Editorial

Dr Lyndsey Bengtsson

Lyndsey2.bengtsson@northumbria.ac.uk

Our autumn issue of the IJCLE has contributors from across the world, including the US, UK, Nigeria, Kenya and India. Our contributors explore whether clinics can play a role in eradicating statelessness and in improving the accessibility of protective injunctions. The value of clinics in legal aid delivery is also explored, including whether the aspirations match the reality of practice and what lessons can be learnt. Lessons learnt are also explored in the context of teaching during the COVID-19 pandemic and whether our experiences can strengthen our face-to-face teaching as we return to the classroom.

Firstly, Maryam Idris Abdulkadir's article provides valuable insight into the role of law clinics in the fight against statelessness by the United Nations High Commissioner for Refugees (UNHCR). In a National Action Plan in 2018, the UNHCR set out their strategies and their belief that Nigerians are not aware of the concept of statelessness. In her article Maryam tests their assertion via a questionnaire to target groups. She argues that law clinics in Nigeria can assist the UNHCR in the fight against statelessness and she recommends that clinicians can be the 'foot soldiers' and help to gather data through client interviews and outreach activities.

In K Rajashree and Sonika Bhardwaj's article they share a fascinating exploration of India's law school legal aid clinics. They map the aspiration of legal aid through an analysis of the key legal education policy documents. They also analyse two institutions by way of a case study to verify whether practices match those aspirations. The article puts forward arguments which are crucial to understanding the gaps between the aspiration and practice.

In Ana Speed's article she highlights how clinical legal education can be an effective tool in improving the accessibility of protective injunctions. She explores the various models of clinical legal education that may be used to support victims of domestic abuse. Using a case study, she highlights the benefits and limitations of each option for the students and victims and provides an important contribution to the literature in this area. The article provides a valuable insight for clinicians who are considering offering support in this area.

In our *Practice Report* section Asha Mikinyango and Judith Nguru explore legal aid in the context of the challenges and lessons learnt from practice in Kenya. They provide an important insight into the role of law schools as legal aid providers, drawing a contrast between law schools based in Kenya and South Africa. The article discusses the challenges faced in the organisation and delivery of legal aid services in one law school and concludes by offering very useful advice on the strategies that can be employed to mitigate the challenges.

Finally, Amy L Wallace provides a topical and interesting reflection of experiences teaching Street Law in a virtual environment during the COVID-19 pandemic. The article considers what lessons have been learnt and whether it is possible that some of our experiences of virtual teaching may enhance our teaching when we return to the classroom.

In June 2021, the IJCLE had the privilege of hosting an online worldwide conference in partnership with the Global Alliance for Justice Education and Association for Canadian Clinical Legal Education. We had 466 attendees from over 40 countries (including Malaysia, Afghanistan, Australia, US, Canada, Turkey, Trinidad and Tobago, Brazil, Germany, Italy, Ireland to name a few). Although we were unable to all meet in person this year; it was great to see so many attendees make connections, share ideas, discuss the challenges we all have faced and explore how these challenges can be turned into opportunities going forward. Thank you to all those who attended.

Finally, we are very excited that the Clinical Legal Education Podcast is now live. In the first episode our hosts, Elaine Gregersen and Molly Doyle, interview Lydia Bleasdale, an Associate Professor from the University of Leeds, about the importance of understanding your community's needs and the value of teamwork. If there is anything that our guests cover that resonates with you, or if you wish to discuss the podcasts further, please do not hesitate to get in touch with Elaine or Molly via the twitter account @IJCLE.

Reviewed Article

THE ROLE OF LAW CLINICS IN THE FIGHT AGAINST STATELESSNESS BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) IN NIGERIA

Maryam Idris Abdulkadir, Baze University, Nigeria*

Abstract

Statelessness has become a global phenomenon. Statelessness simply means that a person does not belong to any country in the world. It means that a person does not have a nationality or any means to prove his or her nationality. The United Nations High Commissioner for Refugees (UNHCR) has embarked on a fight against Statelessness. The UNHCR have estimated that 10 million people in the world are stateless, one million of which are located in West Africa, although no figure has been estimated yet in Nigeria. However, because of numerous factors, the UNHCR has brought the fight against statelessness to Nigeria. They have mapped out their strategies in a National Action Plan (NAP) in 2018, and among such strategies are awareness and sensitization. They are of the belief that Nigerians are not aware of the concept of Statelessness. To test their assertion, empirical research was conducted for this paper via a questionnaire. One of the major consequences of statelessness is that stateless persons are deprived from enjoying their basic fundamental human rights like the right to freedom of movement, civil and political rights and the right to access of certain services which include access to health care and access to justice. More so,

