady Jessup suggests that a "development law clinic" – not to be confused with the discredited "law and development" movement – is a worthwhile model for those in developing nations, as it is concerned with nation building or national development." Grady Jessup, *Symbiotic Relations: Clinical Methodology – Fostering New Paradigms in African Legal Education*, 8 Clin. L. Rev. 377, 400 (2002). Its "design and curricular offerings would take into account the conditions of the country and train law students as future leaders and lawyers to help address those conditions [footnote omitted]." *Id.*

clinical model, as we have come to praise it, is not intrinsic to common law, [85] the development of law school clinics to provide service appears to be a creature of the Anglo-American system. In contrast, the Western European civil law countries – and France in particular[86] – have historically failed to embrace clinical education or *formation pratique*. [87]

A third easily translatable method for providing service employed in the U.S. legal system is the notion of mandatory pro bono hours for every practising attorney. The American Bar Association has "set the bar" by placing responsibility on each attorney to aspire to contribute a certain number of uncompensated hours to the defence of indigent clients and worthy cases or causes. [88] In Africa, a system of *pro bono* work may be emerging, in which lawyers and paralegals provide free representation to indigent criminal defendants, independent of any state aid. [89] Paralegals have

85 For an overview of models for clinical education outside the United States, with an emphasis on rationale and the importance of diverse, organic and country-specific programmes, *see generally*, Wortham, *supra* note 6 and Bloch, *supra* note 31. Professor Bloch warns against adopting a "clinical imperialism" approach in designing overseas curriculum and programme. *Id*. at 132. This advice could also be heeded on one's home turf. *See*, Suzanne M. Rabé and Stephen A. Rosenbaum, A "*Sending Down*" *Sabbatical: The Benefits of Lawyering in the Legal Services Trenches*, 60 J. Legal Ed. 296, 297, n. 2 (2010) (commenting on divisions amongst law faculty engaged in the clinical or experiential education enterprise). *See also*, Richard J. Wilson, *Ten Practical Steps to Organization and Operation of a Law School Clinic* (Feb. 2004) (unpublished paper on file with author) (mechanics of creating a clinic) and Ojienda & M. Odour, *supra* note 70 at 53-59 (suggestions on implementing clinical programme at African university). Kenyan Researchers Ojienda and Odour write that clinical legal education "has been defined simply as learning law by doing law…a method of instruction in which students engage in varying degrees in the actual practice of the law." *Id*. at 49 (citation omitted).

86 In a telling remark, a colleague on the Université d'Artois law faculty replied to one of my emails with: "*Qu'est-ce que tu entends par' clinique juridique'?*" ("What do you mean by 'legal clinic'?")(Email from Arnaud de Raulin, 15 Aug. 2007)(on file with author). Professor Rick Wilson writes of one dual-degree French student who quipped: "After studying in France, I have no idea what the practice of law in France must be like." Wilson, *supra* note 11 at 832. For an explanation of the resistance of civil law countries to clinical education, *see* Norbert Olszak, *La Professionalisation des Etudes de Droit: Pour le Developpement d'un Enseignement Clinique*, 18/7203 Recueil Dalloz 1172 (5 May 2005)(noting benefits of the venerable medical school training model and France's lagging approach to clinical education for law students).

87 Reforms in European legal education call for more emphasis on practical experience. See, Hovhannisian, supra note 82 at 14 (EU reform spurred by "rapidly changing legal environment," growing number of students and, in post-Soviet Europe, by governments transitioning to democracies). Notwithstanding the relatively late and tentative experimentation with clinical education in many civil law countries, there is nothing inherently incompatible between this methodology and the civil law system. But *see*, Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale Hum. Rts. & Dev. L.J. 117, 140 (2005)(noting importance of recognising system differences).

88 American Bar Association, Model Rules of Professional Conduct, Rule 6.1, *supra* note 39. Although the tradition in the United States is longstanding and increasingly formalized, it was not until October 2009 that the first national *pro bono* week was inaugurated.

89 See, *e.g.*, African Commission on Human and Peoples' Rights (ACHPR) Resolution on the Right to a Fair Trial and Legal Assistance in Africa (1999) and Dakar Declaration and Recommendations (hereafter, 1999 ACHPR Resolution/Legal Assistance and Dakar Declaration), supra note 91 at 169, 175 (states parties should "[i]n collaboration with Bar Associations and NGOs, enable innovative and additional legal assistance programs to be established including allowing paralegals to provide legal assistance to indigent suspects at the pretrial stage and pro-bono representation for accused in criminal proceedings"). *See also* David McQuoid-Mason, *A Series of Pointers Clarifying the Role of Paralegals*, in Access to Justice in Africa, *supra* note 3 at 291-295.

made a significant contribution to the legal assistance efforts in some nations [90]

I concluded my remarks by describing some of the independent efforts within Africa to incorporate the idea of *pro bono* service into the practice of law. Various declarations and other accords adopted by the African Commission on Human and Peoples' Rights in the last decade or earlier call on the courts, the bar and law faculties to take on a greater role in assuring the judicial systems are accessible to their fellow citizens, particularly long-term detainees.[91] Although ratification of these texts does not by itself guarantee effective implementation, [92] the principles enunciated in them should nonetheless inform any African legal aid scheme.[93]

Curiously, most seminar participants at Ghis Palace seemed to be unfamiliar with the declarations and action plans adopted by a series of *African* congresses of jurists, all of which have provisions requiring their promulgation and publication for lawyers, law students and the population at-large. Again, the existence of the texts does not ensure that they are transmitted, even to those studying, teaching or practising law.[94] This lack of familiarity also applied to knowledge about legal aid laws on the books in neighbouring countries, some dating back to the early years of independence.[95]

Despite the relevance of outside models, I kept in mind the reality that in adapting a legal aid model, each country must take into account its own laws, traditions, habits and customs. [96] "The transplantation of laws and legal institutions is not always wrong, but formalistic transplantation should come with a caveat emptor. . . ."[97] Intermediary authorities can be more effective when

90 *See*, *e.g.*, Clifford Msiska, Rhoda Igweta & Edouard Gogan, *The Paralegal Advisory Service: A Role for Paralegals in the Criminal Justice System*, *in* ACCESS TO JUSTICE IN AFRICA AND BEYOND, *supra* note 3 at 145 and Geraghty *et al.*, *supra* note 37 at 65-71 (discussing virtues of paralegal model). *See also* Henry Phoya, *The View From Government*, *in id.* at 31-32 (court backlogs and insufficient numbers of lawyers, as well as traditional reliance on informal justice, favour Malawi's Paralegal Advisory Service) and Vivek Maru, *Timap for Justice: A Paralegal Approach to Justice Services in Sierra Leone*, *in id.* at139 (variety of advocacy tasks provided by *Timap* ("Stand Up Together") paralegals, based on South African model, in nation where there is distrust of corrupt formal justice system and rural population has no access to lawyers).

91 *See*, *e.g.*, Lilongwe Plan of Action, *supra* note 32, at 48-49. *See also*, UN Basic Principles on the Role of Lawyers (1990), *reprinted in* Access to Justice in Africa, *supra* note 3 at 268-269; and 1999 ACHPR Resolution/Legal Assistance and Dakar Declaration *reprinted in id.* at 169, 177 ("Bar Associations should…[e]stablish programs for pro-bono representation of accused in criminal proceedings...").

92 Sama, *supra* note 72 at 161.

93 *See generally*, ACHPR Resolution on the Right to Recourse and Fair Trial [sic] (1992) *in* Access to Justice in Africa, *supra* note 3 at 167-68 (right of detainees to prompt judicial review, trial within reasonable time, legal aid for the needy. *See also* ACHPR Resolution/ Legal Assistance and Dakar Declaration, *id.* at 169, 173 ("It is the duty of governments to provide legal assistance to indigent persons in order to make the right to a fair trial more effective.").

94 *See*, Geraghty & Quensah, *supra* note 14 at 97, 99 (outdated texts, inaccessible legal information and technology, poorly stocked libraries) and Dauphinais, *supra* note 10 at 104-05 ("sophisticated-looking statutes and regulations" belies actual knowledge and familiarity due to unavailability of legal texts).

95 *See*, *e.g.*, Loi No. 61-103/AN-RM du Mali (18 Aug. 1960)(statute setting out terms for legal assistance in civil and criminal matters) and Arrêté du Sénégal (31 Jan. 2006) (establishing commission to administer legal aid funds). Again, enacting legislation is only the first step. Professor Bloch recently observed that "the overall state of access to justice in Africa remains 'incomplete' due largely to the lack of government-sponsored legal aid schemes." Bloch, *supra* note 31 at 118 n. 21 (*citing* First All-African Colloquium on Clinical Legal Education (June 2003), *avail. at* http://www.justiceinitiative.org/acivities/led/cle/durban2003/Durban_report.pdf).