the Universal declaration of Human Rights states that everyone has a right to a nationality, which means the very notion of being stateless runs contrary to this universal basic right. This paper submits that derivation of fundamental rights especially access to justice is a social justice issue that could be handled through public interest lawyering. These two- Social Justice and Public Interest Lawyering- form part of the Clinical Legal Education (CLE) curriculum, therefore a nexus is immediately formed between CLE and the fight against statelessness. From the results of the research conducted in this paper, it is recommended that the service component of CLE, which is the Law Clinics, can assist the UNHCR in the fight against statelessness in Nigeria by actualising some of their strategies contained in the NAP which include but not limited to; sensitization and awareness. The UNHCR also raised a red flag on lack of data on this issue; again, this paper recommends that law clinicians can be their foot soldiers and aid in gathering the necessary data through client interviews and outreach activities. Lastly, the benefits of this partnership between the law clinics and UNHCR to the law clinicians was also outlined, as it will be of extreme benefit to them and it would lead to the achievement of the ultimate outcome and objective of CLE .

Keywords: Statelessness, Nationality, Identity, Access to Justice, Human Rights, Law Clinics, Social Justice, Public Interest.

1. Introduction

A "stateless person" is someone who is not considered as a national by any state under the operation of its law[1]. Here, nationality refers to the legal bond between a person and a state[2]. This bond can best be seen as a form of official membership or belonging which grants upon the national certain rights like Civil and Political Rights as well as duties or service to the State[3]. A person who is stateless lacks this membership and will be seen and treated as a foreigner by every country in the world. This phenomenon has also been described as "de jure statelessness"[4]. Statelessness can occur for several reasons, including discrimination against particular ethnic or religious groups, or on the basis of gender; the emergence of new States and transfers of territory between existing States; and gaps in nationality laws. Whatever the cause, statelessness has serious consequences for people in almost every country and in all regions of the world[5].

This means that no person should be without a nationality. Nationality can be acquired through birth, residency, parentage and marriage and it can be proved by any means of identification e.g., international passport, certificate of naturalisation

---

* Lecturer I and Secretary of the Baze University Law Clinic

[1] Article 1 of the 1954 Convention relating to the Status of Stateless Persons

[2] International Observatory of Statelessness retrieved from http://www.nationalityforall.org/whatis, last visited, 6th May 2019

[3] ibid

[4] ibid

[5] Ending Statelessness retrieved from https://www.unhcr.org/stateless-people.html last visited on 7th May, 2019

and nationality certificate etc.[6]. Today, millions of people around the world are denied a nationality. As a result, they often are not allowed to go to school, see a doctor, get a job, open a bank account, buy a house or even get married[7]. Therefore, it means that stateless persons are denied certain basic rights and this makes them one of the most vulnerable and disadvantaged members of our society.

At least 10 million people around the world are stateless, according to estimates from the United Nations High Commissioner for Refugees (UNHCR)[8]. In West Africa, the figures published by UNHCR include 700,000 stateless persons in Côte d'Ivoire and unknown numbers for the rest of the region, with an estimate of around 1 million.[9] Nigeria is one country in West Africa that has been identified by the UNHRC to have stateless persons[10]. During the course of this research, it was discovered that the data collection for the estimated number of stateless persons in Nigeria is still on going.

Generally, the UNHCR has identified certain causes of statelessness in West Africa. They reported that statelessness in West Africa is largely due to gaps in existing law provisions on citizenships and other factors such as limited access to documentation, including birth certificate, nomadism, migration and transfer of territory among

[6] A paper presented by UNHCR at Statelessness Training on the 22-23rd May, 2019, Abuja
[7] Ending Statelessness op. cit. p.2
[8] Who Belongs? Statelessness and Nationality in West Africa retrieved from https://www.migrationpolicy.org/article/who-belongs-statelessness-and-nationality-west-africa last visited 1st July 2019
[9] ibid
[10] ibid

others,[11] which may be as a result of the refugee and internally displaced crises faced by the country.

These stateless persons are, as aforementioned, denied certain fundamental rights, but to be specific, in Nigeria, they are denied the right to vote, access to services, and rights to free movement, rights to documentation of any kind and the right to dignity.

Public Interest Law and Social Justice are an avenue designed to improve access to justice for the most vulnerable and disadvantaged members of our society[12] and Social Justice, in particular, involves a consideration of both joint and individual rights and obligations. It ensures that people who need to claim infringement of their human rights but do not have the ability, capacity or position to do so, can have access to Justice[13]. These two mentioned form parts of the curriculum of the Clinical Legal Education (CLE) and Law Clinics in Nigeria.