96 Sarah Cliffe & Nick Manning, *Practical Approaches to Building State Institutions*, in Charles T. Call, *supra* note 6 at 169.

97 Jensen, *supra* note 6 at 136.

dealing with laws that are "broadly compatible with the pre-existing legal order"[98] and governments are more likely to allocate resources to enforcing and developing the law and legal institutions when adapted to local needs. Furthermore, without such integration of the pre-existing legal structure, the challenge of providing access to justice would prove to be much more formidable.

Mediation and other means of informal dispute resolution are some of the compatible models I highlighted for the seminar audience. [99] While one can hope to improve access to courts and enchance the court personnel and infrastructure, a far more affordable and realiseable short-term goal may be to sensitise village or neighbourhood *chefs*, councils of elders and family law judges, already engaged in traditional African conflict resolution, about contemporary human rights and other legal norms.[100] The focus on encouraging good decisions at the local level also helps to strengthen new laws.[101]

Lastly, having proposed several models for guidance and discussed their applicability, I urged the creation of a law school-associated clinic in Togo, which could really benefit from a theory-practice collaboration resulting from the recent partnership agreement between the local bar association and the University of Lomé.[102] In short, Togo presented a rare opportunity to establish a clinic in

98 *Id*. (based on extensive regressions; footnotes omitted). The observation is not peculiar to developing countries. "Historically, the legal profession has resisted change and is generally slow to adapt to modifications to a system in which lawyers feel knowledgeable and adept….lawyers will be more accepting of change if they feel that they are involved in the process, rather than having change forced upon them.(citations omitted)." Michael King, Arie Freiberg, Becky Batagol & Ross Hyams, Non-Adversarial Justice 230 (2009).

99 The movement to use alternative forms and forums for resolving legal disputes is one of the most dramatic changes in the practice of law, beginning in the latter part of the twentieth century and continuing. According to a group of common law scholars, "The emergence of a wide range of non-adversarial processes requires a re-appraisal of the conventional view of the lawyering role." *Id*. at 230. Embracing non-adversarial methods also requires a change in legal education; clinical education already incorporates a good dose of non-adversarial justice methodology. *Id*. at 240-43, 248-50.

100 *See*, Stephen A. Rosenbaum, *Le règlement non-juridictionnel comme alternative aux situations de crise in* Situations d'urgence et de droits fondamentaux (2006). This chapter, outlining the benefits of the Senegalese-inspired M.A.R.C. (Méthodes Alternatives du Règlement des Conflits), was drawn from remarks I made at the Etats-Généraux de la Justice, 16-19 June 2003, N'Djaména, Chad.

101 Open Society Institute, *Ensuring Justice for Vulnerable Communities in Kenya* (2004) 26 (comments of former Kenyan national human rights commissioner). The so-called "customary law" offers its own rules and norms in a parallel system of justice. Sama, *supra* note 72 at 153. The Togolese Constitution recognises the traditional *chefs* as the guardians of local traditions and customs (*us et coutumes*). Constitution de la Répblique Togolaise, art. 143. There is a school of thought favouring "deformalizing and deprofessionalizing" dispute settlement in developing countries as a means of assuring poor people's access to lawyers, rather than "seeking to put more lawyers for the poor into the existing formal court structure." See, Wortham, *supra* note 6 at 636 (summarising Professors David Trubek and Marc Galanter's critique of the Law and Development Movement). This conclusion, Professor Wortham adds, anticipates the arguement in the United States about the value of ADR. *Id*.

102 Protocole de Partenariat, *supra* note 34. But see, Dauphinais, *supra* note 10 at 62 (customary laws may be inadequate for and detrimental to development, and multiplicity of legal systems may constitute barrier to national unity).

French-speaking Africa.[103]

Despite the adaptability of the nascent legal infrastructure, setting up any legal clinic would require mastery of some less theoretical dilemmas. As noted, lack of funding and staffing is a huge obstacle for legal clinics in developing countries. The most dilapidated U.S. inner city school is a palace next to some African university campuses. It is not simply that the paint is peeling, windows are cracked, the paths are unpaved and landscaping is untended.[104] Office space is limited and lacking in the usual fixtures and furnishings, classrooms are scarce and libraries are comprised of a few bookshelves and a single computer terminal.[105] The commons, cafeteria, secretarial pools[106] and student meeting rooms are all but non-existent. By comparison, contemporary U.S. law school clinics filled with carrels, computers and phones – and even the vintage storefront legal aid offices – are very well appointed. Before locating a physical space for a future *clinique juridique*, it would be necessary to secure the personnel and institutional commitment.

3e Jour

In the last of the formal seminar presentations, Judge Hohoueto, the Modernisation Programme coordinator, spoke, appropriately enough, on the theme of "Legal Aid and the Modernisation of Justice in Togo." [107] She described the six objectives of the national program, which included improving accessibility to the legal system. Hohoueto stated that widespread illiteracy and ignorance of law were factors that impeded the effectiveness of measures, such as the indigence

103 After my trip to Togo I learned that Rwanda's Université Nationale Rwandaise and Université Libre de Kigali have each established a *clinique juridique* in recent years. The former has a walk-in clinic affiliated with the law faculty in Butaré. *See*, http://www.law.nur.ac.rw/spip.php?article17 and http://www.tufts.edu/talloiresnetwork/?pid=180 (last visited 19 Dec. 2010). Its rural-based clients walk miles for a consultation. Kigali offers a one-credit legal aid clinic for third year students. See, http://www.ulk-kigali.net/index.php?page=programme~~department-of-law. (last visited 9 Aug. 2010). However, Rwanda's official language is now *English*, since the Government transformed its entire education system from French to English in 2008. What was ostensibly a move by the former Belgian colony to join the predominantly Anglophone East African Community and the Commonwealth was also "a means of rejecting Francophone influence and its association with the Hutu regime responsible for the genocide." Chris McGreal, "Rwanda to switch from French to English in Schools," *The Guardian* (14 Oct. 2008). A French-speaking clinic has operated in Morocco for a few years, with support from the American Bar Association Rule of Law Initiative. *See infra*, note 115.

104 Of course, how can the grounds be better kept for universities and government ministries if the *presidential quarters* are not "up to code?" An investigative reporter who recently returned from Guinea describes the presidential compound in terms romantic but despairing: "a series of flat-roofed three-story buildings made out of breeze blocks and painted light green, beige, and apricot...," reminding him of low-income housing projects in Florida. Jon Lee Anderson, "Letter From Guinea: Downfall," *New Yorker* 26, 29 (12 Apr. 2010).

105 Professors Geraghty and Quensah declare that law school libraries "are in a sad state." Geraghty & Quensah, *supra* note 14 at 99. Professor Dauphinais writes of the acute paper shortage and out-of-print textbooks in Tanzania and Uganda, "so that even local materials cannot be mimeographed for distribution to students… students compete for a tattered copy [of a casebook or text] in the library… [and] rely heavily on notes taken during lectures." Dauphinais, *supra* note 10 at 72. Upon his return from a short-term stint in Sierra Leone, San Francisco Attorney Elan Emanuel noted the same infrastructure deficiencies in *government* offices, where electrical power shortages were a regular occurrence and one photocopier was shared by an entire agency. (Conversation of 26 Apr. 2010).

106 The shortcomings are not limited to facilities. Staff productivity may also be lacking. I am reminded of the public sector librarians in Conakry, Guinea who seemed to be on a day-long coffee break. Apparently, things have changed little, several years – and one new Government – later. A recent visitor to the Minister of Justice writes how he was escorted "past [the] receptionist, who was watching cartoons on TV with several other women." Anderson, *supra* note 104 at 30.

107 Remarks of Judge Evelyne Afiwa Kindena Hohoueto. *Rapport Général du Seminaire*, *supra* note 59 at 7-8.

provisions of the Code of Civil Procedure.[108] Following Judge Hohoueto's remarks, some of the assembled jurists raised questions about the issue of court fees and costs and their impact on access to justice. The modernisaton programme called for 100 million CFA francs to be set aside in special funds, expended over five years on an experimental basis to finance legal aid for the poor.

Not only do lawyers and notaries charge fees, but the marshals and bailiffs also require payment before service of summonses or subpoenas, or the seizure of goods.[109] As there seemed to be no provision in Togolese law for fee waivers, judicial process was simply unavailable for numerous would-be litigants.[110]

After the discussion, participants divided into two working groups: The first group's theme, predictably, was: "Reflection and Proposal of a Legal Text on the Utility of Legal Aid in Togo." The second theme was: "Reflection and Writing a Programme for Teaching Legal Aid to CAPA-level Students."

I sat in on the second working group, where some of the seminar's formal plenary session protocols had carried over. In an American setting, a scribe or reporter might volunteer to do duty at this juncture. In this working group, however, a chair was chosen more-or-less by acclamation; he then received comments from the others in an orderly fashion. None of the academics – if any remained at the symposium – participated in this group, but there were veteran attorneys and those who had recently been students themselves. It also appeared that any recommendations made at this gathering about a changed curriculum or establishment of a legal clinic would be subject later to a formidable and centralized decision-making process. At a minimum, a change in law school policy or practice would need approval by University authorities or even the Ministries of Education and Justice.[111]

The working group discussed the addition of new law courses: Legal Aid, Social Justice, Clinical Techniques, Legal Practicum. There was also talk about training paraprofessionals, and references

108 Sections 405, 406 & 407. A lawyer activist from neighbouring Cameroon agrees that illiteracy and rural isolation contribute to the lack of awareness of legal aid schemes and fundamental rights. Sama, *supra* note 72 at 160.

109 In the Democratic Republic of Congo, for example, police officers may ask crime victims for "fees" before an investigation or arrest. International Bar Ass'n & Int'l Legal Assistance Consortium, *Rebuilding Courts and Trust: An Assessment of the Needs of the Justice System in the Democratic Republic of Congo* 21(2009) (hereafter *Rebuilding Courts and Trust*), *avail. at* http://www.ibanet.org/Article/Detail.aspx?ArticleUid=6C2BE523-F512-48C1-B09C-FC9A8B1D0AAB.

110 Even in countries that allegedly offer fee waivers, it may still be difficult to actually obtain one. For instance, in the Democratic Republic of Congo, a would-be legal aid recipient must first obtain a certificate of indigence. Local authorities may charge from $15 to $30 issue one. *Rebuilding Courts and Trust*, *supra* note 109 at 21. Under Cameroonian law, attorney services must be remunerated, which "seems to erode the very essence of legal aid, as it implies that...lawyers are only available to those who can pay." Sama, *supra* note 72 at 154 (*citing* Law to Organise Practice at the Bar, No. 90-59, § 1 (19 Dec.1990)).

111 According to one analysis, it has been the *private* law schools – with their younger generation of faculty and competition for students – who have been quick to embrace innovative curriculum, such as clinical education. Hovhannisian, *supra* note 82 at 14-15. In the francophone African academic world, this observation is borne out by the receptiveness of both the Université Libre de Kigali (Rwanda), see *supra* note 103, and the Université Libre des Pays des Grands Lacs (DRC), which has recently indicated an interest in starting a law school clinic, in partnership with an NGO, to serve survivors of gender-based violence in rural Eastern Congo.

to clinical education in South Africa.[112] Externships, as part of the law school curriculum, could offer future lawyers the opportunity to work directly in law firms, NGOs and public law offices. For example, students would work under the supervision of an attorney for a specified time, for the purpose of acquiring professional experience, absorbing values inherent to the profession and mastering the professional code of ethics.[113]

In examining possible curriculum changes, the group focused on instituting practical or skills-based clinical education, inculcating the spirit of volunteerism and social justice, permitting students to acquire legal knowledge before becoming practitoners. As already noted, there are now legal clinics throughout Africa. These clinics sometimes specialize in a particular field of law or clientèle.[114] But, with few exceptions, these clinics are all situated in Anglophone countries with a common law tradition. [115]

Nonetheless, the obstacles to developing law school clinics in Africa have more to do with traditional legal *educational* models than the country's particular inherited legal scheme. This problem begins with the type of instructors available. For the most part, professors are recruited directly from the Academy, with no law practice experience or training. Classes are almost exclusively about theory, delivered lecture style in a large hall, with minimal to no student

112 For lessons gleaned from the South African experience, *see generally* Maisel, *supra* note 41. *See also*, David McQuoid-Mason, *The Supply Side: The Role of Lawyers in the Provision of Legal Aid – Some Lessons from South Africa, in* Access to Justice in Africa, *supra* note 3 at 112: (law clinics provide free legal services to the needy in the lower and high courts in both criminal and civil matters in South Africa; law students may not represent clients in court but may work on other aspects of cases.

113 The literature on externships is too voluminous to cite here. With regard to programmes for large student bodies, *see, e.g.*, Mary Jo.Eyster, *Designing and Teaching the Large Externship Clinic*, 5 Clin. L. Rev. 347 (1999) and James H. Backman, *Practical Examples for Establishing an Externship Program available to Every Student*, 14 Clin. L. Rev. 1 (2007). For an extensive annotated bibliography on externships, visit http://www.cua.eduen Practical Steps/lexternweb/index/htm.

114 *See* Geraghty *et al.*, *supra* note 37 at 75 (noting that many nations have established, or are currently establishing, legal aid clinics associated with law schools). Clinics exist in Sierra Leone, Ghana, Nigeria, Kenya, Uganda, Tanzania, Zimbabwe, Botswana, Malawi, South Africa and Lesotho, although not all are affiliated with law schools. Geraghty & Quansah, *supra* note 14 at 100. Clinics have also been put in place in Rwanda, Morocco, Egypt and Ethiopia, where the legal systems are not derived from English common law. A new environmental law clinic opens its doors in February 2012 at the Helwan University Faculty of Law, just outside Cairo.

115 In 2005, a human rights legal aid clinic was established at the Mohammedia, Morocco law faculty at the University of Hassan II with support from the American Bar Association African Initiative and the U.S. State Department. Moroccan law is based on French civil law and French is still the primary language of university instruction. The clinic, the first of its kind in North Africa, is now under law faculty management. https://www.abanet.org/rol/news/news-morocco-curriculum-addition.html (last visited 26 June 2010). *See, Practical Manual for Activities of the Centre de Conseil et d'Assistance Juridique pour les Droits Humains* (Mar. 2006)(on file with author). See also *supra* note 103 (clinics operate at Rwandan law schools, where the official language is now English, but French is still widely spoken in professional, commercial and government sectors.). To the extent it is important for prospective clinicians to look for support and guidance from peer institutions, the University of Lomé should develop a working relationship with the francophone faculty in Rwanda or Morocco. While there are a limited number of American clinicians who are proficient in French, some of the Canadian law schools have established French-language clinical curricula and programmes. *See, e.g.*, https://capsuleweb.ulaval.ca/pls/etprod7/bwckctlg.p_disp_course_detail?cat_term_in=201001&subj_code_in=DRT&crse_numb_in=2206 (*service juridique* offered for "university community" at Université Laval) (last visited 2 Aug. 2010); http://www.droit.umontreal.ca/baccalaureat_droit/FormationPratique.html (similar clinical offering under the rubric of *formation pratique* at the Université de Montréal)(last visited 2 Aug. 2010); and http://mlic.mcgill.ca/CIJM.html (McGill University's bilingual *clinique d'information juridique*)(last visited 9 Aug. 2010).

interaction or opportunities for *formation pratique*.[116]

Upon further working group discussion, it became apparent that students who enter the faculty of law right out of secondary school may have too little background or professional orientation at that stage to fully participate in a legal clinic designed for would-be lawyers.[117] This viewpoint has been echoed by other scholars in the field. Professor Frank Bloch, an active GAJE member, has previously observed that a clinical programme for an upper teen at an undergraduate college of law in a "lecture-based, code-dominated curriculum" may look different than it does for his American law school counterpart. According to Bloch, the American student tends to be older, desirous of a career in the legal field and engaged in an "interactive and advocacy-oriented course of study." [118] Professor Kirsten Dauphinais notes other ways in which African law students may be unprepared to adopt some of the American innovations.[119]

One must adopt a model that is compatible not only with national legal institutions and practices, but also with the educational system. Professor Leah Wortham, a veteran clinician in the international arena, goes further with her sage advice that American consultants not be wedded to their "home country model" of what constitutes a law school clinic.[120] Professor Richard Wilson has devised a ten-step program in clinic construction, complete with five foundational

116 *See*, Geraghty & Quensah, *supra* note 14 at 90, 97, 100 and Dauphinais, *supra* note 10 at 67-69, 91.

117 This point was reinforced in conversations I had with faculty and others on subsequent programme visits to the Universities of Dschang, Yaoundé, Maoura and N'gaoundéré, in Cameroon.

118 Bloch, *supra* note 31 at 115. *But see*, Hovhannisian, *supra* note 82 at 15 (European universities that enrol students in law faculties just after secondary school now recognise the need for "practical training at the early stages of legal education") and James Marson, Adam Wilson & Mark Van Hoorebeak, *The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective*, INT'L J. CLIN. LEGAL ED. 29, 41-42 (Aug. 2005) (noting appropriateness of clinics at undergraduate level).

119 Being accustomed to overly formalistic, theoretically-based teaching is only one barrier. Students may come to the university from resource-poor secondary schools. English (or French) may well be a second, third or fourth language and students from diverse backgrounds may have had little cross-cultural interaction before they begin their tertiary education. Dauphinais, *supra* note 10 at 95. The challenge is also "teaching students in an educational culture that is not student-centered, that is lecture-based, and that favors passivity and deference…" *Id*. *See also*, Geraghty & Quensah, *supra* note 14 at 100 (warning that "pervasive politeness" of African law students not be mistaken for enthusiasm for interactive teaching methods).