Hence the question; Can Law clinics in Nigeria play a role to help the UNHRC to eradicate statelessness? Can the Law clinics in Nigeria become mechanisms to provide access to justice through Social Justice and Public Interest Law to those stateless

[11] Citizenship Rights in Africa Initiative retrieved from http://citizenshiprightsafrica.org/wp-content/uploads/2019/01/UNHCRNigeria_Communique-Statelessness_Dec2018.pdf last visited 7th May, 2019

[12] What is Public Interest Law? Retrieved from https://law.unimelb.edu.au/students/jd/enrichment/pili/about/what-is-public-interest-law last visited, 7th May 2019

[13] What is Social Justice? https://probonocentre.org.au/wp-content/uploads/2015/09/Occ_1_What-is-Social-Justice_FINAL.pdf last visited 7th May, 2019

persons that are denied their fundamental human rights? These questions are what this paper seeks to address.

2. The Concept of Statelessness

As mentioned earlier, statelessness refers to the condition were an individual who is not considered as a national by any State under the operation of its law[14]. This definition has attained the status of customary international law, which means that it applies in all jurisdictions, regardless of whether or not a State is party to the 1954 Convention[15]. Those at risk of statelessness include; orphans and foundlings, children of immigrant parents (especially illegal immigrants), persons whose birth was not declared, nomadic groups, border populations, migrants etc.

The Universal Declaration of Human Rights states that[16] '"Everyone has the right to a nationality" and "No one shall be arbitrarily deprived of their nationality, nor denied the right to change their nationality."[17] While human rights, including the rights to a nationality, are in principle universal and inherent, however, in practice a large range of fundamental human rights are denied to stateless people: they are often unable to obtain identity documents; they may be detained for reasons linked to their

[14] Art 1 of the 1954 Convention on the Status of Statelessness.
[15] A paper presented by UNHCR at Statelessness Training on the 22-23rd May, 2019, Abuja
[16] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: https://www.refworld.org/docid/3ae6b3712c.html [accessed 2 July 2019]
[17] Article 15, ibid

statelessness; and often times they are denied access to education and health services or blocked from obtaining employment.

According to the UNHCR, the various means to prove nationality are: passport, nationality certificate, certificate of naturalisation, national identity card, voter's cards, certificate of indigeneity, and birth certificate[18]. Although, they argue that national identity card, voter's cards, certificate of indigeneity and birth certificates are questionable means to prove nationality mainly due to the means and sometimes unreliable nature of the means and methods of acquiring them[19].

Under resolutions adopted by the United Nations General Assembly[20] UNHCR has been requested to lead global efforts to address statelessness, particularly by supporting identification of stateless populations and the protection of stateless persons, as well as promoting efforts to prevent and reduce statelessness.

2.1 Fight against Statelessness in West Africa

The States of West Africa have acknowledged the statistical numbers and the above-mentioned factors that lead to statelessness in the region. Therefore, they understand the importance of the fight against statelessness. Hence, it came as no surprise that in 2011, during a high-level conference in Geneva they made the largest number of

[18] A paper presented by UNHCR at Statelessness Training on the 22-23rd May, 2019, Abuja
[19] ibid
[20] Resolutions 3274 (XXIX) of 10 December 1974; 31/35 of 30 November 1976; 50/152 of February 1996; 61/137 of 25 January 2007.

pledges to improve their position on statelessness, compared to other regions in Africa and the rest of the world[21].

In the spirit of the commitments made by the States in West Africa, UNHCR has doubled its effort to fight this phenomenon in this region. It has particularly focused on building the capacity both of governments and of organizations of civil society, by carrying out advocacy and trainings. UNHCR has also provided technical advice to authorities to address the situation of populations at risk of statelessness as well as stateless persons and find adequate solutions[22]. Several regional seminars were organized from 2011-2013 in order to sensitize states on the significance of the issue and to develop their capacity to address it. A major event, which took place in the Gambia in December 2013 gathered National Commissions on Human Rights, the Economic Community of West African States (ECOWAS) Court of Justice and the judicial and quasi-judicial institutions of the African Union. It resulted in the Banjul Appeal, which lays the foundations for partnership between those institutions and calls upon States and other stakeholders, including the UNHCR and ECOWAS, to take additional steps towards the eradication of statelessness in West Africa. In February 2015, government representatives in charge of nationality issues of the ECOWAS member states met in Abidjan for the regional ministerial conference on statelessness in West Africa jointly organised by UNHCR and ECOWAS. As result of the

[21] Nationality and Statelessness in West Africa- Background note retrieved from https://www.unhcr.org/591c20ac7.pdf last visited, 1st July 2019
[22] ibid

conference, the ministers of the ECOWAS member states adopted a declaration on the eradication of statelessness called The Abidjan Declaration[23].

In the declaration, they committed to identify and protect stateless persons as well to prevent and reduce statelessness. This declaration has been endorsed by all Heads of States in the ECOWAS region during the summit meeting held in Accra, Ghana, on May 19, 2015[24]. In September 2015, during a consultative conference on nationality and statelessness in West Africa, the progress achieved since the adoption of the Abidjan Declaration was evaluated. The evaluation testified to development in the fight against statelessness in West Africa[25].

2.2 Fight against Statelessness in Nigeria

In Chapter three of the constitution of Nigeria, a person can become a citizen in Nigeria by birth, registration or naturalisation[26]. This simply means that for a person to show a bond between himself and the state of Nigeria he/she must possess certificate of birth registration, indigene certificate or certificate of naturalisation or

[23] Regional Treaties, Agreements, Declarations and Related, Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness, 25 February 2015, available at: https://www.refworld.org/docid/54f588df4.html [accessed 1 July 2019]
[24] Nationality and Statelessness in West Africa- Background note op. cit. p.4
[25] ibid
[26] Section 26, 27 and 28 of Constitution of the Federal Republic of Nigeria, Cap c 23 Laws of the federation of Nigeria, 2004

registration. The data analysis section of this paper will examine if a particular target group have one of these documents

Nonetheless, as mentioned earlier, Nigeria- a West African State and a member of ECOWAS- does not have an estimated number of stateless persons, this means no one is sure how many stateless persons are in Nigeria, studies were still ongoing as at the time this paper was written. In the Communique of the UNHCR[27], it states that there is limited information on the situation of statelessness in Nigeria and that it is important to develop and establish a coordinated process to assess the scope, numbers and risk.[28] The communique also states that the lack of comprehensive data on the population also makes it difficult to fully assess and establish the extent of the risk in Nigeria and to engage in evidence-based advocacy.[29]

In addition, the document also reinstated that the effects of statelessness is that stateless persons are deprived of a range of fundamental human rights, such as right to vote, right to access to services (such as justice), right to free movement, right to documentation, right to dignity etc.[30]

In Nigeria, the UNHCR[31] has identified the following as causes of statelessness in Nigeria;

[27] Ibelong Campaign to end Statelessness: Towards a National Plan of Action to Eradicate Statelessness in Nigeria: Communique 2018
[28] ibid
[29] ibid
[30] ibid
[31] ibid

a) Gaps in existing laws on nationality

b) Limited access to documentation- including birth certificates

c) Nomadism, migration and transfer of territory, among others

As part of their recommendations for a draft National Action Plan (NAP) to end statelessness in Nigeria, the UNHCR recommends, among others, five (5) key areas of action to be prioritised for Nigeria[32]:

a) Research, advocacy and sensitization (including sensitization and advocacy of top-level administrators and policy makers)

b) Prevent childhood statelessness

c) Prevent statelessness in transfer territory

d) Address gender and other forms of discrimination in issues of citizenship documentation

e) Ensure protection of stateless migrants/persons

2.3 Data Presentation and Analysis

Research was carried out for this paper using a questionnaire. Between June-July 2019, the questionnaire was printed and distributed among certain target groups; Working class, Students that are 18 years and above (young adults), Students that are below 18

[32] ibid

years[33], and Street Children. Two hundred questionnaires were distributed and 66[34] were returned. The research was conducted in order to find out if Nigerians knew about the concept of statelessness and if they had any means to prove their nationality as Nigerians.

The questionnaire so far has been answered by the three target groups and the following are the results:

2.3.1 **Data Presentation**:

a) Age

VALUE	**FREQUENCY**	**PERCENTAGE (of the total number of respondents)**
Below 18	**40**	**60.6%**
Above 18	**26**	**39.3%**

b) Gender

VALUE	**FREQUENCY**	**PERCENTAGE (of the total number of respondents)**
Male	**40**	**60.6%**
Female	**22**	**33.3%**

[33] Ethical clearance was sort for this group from their guardian in the school because of their age https://drive.google.com/file/d/18uX3fD12cowAlM9QrtWLxm6ldxzdmsyc/view?usp=sharing