120 Wortham, *supra* note 6 at 670-74. Wortham, however, seems to discourage the practicum or externship model as *bona fide* clinical education. *Id*. at 660. *But see*, Geraghty & Quensah, *supra* note 14 at 100 (qualifying "carefully supervised student externships" in government agencies, NGOs, and human rights organisations as a "clinical" model) Wortham, *supra* note 6 at 670-74. Wortham, however, seems to discourage the practicum or externship model as bona fide clinical education. Id. at 660. But see, Geraghty & Quensah, supra note 14 at 100 (qualifying "carefully supervised student externships" in government agencies, NGOs, and human rights organisations as a "clinical" model) Id. at 2.Pedagogically, financially and/or logistically, the leap to an in-house clinic may be just too great for some institutions— at least in the initial stages of experimenting with experiential education. The externship or field placement has evolved into a more robust and credible vehicle for learning and practice, thanks to efforts by the American Bar Association and by a number of able law school professionals and academics—including Professor Wortham herself. *See, e.g., ABA Standards and Rules of Procedure for Approval of Law Schools*, Standard 305 (Study Outside the Classroom), *avail. at* http://www.americanbar.org/groups/legal_education/resources/standards.html (last visited 21 Nov. 2011). *See also*, Learning From Practice (J.P.Ogilvy, Leah Wortham & Lisa G. Lerman, Eds.) (2d ed. 2007) (textbook used in a number of U.S. law schools for extern students' classroom component). On the other hand, Professor Dauphinais points out that "[t]he average African law firm is small and often poorly organized" and experienced lawyers may be "too busy to assist in the development and training of the young lawyers" and "may merely perpetuate the relatively low standards of old." Dauphinais, *supra* note 10 at 91-92. This critique is familiar to externship detractors. But see, Ojienda & Odour, *supra* note 70 at 56-57(externships utilised, together with classroom simulations, to give students clinical experience that is otherwise absent in law school curriculum).

principles.[121]

Although the working group had not raised the issue, I knew from past experience and research that funding the clinic could also prove to be a huge hurdle. The American government's expectation is that the host government or academic institution will commit its own resources to a clinic, and not rely exclusively on the United States or other foreign donors. Togo was not in a position to easily allocate such funds.[122] As I listened, I was pleased with the direction of the discourse, as these were themes I had promoted earlier in the week. But, as a foreign advisor and non-Togolese jurist, I was wary of steering the group toward a predetermined conclusion, rather than allowing the Togolese to organically develop and nurture their own proposals.

4e Jour

The final plenary of the symposium was devoted to reports from the working groups.[123] Members of Group One proposed the adoption of an executive order or *décret* to implement the existing indigent assistance statute, Article 10, by laying out a definition of legal aid, conditions of access and limitations. Even in this proposal there remained a near obsession with the failure of the Executive to implement the statute's spare but precise text for almost three decades. It was as if until the decree were issued and the bureaucratic machinery cranked up, no legal assistance could be offered the poor. On the other hand, the Executive delay might be considered reasonable in light of the Constitutional separation of powers between the independent judiciary and the Government.[124] Under this framework, action by the executive branch to implement judicial guarantees such as access to the courts, might conceivably be viewed as interference. This tension may well explain the stagnation of the law, even in light of a democratic transition in Togo.

Group One also called for the installation of orientation and assistance booths in all Togolese courts. The group advocated for promotion and reinforcement of the role played by the bench

121 Wilson, *supra* note 85. Under Wilson's definition of a clinic, it must be part of the law school curriculum, offered for credit, and be accompanied by a course using experiential methodology. Its students should be engaged in actual cases or projects, supervised by experienced attorneys, on behalf of clients who may otherwise go unrepresented. Professor Iya, writes, *supra* note 65 at 18, that clinical education in Africa may be called "skills training" or "professional training." These are concepts that tend to be devalued by American purist clinicians, as well as doctrinal law faculty. The former view them as a diluted form of the live-client, intensive supervision and reflective lawyering experience, and the latter dislike the trade school connotation. For an overview of how African clinical models draw on professional skills training and simulation and writing exercises to complement live-client representation, *see, e.g.*, Dauphinais, *supra* note 10 at 93-94, 111-13 and Ojienda and Odour, *supra* note 70 at 53-56.

122 Funding, and particularly *local* funding, will be a constant concern. The small faculty-student ratio inherent in most clinical programmes is reason enough to ask how can one expect African law schools to invest in what their American counterparts continue to view as an expensive educational venture? Geraghty & Quensah, *supra* note 14 at 102. In an important display of solidarity and continental self-determination, the African Union (AU) has urged richer African nations to regularly fund higher education in poorer nations where internal and other sources were not available. AU, Second Decade of Education for Africa (2006-2015) Plan of Action, Revised at 2 (Aug. 2006), *avail. at* http://www.education.nairobi-unesco.org/PDFs/Second%20Decade%CC20of%CC20Education%CC20in%Cr ica_Plan%20of%20Action.pdf (*cited in* Geraghty & Quensah, *supra* note 14 at 96, n. 52). This is not likely to lead to overflowing coffers any time soon. Hence, the "call for action" for the philanthropic and academic communities to fund personnel and infrastructure and otherwise support innovative, revitalized African legal education. *Id.* at 104. *See also*, Dauphinais, *supra* note 10 at 95, n. 233 & 120 (limited public funding and other resource constraints in African law schools).

123 *Rapport Général du Seminaire, supra* note 59 at 9-10.

124 Sama, *supra* note 72 at 161.

and bar. This approach would include legal aid programmes based in law faculties. These innovations could truly foster a *pro bono* ethic, building on the current *bénévolat* and annual visits by lawyers to the prisons.[125] It could also give meaning to the recently adopted protocol between the Lomé bar and the law school.

Group Two proposed similar changes. It called for a training programme, with theoretical and practical emphases, as an elective at the judicial college and faculty of law. The theoretical curriculum would focus on conceptual definitions, ethical norms, legal foundations, inter-university exchanges and alternative methods of conflict resolution. The practical programme would concentrate on statutory amendments [*redaction d'actes*], "drop-in and orientation" centres and legal clinics,[126] and reliance on paralegals.[127] The objective, the group's members said, was to give future attorneys and judges the necessary tools to familiarise citizens with their rights and facilitate their access to justice. When other seminar participants expressed some concern about the clinic proposal, the working group responded that its mandate was to suggest a general orientation about instilling a "legal aid consciousness," while leaving it to the University to determine the practical methods of teaching the subject matter.[128]

125 In countries without large law firms, a central agency, such as a bar association, may assign cases to *pro bono* attorney members. Geraghty *et al.*, *supra* note 37 at 80. However, under such schemes, assignments often fall to young and inexperienced lawyers. To develop a more effective model for delivering legal aid, even with financing challenges, the ABA Rule of Law Initiative partnered with the Moroccan Federation of Young Lawyers and the Rabat Bar Association to organise a study tour for six prominent Moroccan lawyers. https://www.abanet.org/rol/news/news_morocco_new_legal_aid_model_0110.shtml (last visited 26 June 2010). Of course, a new lawyer's eagerness and earnestness should not be discounted. One West African commentator observes that the "new wigs" may even wait in the courtroom for cases to be assigned to them, a sign of "their disposition to provide legal assistance to desperate defendants." Sama, *supra* note 72 at 157.

126 According to Professor Wilson, "…[A] law school can call its clinical legal education program by any name – live-client clinic, legal aid, field placement (externship or internship), street law, simulation or role-play, apprenticeship or any other local name – so long as the focus is on student experiential learning – learning by doing – for academic credit." Wilson, *supra* note 11 at 829. Professor Bloch asserts that "access to justice" is a "central component" of clinical education in the U.S. and abroad. See, Bloch, *supra* note 31 at 111 & n. 1 (*citing* sources that document role law school clinical programmes play in assuring equal access to law and the legal system). The three key elements of clinical education, according to Bloch, are: "professional skills training, experiential learning, and instilling professional values of public responsibility and social justice." *Id*. at 121. *See*, Appendix II, A Bleu*print* [sic] *for a Francophone African Law School Clinic*.

127 On the current use of paralegals and non-lawyers in African legal regimes, *see* Geraghty *et al.*, *supra* note 37 at 53; Stapleton, *supra* note 3 at 20. David McQuoid-Mason, *The Supply Side: The Role of lawyers in the Provision of Legal Aid – Some Lessons from South Africa*, *id*. at 97. *See also*, David McQuoid-Mason, "Pro Bono Work by the Legal Profession and Clinical Legal Education" (powerpoint, n.d.) (on file with author); Iya, *supra* note 65 at 19 (clinical programmes used to train paralegals); and Stephen A. Rosenbaum, *The* Juris Doctor *is* In*: Making Room at Law School for Paraprofessional Partners*, 75 TENN. L. REV. 315 (2008) (urging law schools to co-educate future lawyers and future lay advocates and paralegals).

128 The skepticism about clinical methodology expressed by the Togolese bar and academics might also resonate with American clinicians who have a fine-tuned sense of what is fundamental to a clinic. As noted above, the Projet Clinique Juridique Berkeley-Goma, in trying to launch a law school clinic for women survivors of gender-based violence, had to temper its ideas about programme content, service delivery and objectives – even on what might be considered the essentials – when reconciling its proposal with the one conceived by the Goma-based law faculty and NGO. Flexibility is the byword of veteran international clinicians Bloch, Wilson and Wortham when it comes to designing the appropriate model. *See*, *supra* notes 120-21,126 and accompanying text. Professor Jessup also reminds us that "[a]lthough the American experience is informative and may provide guidance to an African law school contemplating a clinical program, it is imperative that any attempt to incorporate a clinical experience into a current African law school curriculum take into account a cognizance of the political structure of governmental organizations and customary norms. [footnotes omitted]." Jessup, *supra* note 84 at 380.

Before the closing ceremony, those assembled adopted the recommendations of both working groups in a final report.[129] The session adjourned and we abandoned the air-conditioned hotel meeting room for the hot, dry, late afternoon air. Participants completed twenty evaluation forms and returned them to the Embassy staff.

With the exception of remarks about hardship associated with travel to the site, the comments were all positive in endorsing the seminar themes and recommendations. When asked to name three ideas they retained from the seminar for use in their professional life, many referred to the concept of practical legal education, including: *cliniques juridiques*, externships for upper-level law students, and fostering a legal aid ethic in the curriculum offered at the law faculty and the Ecole Nationale de la Magistrature. Others referenced the need to finally implement Article 10, create a legal aid funding scheme, establish a *pro bono* programme, and to set affordable attorneys' fees for clients. Another mentioned increased utilization of paralegals and more know-your-rights outreach to the public about legal assistance. One participant liked the comparative law perspective. [130]

As for suggestions for the future, respondents indicated that more such practice-orientated continuing education seminars should be held. They urged expanding participation to bailiffs, marshals, clerks, notaries, law students, judicial college students, senior attorneys, the human rights minister, and members of civil society and non-governmental organizations. Rather than restrict such gatherings to the capital, participants urged that seminars be held in other cities throughout the country and that they be open to the media. Another respondent was anxious to see positive effects from the group's recommendations and produce the fruits of their labour ("*produire leurs fruits*") in a reasonable amount of time. In the same vein, another voiced concern that the work product not collect dust in file cabinets ("*classés dans des tiroirs*"). [131]

Before planning the next steps, the coordinators and a small group of participants celebrated the close of the program at a dinner at the home of Maître Attoh-Mensah. An established member of the bar who supports human rights causes and appeared to share the aims of the seminar, Attoh-Mensah had previously traveled to the United States on State Department legal reform exchanges.[132] The Chair of National Human Rights Commission, [133] Koffi Kounté was among the guests. One of my Embassy hosts had informed me that he had a genuine concern about prisoners

129 *Rapport Général du Seminaire*, *supra* note 59 at 10.

130 Fiches d'Evaluation (on file with author).

131 *Id*.

132 Me. Attoh-Mensah and his counterparts in other African nations are the kind of informal leaders who could be influential in promoting new legal initiatives. They could also just as easily be dismissed as privileged blowhards or junket seekers – or even what Dean Garth, *supra* note 16 at 396, calls the "cosmopolitan elite" – whose objectives are focused more on self-aggrandizement and economic or political gain than socio-juridical improvements. In her evaluative toolkit for funding legal clinics, Professor Wortham reserves a large space for testing the "competence, sincerity and integrity" of those involved. Wortham, *supra* note 6 at 669. Although a challenging trait to measure, the advice is equally apt for funding *any* start-up. Wortham suggests relying on locals to evaluate and to do over time, and in multiple settings. *Id*. at 669-70.

133 Constitution de la République Togolaise, art. 133 (creation of the Commission Nationale des Droits de l'Homme, an independent national human rights commission).

with mental illness. [134] He struck me as someone in a position of responsibility with whom I should have some follow-up contact about treatment of detainees. We exchanged email addresses. We talked about the delays in processing prisoner cases[135] and how this was particularly detrimental for mentally ill detainees. I suggested that student or postgraduate *stagiares*,[136] might help judges alleviate their docket.

He seemed a bit skeptical at the prospect of anyone but the judge actually managing a case. To me, however, encouraging the judiciary to utilize students is merely a variation on the larger effort to convince the bar to supervise and train its future members.

We continued our informal conversations over a meal served in a gated courtyard under the stars, with no particular agenda and no need for decision making. It is important to have this type of meeting with prospective reformers, outside of formal settings. There is more opportunity for candor and reiteration. This is particularly the case where the conference is long on theory and short on pragmatics. For real change to take place, we must develop interpersonal relationships to build confidence and to continue the dialogue once the seminar banner is packed away. I regret that I am not always able to maintain these contacts upon departure or to monitor progress on proposed reforms.

5e Jour

The Bar Association devoted the day after the seminar to a presentation of the conclusions and recommendations to the full bar membership and the media. I shared the podium that morning in a darkened hall at the Bar Association headquarters, with the Bar's programme coordinator, Maître Afangbedji, who also served as liaison to the Embassy.[137] The auditorium was full. I recognised very few people from the seminar, and I was uncertain who in this crowd was an attorney, a journalist, a government official or a NGO activist.

Me. Afangbedji and I each spoke briefly about the recommendations made at the close of the Ghis Palace conference concerning legal aid, voluntary lawyer services and legal education. We

134 African prison conditions, including treatment of mentally ill prisoners, is the subject of two extensive human rights declarations issued after pan-African conferences held in the past several years. The declarations are laden with all the right words, just waiting to be given meaning. See *infra* notes 135, 141- 45, 149-51 and accompanying text. As mental health law and disability rights are some of the subjects I teach, I have a particular interest in the sub-population of incarcerated persons with mental disabilities. I also worked as a staff attorney for a disability civil rights NGO for over a decade, although I have not traveled to Africa in that capacity.

135 Notwithstanding statutory and constitutional guarantees, delay in the judicial processing of pretrial detainees is the norm in a number of countries. *See, e.g., Rebuilding Courts and Trust*, *supra* note 109 at 22 (up to 75% of Congolese detainees were awaiting trial in 2009) and Federica Dell'Amico, *The Impact on Prisons: Overview of Problems Leading to High Prison Overcrowding*, *in* Access to Justice in Africa, *supra* note 3 at 297, 299-300 (inefficiency of criminal justice system). *See also*, Kampala Declaration on Prison Conditions in Africa (1996) (hereafter, Kampala Declaration) *reprinted in* Access to Justice in Africa (recommending that judiciary ensure prisoners are kept in remand detention for "the shortest possible period" with regular review), *reprinted in id*. at 223; and Ouagadougou Plan of Action (on Accelerating Prison and Penal Reform in Africa (2002)) (hereafter, Ouagadougou Plan of Action)(recommending speedy processing of trials by police, prison services and courts and reduced delays of remand detention), *reprinted in id*. at 234. These declarations and plans of action, along with other related texts, are also available at http://www.penalreform.org (last visited 16 July 2010).

136 This translates as "apprentices," "externs," "interns" or "pupil-lawyers."

137 Maître Gil-Benoît Afangbedji, Ordre des Avocats, Lomé.

referenced the Lomé bar association-law school protocol signed earlier that year.[138] What neither of us noted is that in establishing a law school clinical programme of any sort, the temptation is to rely on members of the private bar or an NGO-affiliated attorney, as they have more practical knowledge and experience than the professoriat. For long-term sustainability, however, it is necessary to have law faculty involvement.[139]

Questions and comments followed. Most of the audience comments focused on the role of paralegals, law student clinics and student externships. More than one lawyer expressed skepticism about this advocacy model. Their concern generally centered on competition for clients, professional integrity or both. [140] Bar associations in many countries tend to be ingrown and protectionist, with controlled access to membership. Although small in numbers, the Togolese bar is no less concerned than its counterparts in developed countries about non-lawyers giving advice and counsel.[141]

In addition to asking about the programme, members of the media also asked about the United States' human rights record at home. These questions are typical of the inquiries made to official visitors. Reporters and others asked about the death penalty and its uneven application across the states, the status of Guantánamo Bay detainees, police abuse and racism. Although embassy staff during other program visits have sometimes tried to shield me from impertinent or provocative questions, I did not feel the need to censor my answers. In fact, I believe these issues merit discussion even in the context of a ROL conference, in part because a government that is promoting democratisation and celebrating civil society and rule of law must bare its own account. Accordingly, journalists often take advantage of the opportunity to question an American visitor even if these are not the topics on the speaker's menu du jour.