[34] All returned and filled questionnaires available at https://drive.google.com/drive/folders/1ix26lYvWI84Vpq973GHpc6NamTn-QZQN?usp=sharing

c) Occupation

VALUE	FREQUENCY	PERCENTAGE (of the total number of Respondents)
Working Class	**14**	**21.2%**
Students above 18 years	**12**	**18.1%**
Students below 18 years	**20**	**30.3%**
Street children	**20**	**30.3**

d) Ownership of means of Identification

VALUE	FREQUENCY	PERCENTAGE (of the total number of each target group)
International Passport	**Working Class: 6** **Students above 18 years: 2** **Students Below 18 years: 4** **Street Children: Nil**	**Working Class: 42.8%** **Students above 18 years: 16.6%** **Students below 18 years: 20%** **Street Children: 0**
National I.D Card	**Working Class: 7** **students above 18 years: 2**	**Working Class: 50%** **Students above 18 years: 16.6%**

	students below 18 years: 3 **Street Children: Nil**	**Students below 18 years: 15%** **Street Children: 0**
Drivers License	**Working Class: 8** **Students above 18 Years: 1** **Students below 18 years: Nil** **Street children: Nil**	**Working Class: 57.1%** **Students above 18 years: 8.3%** **Students below 18 years: 0** **Street Children: 0**
Voters Card	**Working Class: 2** **Students above 18 years: 3** **Students below 18 years: Nil** **Streets children: Nil**	**Working Class: 14.2%** **Students above 18 years: 25%** **Students below 18 years: 0** **Street Children: 0**
Birth Certificate	**Working Class: 6** **Students above 18 years: 4** **Students below 18 years: 18**	**Working Class: 42%** **Students above 18 years: 33.3%** **Students below 18 years: 90%** **Street Children: 0**

	Street Children: Nil	
Nil	**Street Children**[35]	**100%**

e) Do you have dependants?

VALUE	FREQUENCY	PERCENTAGE (of the total number of respondents)
Yes	**Working Class: 8** **Students above 18 years: 3**	**16.6%** **25%**
No	**55**	**83.3%**

f) If your answer above is yes, what means of identification do your dependents have?

VALUE	FREQUENCY	PERCENTAGE (of the total number of Respondents)
International Passport	**4**	**6%**
National I.D Card	**6**	**9%**
Driver's License	**1**	**1.5%**
Voters Card	**4**	**6%**

[35] All the Street children that answered the questionnaire did not have any means of identification. Although, two of these children claimed that the have a means of identification, unfortunately their claim was not verified during the course of this research.

Birth Certificate	**6**	**9%**
Nil	**1**	**1.5%**

g) Do you know about the concept of statelessness?

VALUE	FREQUENCY	PERCENTAGE(of the total number of each target group)
Yes	**Working Class: 7** **Students above 18 years: 2** **Students below 18 years: 2** **Street Children: Nil**	**Working Class: 50%** **Students above 18 years: 16.6%** **Students below 18 years: 10%**
No	**Working Class: 7** **Students above 18 years: 10** **Students below 18 years: 18** **Street Children: 20**	**Working Class: 50%** **Students above 18 years: 83.3%** **Students below 18 years: 90%** **Street Children: 100%**

h) If answer in 10 is 'yes' how did you get to know about the concept of Statelessness?

VALUE	FREQUENCY	PERCENTAGE (of the total number of each target group)
I have an idea (from the word 'Statelessness'	**Working Class: 6** **Students above 18 years: 0** **Students below 18 years: 3** **Street Children: 0**	**Working Class: 42%** **Students above 18 years: 0** **Students below 18 years: 15%**
Conference	**Students above 18 years: 1**	**Student above 18 years : 7%**
Media	**working Class: 1**	**working class: 7%**

2.3.2 Data Analysis:

a) **Working Class**: 50% of the people in this group know about the concept of statelessness and 50% do not know about the concept of statelessness or its consequence. Of this 50% that know what the concept means, 43% 'have an idea' (from the word 'Statelessness' they can deduce the meaning) what it means. 7 % of this group were sure about the meaning of statelessness, and they acquired this knowledge through the media. They had one or all of these documents: international passport, birth certificate, voter's card,

national identification card and driver's licence. 16.6% of this group have dependants, their wards or dependents also have some of these documents. However only 42% of members of this group had the required document of birth certificate to show a bond with the state according to its laws. Within the Nigerian context, this does not come as a surprise. The documents the working class group and their dependants have as a means of identification, they own because of socio-economic reasons. For instance, they have international passports because they need to travel, they have drivers licence because it is required by the law before you can drive on Nigerian roads, for birth certificates, most schools and work place ask for birth certificates before they give admission or job offers. This writer can confirm this, as the only reason why I went to process my indigene letter from my local government was because it was a requirement to write exams into higher institutions. Therefore, the reason for having these documents is not to reduce avoid being at risk of statelessness, it is for reasons, some of which have been mentioned above. The reason for this is simple, just like the UNHCR have reported above; there is lack of awareness and a gap in Nationality laws in Nigeria. If the law exists and emphasis on the issue of statelessness, it will definitely raise a level of awareness. The grund

norm of the country, the constitution[36] has been criticized for being at the forefront of creating such gaps in Nationality laws in Nigeria[37]. Some of the areas criticised in the constitution include; Presumption of Nigerian citizenship for children of unknown parents found in Nigeria[38], Gender discrimination in the acquisition of citizenship by marriage[39], Naturalization criteria too rigid[40], the ease of having dual citizenship[41] Renunciation of citizenship[42] and loss and deprivation of nationality[43]. All of the aforementioned exposes a gap in the nationality laws of the country and shows that laws lack safeguards against statelessness[44].

b) **Students that are 18 and above (young adults):** 83% know about the concept of statelessness and 16% do not know about the concept. Of the 83% however only 7% could specify what the concept is and how they knew about it, which was through a conference. They have one

[36] The Constitution of the Federal Republic of Nigeria Cap. C.23, Laws of the Federation of Nigeria 2004
[37] The Normative Framework on Nationality in Nigeria UNHCR https://drive.google.com/file/d/1_ro6-kTzGQ_TlSm69hog-gN1OICgnOeYG/view?usp=sharing
[38] Section 25 (1) Constitution of the Federal Republic of Nigeria Cap. C.23, Laws of the Federation of Nigeria 2004
[39] Section 26, ibid
[40] Section 27 (2), ibid
[41] Section 28, ibid
[42] Section 29, ibid
[43] Section40, ibid
[44] For further reading on the sections of the constitution criticized by UNHCR, please use the link in foot note 36

or all of the following documents; international passport, birth certificate, national identification card and driver's licence, and voter's card. 25% of the respondents in this group have dependents that have most of these documents. Only 33% had the required document of birth certificate to show a bond to the state according to its laws. The most striking thing about this group is that majority of the persons in this group know about the concept, from the name of course, but only a few of them had in-depth knowledge of the concept. It is one thing to have an idea or decipher the meaning of a concept from its name and to actually understand the concept and how it applies, and in the instance of statelessness, the risk that such a concept pose. As for the documents they possess the same explanation given above for working adults applies here i.e. socio-economic reasons prompted them to possess such documents not the issue of statelessness or the risk of being stateless.

c) **Students that are less than 18 years (Children):** 90% of this group do not know about the concept of statelessness and 10% know what the concept means. 15% state that they 'have an idea' (from the word 'Statelessness' they can deduce the meaning) they have one or all of the following documents: international passport, birth certificate and

national identification card. An impressive 90% have the required document of birth certificate to show a bond to the state according to its laws. This might be that the National Population Commission, the agency that has the mandate to register births has put in more effort to register births across the country for a number of reasons. Just like the two groups discussed above, some members of this group are torn between 'have an idea' and 'know about' the concept of statelessness and of course it is no surprise for their age group that majority of them do not know about the concept. Again, considering their age it is presumed that they have parents/guardians, therefore the reason outlined for the working class and young adults in regards to possession of these documents applies here the reason being that this group could easily be their dependents.

d) **Street Kids**[45]: All the children respondents (note, this group had the questionnaire administered orally because they are unable to read and/or write) identified that they did not have an idea about the concept of statelessness. They were between the ages of 12-14 and those that seemed much younger had no idea of their age. When I

[45] They are children that have been sent into towns by their parents to learn Islamic Education from an Islamic Scholar but usually end up begging on the streets. In Nigeria, they are popularly called *Almajiri*. This is prevalent mostly in the northern part of the Country.

asked them if they had any document to show that they are nationals of Nigeria, two of them claimed they did and it is with the scholar they were learning under, however they did not know the nomenclature or title of the document.However, it is safe to say that they do not have any required document to show their bond with Nigeria.

The above data presentation and analysis of this research hints at the following:

i. It seems like majority of the respondents are not aware of the concept of Statelessness. Looking at all the three target groups individually, half, more than half or all the respondents in each target group seem to lack knowledge about the concept.

ii. From their seemingly lack of knowledge, it appears that the adults and their dependants (for those that have dependants) own certain means of identification not to prevent statelessness but for other reasons (requirements of socio-economic activities e.g. drivers licence is compulsory to drive a car and international passports are required for traveling outside the country). More so, a lot of them do not possess the document that will show a bond with the state according to the Law.

iii. It appears that there is an entire group of members of the society growing up without any means of identification or documentation that run the risk of being Stateless (the Street Children).

The above analysis of this section of the paper indicates that more research needs to be conducted in this area. The results of this research **maybe** generalised to the entire population because the persons selected for this research were random. Most importantly, the research carried out, although on a small demography of the society, has laid a foundation for the recommendations of this paper.