After the press conference and some individual TV and radio interviews, I walked down a long unpaved road with a group of lawyers, in the late morning heat, to one of the principal prisons in Lomé. Most of these lawyers were newer members of the bar, including *stagiares*, and had attended the Ghis Palace seminar. I am not sure if the trip to the prison was impromptu or anticipated, but I was glad for the chance to have a personal observation of the prospective clients whose prolonged detention prompted the renewed call for legal assistance.

About eight to ten of us entered a dusty prison yard in our suits and ties. The scene before us was overflowing with humanity, and yet a degree of normalcy, as if all the hot, sweaty, teeming life of the streets and shanty towns was transported to this sunny open, but densely populated space. I saw only a few uniformed guards, and they did not carry weapons. Near the entry, a plainly lettered sign had been posted by the European Union[142] with the number of current detainees—a number

138 Protocole de Partenariat, *supra* note 34.

139 Wortham, *supra* note 6 at 669. Professor Maisel's colleagues in South Africa agree that the campus leadership must share the clinical vision. Maisel, *supra* note 16 at 487-88.

140 The same comments have been made by private lawyers and bar associations in the West and elsewhere in Africa. *See, e.g.*, Rosenbaum, *supra* note 127 at 322-23 (U.S. attorneys and bar associations voice concern about inexperienced, untrained and/or unsupervised lay advocates) and Open Society Institute, *supra* note 101 at 24 (concern of private lawyers in Kenya).

141 Wortham, *supra* note 6 at 662.

142 The European Union has helped support the pan-African conferences on penal reform has had an on-going interest in detention and incarceration practices in African countries that are recipients of EU assistance. *See, e.g*, http://allafrica.com/stories/200809080090.html (last visited 16 July 2010) (human rights training for Ugandan prison officials).

I do not recall. Was this meant to assure monitors and visitors, or was it displayed as a proud banner, to see how Togo ranks on the overcrowding scale with its neighbours on the continent?[143]

The prison yard was a picture of *petit commerce*, visiting, the biding of time. It was at once industrious and carefree. Off to the sides were dark caves of cells filled with thin mats, and walls hung with laundry and personal effects. There were no bars on the cells. Masses of shirtless men and boys were talking, sitting, lying down, selling, buying. We came as sympathetic observers, and yet it was hard not to feel like voyeurs.

The Kampala Plan of Action, which followed the 1996 Conference on Prison Conditions in Africa, recommends educational activities, skills-based training and a work programme, incorporating elements of self-sufficiency and sustainability.[144] The 2002 Ouagadougou Plan of Action recommends nationally certified vocational training, rehabilitation and development programmes, with ensured access for "unsentenced" prisoners, literacy and skills training.[145] The latter plan also calls for more self-sufficient prisons by fostering prison agriculture, workshops, locally-managed industries and other enterprises "for the good of prisoners and staff."[146] None of that was happening here.

Chez les femmes, the women's section, revealed a slightly different story. The handful of incarcerated women (and one or more with a child) were actually separated from the men. Throughout the world, women are a minority of the prison population, but their numbers are increasing. According to Penal Reform International, the increase is "fueling the global trend" toward overuse of imprisonment and under-use of alternative sanctions.[147] At the Lomé prison, their quarters were more spacious than the men's. They were almost homey in a modest way. Not all was out of sync with the lofty declarations and plans of action: the staff proudly showed us how

143 *See, e.g., Rebuilding Courts and Trust, supra* note 109 at 22 (in DRC, cells are overpopulated, minors not segregated from adults and pretrial detainees are not separated from convicted criminals); Sama, *supra* note 72 at 155 (overcrowding and unsanitary conditions in Cameroon, where "vulnerable groups like women, women with babies, juveniles, the elderly, and terminally ill" are amongst the long-term pretrial detainees). As noted above, three pan-African conferences held since 1996, have resulted in declarations and plans of action aimed at eradicating long-term detention and unsanitary and desultory prison conditions. In addition to the Declarations of Kampala and Ouagadougou, supra note 135, the Lilongwe Declaration and Plan of Action also address legal aid to prisoners. See, Lilongwe Plan of Action, *supra* note 32 at 48-49 (better judicial processing of detention cases, more use of paralegal services, easier access to prisons by NGOs, community-based organisations and faith-based groups). The comparison with advocacy efforts in the United States to eliminate prison overcrowding and impove health care is a bit surreal, given the contrasting conditions and standards. *See, e.g.*, Brown v. Plata, __U.S.__, 131 S.Ct. 1910 (2011) (affirming lower court order that State of California must substantially reduce prison population due to overcrowding); Coleman v. Wilson, 912 F.Supp. 1282 (E.D. Cal. 1995) (mandating overhaul of prison mental health system).

144 Kampala Plan of Action on Prison Conditions in Africa, *reprinted in* Access to Justice in Africa, *supra* note 3 at 226. Many prisoners require only minimal security and "should be accommodated in open institutions." The incarcerated should involve themselves in "educational and productive activitie with the support of staff." *Id*. at 228.

145 *Id*. at 235.

146 *Id*. In addition, the United Nations adopted a set of "minimum rules" for treatment of prisoners in 1957 and another set of rules in 1990 for non-custodial measures for pretrial detainees, as well as principles for the protection of all detained and imprisoned purposes (1988). These are available at http://www.un.org/disarmament/convarms/ATTPrepCom/Background%20documents/CompendiumofUnstandardsandnormsincrimeprevention.pdf.

147 *See Penal Reform Briefing No. 3* (2008)(1), *avail. at* (http://www.penalreform.org/publications/penal-reform-briefing-no3-women-prison-0 (last visited 19 Dec. 2010). The largest numbers of incarcerated women are actually in the U.S., Russia and Thailand. *Id*.

some of the women were learning to sew as an eventual trade.

We were told there was a woman prisoner with a mental disability. "*C'est une folle*."[148] I do not remember if I caught a glimpse of her, isolated in a dark cell, or if there were just the whispers. On the subject of mentally ill prisoners, the Kampala and Ouagadougou conferences yielded some broad legal standards. The Kampala Declaration and Plan of Action, for instance, urge the adoption of "urgent and concrete measures" to improve conditions for persons with mental illness and disabilities, including adequate treatment during arrest, trial and detention, and that access to doctors be allowed.[149] The subsequent Ouagadougou action plan recommends prison alternatives for people with "mental health or addiction problems;" and social and psychological support by professionals.[150]

Yet, there we were, witnessing what we and other legal reformers in Africa hoped to alleviate. It is possible that "sidebar" conversations were taking place outside of earshot, and the attorneys accompanying me were able to process minor cases on the spot, helping to clear the backlog of pretrial detainees. Surely, that is what happens during the periodic *journées de consultation juridique gratuite*. Could those free consultation days be institutionalized through a routine bar association pro bono programme? Could a law student clinic assist those lawyers or help train paralegals, or provide community education and outreach to families, street merchants, secondary school students, rural villagers and others?[151] Could law students serve as externs to magistrates to help them clear the detention backlog? A few small and creative steps could begin to breathe life into the promises embedded in a plethora of declarations, action plans, minimum standards, principles, statutes and constitutions.

6e Jour

As disability rights is the bread-and-butter of my law practise in the United States, I try to find ways to make some connection to the local disability community on these speaker specialist

148 "It's a crazy woman."

149 *See*, Kampala Declaration, *supra* note 135 at 222, and Plan of Action, *id*. at 227. The Declaration also recommends that non-custodial measures be used in lieu of imprisonment. *Id*. at 225.

150 *See* Ouagadougou Plan of Action, *id* at 233 & 235. One of the Ouagadougou Declaration's principles is that governments recognise they are ultimately responsible for ensuring "prisoners can live in dignity and health." *Id*. at 232.

151 *See*, Lilongwe Plan of Action, *supra* note 32 at 49 (encouraging governments to establish prison paralegal services to assist with bail and release, prisoner legal education and self-help, appeals and special assistance to vulnerable groups). A few months before my visit to Lomé, the Embassy published a guide on the rights of detainees. "Le Nouveau Guide des Droits du Détenu Remis aux Autorités," *USA-Togo: Bulletin d'Information de l'Ambassade des Etats-Unis au Togo* 12 (Jan.-June 2007) (on file with author).

visits.[152] The best I managed during my stay in Togo was a Saturday morning excursion to the local marketplace, where my penchant for local artisanry brought me in contact with an organisation supporting people with disabilities. Located in the rural northern zone of Togo, the Coopérative des Handicapés de Niamtougou (CODHANI) is composed of persons with physical impairments who produce crafts for sale in the capital and abroad. Its goal is to improve living conditions for disabled persons and support their social and economic integration into society.[153] I found CODHANI's shop in Lomé, after wandering through a warren of vendors–fabrics, spices, potions, ceramics, household goods–with the help of an Embassy aide and after many inquiries for directions.

In the constellation of recognised human rights, those associated with disability are among the most recently established.[154] In 2005, Togo enacted a law prohibiting discrimination against persons with disabilities in employment, education and access to health care and government services, but, according to the State Department, it is not "effectively enforce[d]."[155] While I would have preferred contact with an advocacy or service provider NGO, I was pleased to purchase colourful tie-dyed fabrics made by and for the economic benefit of individuals with disabilities.

Post-Script

The tape that keeps playing in my head throughout this and other visits goes something like: *Les conferences, les entretiens, les visites*. The lectures, the meetings, the visits. *A quoi ca sert, tout ca?* What is it all about?[156] In the end, it may be simply about a beginning: Perhaps an opportunity for dialogue – between visitor and hosting jurists, or amongst local jurists who rarely get together

152 On a subsequent trip to Africa, the Embassy arranged a visit to the modest headquarters of Goodwill Cameroun, a national multi-disability services and advocacy organisation based in the capital, Yaoundé. It was evident at the time of our meeting – and more so in email exchanges with Goodwill's president since then – that even a brief dialogue with a foreign visitor who understands disability issues is an act of immeasurable solidarity and support for a NGO. *Rapport de Visite à Goodwill-Cameroun* (2009)(on file with author.) A year later, the U.S. Cultural Affairs Officer in Dakar asked if I would meet with a federation of disability rights NGOs. "It's such an under-served population in Senegal," she wrote. "I hope that's not too far off field to ask you to meet with them, but we noticed in your CV that this is also one of your areas of expertise." (Email of 13 Sept. 2010 from Kristin Stewart) (on file with author). The irony in this request was not only the Embassy's off-handed discovery of my primary field of legal expertise, but that management staff at my law office, Disability Rights California, saw little value in my work in Africa, which they considered a distraction from their organisational mission).

153 See, http://www.facebook.com/pages/Coop%C3%A9rative-des-Handicap%C3%A9s-de-Niamtougou/159618054050727#!pages/Coop%C3%A9rative-des-Handicap%c3%A9s-de-Niamtougou/1596180540727?v=info_edit_sections (last visited 12 Nov. 2011).

154 *See*, e.g., United Nations Convention on the Rights of Persons with Disabilities.http://www.un.org/disabilities. Almost one year after my visit, Togo signed the Convention and Optional Protocol, in 2008 and, unlike the United States, it ratified the treaty and protocol in 2011. http://www.un.org/disabilities/countries.asp?navid=12&pid=166#T (last visited 12 Nov. 2011). *See also*, United Nations Office on Drugs and Crime, http://www.unodc.org/unodc/en/justice-and-prison-reform/index.html?ref=menuside (last visited 16 July 2010)

155 U.S. Dep't of State, Country Reports on Human Rights Practices, *supra* note 8. "There was no overt state discrimination against persons with disabilities, and some held government positions, but societal discrimination against persons with disabilities was a problem....Although the law nominally obliged the government to aid persons with disabilities and shelter them from social injustice, the government provided only limited assistance." *Id*.

156 The English does not quite capture the meaning: What is it all about? What is the point in all this?

in the absence of an outside visitor.[157]

It goes without saying that short-term visits and short-term foreign visitors have their limitations.[158] I knew before I left Berkeley that I could not will the establishment of a law school clinic or a volunteer legal services programme in Togo in one week. Nor one semester. Perhaps not even in one year. The logistical and cultural gaps are huge. The successful establishment of any new program or institution takes time and it takes others. There must be more face-to-face exchanges and of longer duration. There must be a greater interchange between Togolese who study, observe, teach or consult abroad – in Africa, Europe or the United States – in law school, law practice or NGO settings, and foreigners who come to Togo to do the same. Any attempt at establishing a clinical system will also require public and private funds, administrative and technical feasibility, and political will.

The key for the consultant is to encourage trends or the creation of a new legal or socio-political culture in a way that does not trigger a divisive response. The question from our host country partners should not be: "How can a *pays en voie de developpement* – or, the Global South – be expected to adopt the measures and practices that are available to a *pays developpé*?" This question misses the mark, because the efforts at issue are not a prescription for establishing relativist standards, but a recognition that a country with fewer resources will have to husband those resources for higher priorities.

In the same vein, one must strive to impart information and exchange ideas in a spirit of mutual respect, and not by way of the sermon or financial carrot-and-stick. Would-be clinical instructors and bar association activists in Togo, or elsewhere, must not feel overwhelmed or demoralized by the knowledge that arguably "better" policies or customs are in place in the United States in the establishment of law school clinics and *pro bono* programmes.

Instead, the process of creating a clinical programme and *pro bono* system is all about the encouragement of what is possible within the existing legal, political, socio-cultural and economic frameworks. The visitor then leaves behind a little reflection and self-criticism, a little passion, some commitment, a lot of goodwill and solidarity – and asks for the same in return.

Je vous remercie de votre attention.

157 After working in a rule of law partnership with a Haitian law school for over a decade, utilising what he terms a "slow law" approach (akin to the "slow food" movement), Professor Richard Boswell cautions against setting a certain set of outcomes or deliverables. Have "no expectations" about results, he told an audience recently at the University of California, Berkeley School of Law. (Annual Stefan A. Reisenfeld Symposium: "Justice Under Construction," 31 Mar. 2011).

158 Professor Wortham's criticism of the "drop in" foreign expert lecture approach to effecting change is well-taken. Wortham, *supra* note 6 at 677. The efforts simply cannot begin and end there.

APPENDIX I

Seven[159] Tips for the Short-Term Consultant

1. Do not expect the Embassy to lay out a clear agenda – beyond an itinerary of activities – or to have answers to all your questions before you arrive. Be flexible.
2. Do not be afraid to set your own objectives for the visit and its aftermath. Be flexible.
3. Dispense some theoretical knowledge about American law and practices to the extent it meets your hosts needs and do some homework on your own before you embark or while on your visit.
4. "Whet the appetite" of your audience. Be charming and gracious.
5. Make the most of the intellectual and cultural exchange. Be humble enough to know that you too can learn much about your own country by working with another.[160]
6. As you meet with various players, gauge the local or national support for any idea or practice you propose.[161]
7. If your visit is to have any impact, follow-up is essential:
   a. If not asked outright, seek opportunities to advise the relevant embassy staff on where to allocate U.S. funds or other resources.[162]
   b. Keep non-U.S. public funding and other resourcing needs in mind with any particular proposal, i.e., NGOs and foundations, United Nations, European Union and individual European governments163 – and do not discount what the host country must allocate at a

159 There is nothing talismanic – or even Kabbalistic – about the number seven. I offer apologies to Thomas Carothers for advice based heavily on personal experience, although dispensed through the lens of a practitioner "engaged in democracy aid" and not an academic "engaged in democracy theory." Thomas Carothers, *supra* note 14 at 93-94 (decrying reliance of earlier ROL and LDM "foot soldiers" on personal experience rather than on research).

160 Wortham, *supra* note 6 at 675.

161 One of the cultural challenges encountered in one-on-one conversations, particularly with key government officials, bar leaders and faculty members, is determining the degree of directness that is appropriate. Given the short time one has with interlocutors, it is tempting to make the most of it – even if not seeking an explicit commitment of time or resources, but perhaps a willingness to "move forward." Directness can be perceived by the host as brusque or impolite. The host may also have his own agenda or may not be in a position of authority to make any kind of commitment. What is a mere courtesy call and what is a working meeting? How senior is that lawyer or professor who seems to express genuine interest? These are the questions you will need to answer as you go, relying on embassy staff to the extent possible.

162 This does not mean U.S. financial assistance should be overlooked. *See, e.g.*, State Department Request for Proposals: "Democracy, Human Rights and Rule of Law" to "build the capacity of the judicial sector to strengthen cognizance of and respect for the legal rights of individuals, especially detainees and those accused of crimes, with a special focus on increasing the use of bail (*liberté provisoire*)." http://www.state.gov/g/drl/p/130297.htm (last visited 13 Nov. 2009). The application process for this $500,000 grant is full of possibilities and hurdles.

163 For example, Togo can count Germany as a reliable donor nation, due to its brief tenure as a colonial power before ceding the territory to France and Britain. During my visit, its Embassy gave a large garden party, to commemorate the unification of West and East Germany, where its still popular Togolese-bottled lager beer was in plentiful supply.

national, agency or institutional level.[164]

c. Try to ensure future "working" exchanges of longer duration (3 to 6 months) by key actors:

i. U .S. teachers, lawyers, students and other consultants going to Africa; and

ii. Mid-level elites and junior associate African lawyers, (paraprofessionals), academics, and students coming to the United States: to teach, to advocate, to observe, to critique.[165]

d. Promote local and regional contacts and networks within Africa.

e. Promote long-term personal relationships.[166]

164 Professors Geraghty and Quensah passionately advocate for an immediate and intensive investment of money and resources in African legal educational institutions. They call upon American academics and lawyers to aid their African peers in seeking funds and collaborating – with Africans in the lead – in the assessment and planning process. Geraghty & Quensah, *supra* note 14 at 104-05. There are already some established sister school relationships between American schools and those in east and southern Africa. Dauphinais, *supra* note 10 at 84, n. 183.