3. Law Clinics in Nigerian Universities

The summary of a report of the Council of Legal Education Committee on the Review of Legal Education in Nigeria submitted on 29th July 2004 was to the effect that law faculties and the Nigerian Law School should "as a matter of urgency" introduce Clinical Legal Education and that "the faculties are required to provide appropriate facilities, such as clinical consultation rooms" and that "for purposes of achieving interactive teaching, proper training will have to be given to lecturers at the various law faculties and the Nigerian Law School…. " [46]

[46] The Development Of Clinical Legal Education Retrieved from http://www.nulai.org/index.php/blog/83-cle last visited 26th June 2018

This led to the Nigerian draft Legal Aid Bill which had provisions for supporting Legal Clinics in the universities[47] . Consequently, in 2011, the Legal Aid Act by its Section 17 recognizes law clinics as legal aid providers[48]. Also, the National Universities Commission's[49] draft benchmarks and minimum academic standards in the law programme released in August 2004 has identified cognitive and skills competencies as a learning outcome and also introduced "a community-based course: community legal assistance to the poor, minority and the under privileged" in the 4th year class. The Benchmark was reviewed in 2010/2011 and Clinical Legal Education CLE Curriculum was made compulsory, and it was required for all new faculties of Law to have law clinic[50]

Another notable development is the establishment of the Network of University Legal Aid Institutions (NULAI), which has been able to develop and institutionalized Clinical Legal Education through the undertaking of expository and intellectual seminars and workshops which yielded tremendous results[51]. From 2005-2014, NULAI Nigeria has seen to the establishment of 17 Law Clinics in Nigerian

[47] ibid
[48] Section 17, Legal Aid Act, Cap L9, Laws of the Federation of Nigeria, 2004
[49] The National Universities Commission (NUC) is a parastatal under the Federal Ministry of Education (FME), The main functions of the Commission are; Granting approval for all academic programmes run in Nigerian universities; Granting approval for the establishment of all higher educational institutions offering degree programmes in Nigerian universities; Ensure quality assurance of all academic programmes offered in Nigerian universities; and Channel for all external support to the Nigerian universities. Retrieved from https://nuc.edu.ng/about-us/ last visited 29th June 2018
[50] The Development Of Clinical Legal Education Retrieved from http://www.nulai.org/index.php/blog/83-cle last visited 26th June 2018
[51] ibid

Universities and the Nigerian Law School. These law clinics are spread over the six geo-political zones of the country[52].

According to Network of Universities Legal Aid Institutions (NULAI)[53], as at 2019, there were 38 Law Clinics[54] in Faculties of Law across the six geo-geopolitical zones in Nigeria[55] that have registered with the organisation. Keep in mind that there are fifty-five (55) Faculties of Law in Nigeria[56].

The above has given a rather a brief assessment of how CLE and its service component- Law Clinics-were established in Nigeria.

---

[52] ibid

[53] Network of University Legal Aid Institutions (NULAI) Nigeria was established in 2003 as a non-governmental, non-profit and non-political organization committed to promoting Clinical Legal Education, legal education reform, legal aid and access to justice in Nigeria and the development of future public interest lawyers. Clinical Legal Education (CLE) is the use of any kind of experiential, practical or active training for legal professionals to impact such skills as the ability to solve legal problems.

[54]AAU Law Clinic, ABSU Law Clinic, ABU Law Clinic, AKUNGBA Law Clinic, American University of Nigeria Law Clinic, Bauchi State University Law Clinic, BAZE Law Clinic, BU Law Clinic, Caliphate Law Clinic, DSU Law Clinic, ESUT Law Clinic, EBSU Law Clinic, Elizade University, Law Clinic, , ESU Law Clinic, IMSU Law Clinic, KSU Law Clinic, LASU Law Clinic, Legal Aid Clinic, Niger Delta University Law Clinic, Nnamdi Azikwe University Law Clinic, NUN Law Clinic, NSUK Law Clinic, Osun State University Law Clinic, OOU Law Clinic, POLAC Law Clinic, Renaissance University Law Clinic, TSU Law Clinic, UNN Legal Aid Clinic, UNIMAID Law Clinic, UNIUYO Law Clinic, UNIABUJA Law Clinic, UNIBEN Law Clinic, UNICAL Law Clinic, UNILAG Law Clinic, UNIPORT Law Clinic, UNIJOS Law Clinic, Women's Law Clinic, YSU Law Clinic. https://www.nulai.org/index.php/partners/clinical-law-programs last visited 1st July, 2019

[55] Law Clinics in Nigeria, retrieved from https://www.nulai.org/index.php/partners/clinical-law-programs last visited, 7th May, 2019

[56]List of Accredited/Approved Faculties of Law in Nigeria https://www.myschoolgist.com/ng/approved-faculties-of-law/ last visited 1st July, 2019

4. Nexus between Law Clinics and the fight against Statelessness by UNHCR

Recall the definition of statelessness and how its consequences could lead to discrimination and lack of enjoyment of full-blown human rights violation and overall lack of access to justice. This obvious human right issue and lack of access to justice could lead to the conclusion that statelessness could be fought through social justice and public interest law which are embedded in the CLE programme[57].