165 One informed commentator argues that (at least for launching a clinical educational programme) inviting would-be clinicians to the United States, to observe on-site for a period of time, is a far more useful expenditure of funds than sending a speaker abroad. Wortham, *supra* note 6 at 677. Others have stressed the importance of collaborative and genuinely deferential relationships in establishing or improving local institutions. *See*, *e.g.* Dauphinais, *supra* note 10 at 105-06 (advocating co-authorship of curriculum materials and collaboration in teaching between African and American legal educators) and Maisel, *supra* note 16 at 489-90 (advising guest educator to come with lack of hubris, open agenda and ask how she can assist hosting colleague in transnational collaboration).

166 The importance of personal, ongoing relationships cannot be overstated. Wortham, *supra* note 6 at 676-77. Thomas Carothers' research reveals the overlooked psychological, moral and emotional support that a foreigner may bring, by showing interest in another country's problems and by returning and working with colleagues across borders. Thomas Carothers, *Assessing Democratic Assistance: The Case of Romania* (1996) 95-97 (*cited in* Wortham, *supra* note 6 at 678). Leah Wortham also recalls Carothers' comment that one should not assume valuable "psychological, attitudinal and educational" change occurs in *every* ROL or law and development project. *Id*. at 678, n. 279 (quoting Thomas Carothers, Aiding Democracy Abroad, 312-313 (1999)).

APPENDIX II

Bleu*print for a Francophone African Law School Clinic*[167]

1. Synopsis:

The goal of the Francophone Africa Law Project (FALP) is to establish a university-based legal aid clinic in francophone African countries that have adequate infrastructure, support and credibility. While such clinics currently exist in an increasing number of anglophone, common law African nations – usually where U.S. clinical law professors or Non-Governmental Organizations have taken the lead in providing technical assistance and funding – French-speaking Africa has been largely neglected.

2. Introduction:

a. U.S. law schools (with or without NGO support) are uniquely positioned to promote and nurture a *clinique juridique*. A by-product of this effort is a law student exchange programme.

b. A necessary component of the *clinique juridique* should include formalized bar association-law faculty collaboration in the designated country to develop a private bar *pro bono* culture and more integration of practitioners in local law faculties. Partnerships or other formalized relationships could be formed with local NGOs and/or customary law practitioners and decision-makers.

2. Objectives:

The first phase consists of a short-term field placement in which a limited number of U.S. students:

a. Enrol in classes in an African law faculty for one quarter or semester;

b. Observe trial and/or appellate court proceedings and customary or other informal dispute resolution practices on a regular basis;

c. Meet once or twice per week with lawyers, judges, court officers, government officials, law enforcement officers, elders or traditional leaders, students in law or *magistrature*, journalists and/or NGO activists;

d. Engage in limited, supervised, legal work (where possible);

e. Conduct an assessment of the potential for a *clinique juridique*, under the supervision of a U.S.-based clinician and practitioner and local NGOs.

167 In addition to Milliette Marcos, I thank Yvonne Troya and Charlotte Martinez for their contributions to this blueprint template for a *clinique juridique typique*, *i.e.*,a conventional law school (in-house) clinic. Assumptions about staffing and non-personnel expenses will obviously vary. *See also*, Wilson, *supra* note 85. This should not necessarily be favoured over other approaches to fostering experiential or practice-orientated legal education. Adaptability and deference to local preference are essential.

Future students would continue to build on the "needs assessment," with the eventual goal of setting up a fully functional clinic:

a. Funds permitting, United States practitioners and academics would also conduct periodic workshops or training modules on site, with assistance from their African counterparts (including jurists who return to their home country after obtaining an LLM);

b. American students would help to establish a long-term clinic and pro bono culture, and at the same time, benefit from an educational and multicultural experience, and forge future relationships with their African peers;

c. Ongoing participation by clinicians and practitioners would be dependent on funding;

d. Participating students must be fairly proficient in French and will need to secure their own funding for travel, accommodations and food;

e. The Project would assist in enrolment, on-site contacts, locating lodging and procuring visas.

4. Selecting a University Pilot Project:

University in chosen francophone country where the administrative, resource and legal commitments have been established and memorialized.

5. Prospective Partners (for funding, board of directors, advisory council, service delivery, etc.):

a. U.S. law school sponsor(s).

b. Open Society Justice Initiative.[168]

c. American Bar Association Rule of African Initiative / Africa Division.[169]

d. U.S. Department of State.

e. Global Alliance for Justice Education.[170]

f. AHEAD (African Higher Education Activities in Development).

g. African national and local bar associations.

h. Universities in other francophone countries in Europe and Africa.

i. Local *chefs du village*, *chefs du quartier*, *sultans* or other facilitators/adjudicators in traditional dispute resolution.

j. Other partners identified through a needs assessment (see below).

168 For details on this Soros Foundation Initiative, visit http://www.soros.org/initiatives/justice.

169 For details on programmes and opportunities, visit http://apps.americanbar.org/rol/africa

170 See *supra* note 31.

6. Structure:

Space:

The university law faculty will house the administrative office of the law clinic. Most substantive and skills training will take place in classrooms at the university as well as community venues.

Staffing:

a. One full-time attorney Coordinator to act as Operations Manager. This Coordinator, in collaboration with African-based partners, will assist students in conducting a needs assessment, develop a training curriculum and establish effective delivery models.

b. One part-time African university professor to supervise the law school clinic students on-site and provide training for the clinic participants.

c. One part-time African staff attorney to collaborate with the University supervisor and the Coordinator.

d. One part-time clinic administrator for clerical, technical and logistical support.

7. Time-Line:

Year "1"

a. 0-3 months:

Selection and hiring of clinic staff.

Solicit applications from U.S. law exchange students.

Law students begin orientation.

Initiate Needs Assessment by surveying law school faculty and students, local bar association members, NGOs and other stakeholders. By coordinating with other local legal service providers, this needs assessment will ensure that legal services are not being duplicated.

Set up administrative offices at the university.

Engage in collaborative meetings with local bar association, judiciary, and government officials.

Create an Advisory Board of African and international members.

b. 3-6 months:

Complete needs assessment.

Develop training curriculum.

University law students submit applications to participate in the clinic. Participating students chosen based on interest and experience.

Invite African and international practitioners and clinicians for short-term training and exchanges on-site and abroad.

Clarify role of local bar association members and recruit members and judges to mentor law students.

c. 6-9 months:

Law students begin clinical classroom component with emphasis on sensitisation, ethical training, skills-building and reflective lawyering.

Law students participate in substantive law training and mentorship.

Law students begin clinic work and begin preparing community education curriculum for both community members and medical providers. Law students will engage in other activities, including opening client cases, researching legal issues, meeting with their supervising attorneys.

African and international practitioners and clinicians participate on-site in short-term training and exchanges in classroom and clinical settings.

d. 10-12 months:

Conduct summary review of legal clinic progress to date, modify as necessary, and submit reports to funders.

Years "2" & "3"

Continue development of classroom and training curriculum as needed.

Continue African and international practitioner and clinician short-term training and exchanges on-site and abroad.

Law students continue clinical classroom component, substantive law training and mentorship.

Law students continue working at clinics and conducting community education curriculum for community members.

Continue collaboration with local bar association, judiciary, and government officials.

Assess supervisory component and adjust as necessary.

Develop community education outreach materials for written or broadcast distribution.

Accept new and continuing law student applicants.

Incorporate U.S. law exchange student(s).

Collaborate with African and international practitioners and clinicians.

Develop lay advocacy component.

Conduct summary review of legal clinic progress to date, modify as necessary, and submit reports to funders.

8. Costs:

Salary of Coordinator, for years 1-2: $/€__

Salary of university half-time administrator: $/€__

Salary of university full-time supervisor: $/€__

Salary of African half-time supervisor: $/€__

Transportation, lodging and meal costs for student participants and presenters: $/€__

Administrative costs (copying curriculum and community legal education materials): $/€__

Translation/Interpretation fees: $/€__

9. Proposed project term and funding:

Three years; $/€__

10. Potential Concerns:

a. Will U.S. students enroll in African university as "exchange students" or will they participate for externship credit?

b. Who will provide the clinical classroom training?

c. How long will students from U.S. law schools spend in Africa? Is there a minimum requirement?

d. Will students have to be proficient in French?