Social Justice and Public Interest law primarily enables students to acquire, by way of experiential learning, the specialised technical knowledge and professional legal skills in social justice and public interest lawyering[58] . Students are engaged in the supervised preparation and carriage of particular public interest cases or projects such as cases involving possible miscarriage of justice, human rights, and assisting persons seeking asylum protection[59] . Their objective has been to teach students to employ legal knowledge, legal theory, and legal skills to meet individual and social needs. The end result is that it instils in students a professional obligation to perform public service; and to challenge tendencies in the students toward opportunism and social irresponsibility[60] . In addition, they are aimed at educating the neglected members of

[57] They both have the same objectives and outcomes see Ojukwu E. et al Clinical Legal Education : Curriculum lessons and materials Network of University Legal Aid Institutions(NULAI Nigeria),Abuja, 2013

[58] Social Justice and Public Interest Law Clinics Hand book Retrieved from https://www.newcastle.edu.au/course/LAWS6029 last visited 14th October, 2018

[59] ibid

[60] Ibijoke Patricia Byron The Relationship Between Social Justice and Clinical Legal Education: A Case Study of The Women's Law Clinic, Faculty of Law, University of Ibadan, Nigeria. Retrieved from http://www.northumbriajournals.co.uk/index.php/ijcle/article/viewFile/22/27 last visited 14th October, 2018

a community while addressing their legal problems; it is used by clinical law teachers to teach students on how to educate clients on their rights[61] .

The service component of Clinical Legal Education, (law clinics) using Social Justice and Public Interest Law, requires the students to carry out the following law clinic activities like; interviewing, counselling, research, writing[62], community based services and street law[63], and eventually to learn ethics and professional responsibility.[64]. To emphasise and elaborate this point further, an example of a project carried out by students using social justice and public interest law will be given and discussed.

The CLE programme at the Faculty of Law of Baze University[65] requires students to take the following mandatory courses under its Clinical Legal Education programme: Ethics and Professional Responsibility; one of these three courses- Social Justice and Public Interest Law (I & II), Human Rights Law (I & II), Environmental Law (I & II); and Clinical and Moot Court Practice (I & II). There is a service component attached to the CLE program which is the Law Clinic of the Faculty. In the Law Clinic, students are engaged in a project called Reforming Pre-trial Detention in Kuje Prison Project

[61] ibid
[62] Stuart H. Smith Law Clinic and Center for Social Justice retrieved from http://www.loyno.edu/community/stuart-h-smith-law-clinic-and-center-social-justice last visited 1st July, 2019
[63] Social Justice Initiative-In-house pro-bono Projects 2018-2019 https://www.law.columbia.edu/social-justice/students/pro-bono/in-house-pro-bono-projects last visited
[64] Ojukwu E. et al Clinical Legal Education : Curriculum lessons and materials Network of University Legal Aid Institutions(NULAI Nigeria),Abuja, 2013
[65] Baze University is a private University located in Abuja, Nigeria. The writer of this paper is affiliated with this University. She is also a supervisor of the Law Clinic and has supervised students on the LCPK project.

(Reform Kuje). This project has similar outcomes with the project suggested in this paper. The project is funded by the United States Department for International Narcotics and Law Enforcement (INLC). Other partners of the project include; Partners Global, West Africa Nigeria and Network of University Law Institutions. The students, under this project, have interviewed and managed the cases over 60 pre-trial detainees at the Kuje Correctional Facility. In addition, on a general note under this project, 10,326 court dates for 836 detainees were inputted into a designated system after training with Nigeria Correctional Services staff and 475 pre-trial detainees in Kuje Correctional Centre were interviewed by students, over 200 detainees were granted access to Justice[66].

To analyse the effect of this type of project on students and to get the feedback of students in general, a questionnaire was given to the first 15 students that were engaged in this project. The result of the questionnaire[67] showed that indeed, projects like the Kuje Reform Project and others alike strengthens the skills of students and has quiet an impact on vulnerable people in the society seeing that it has created access to justice for them. This impact, on both students and stateless persons, is what this proposed project will hopefully achieve.

[66] Reforming pre-trial detention in Kuje prison, retrieved from https://www.partnersglobal.org/resources/reforming-pre-trial-detention-in-kuje-prison/ last visited 4th December 2020

[67] The focus of this paper is not the LCPK thus data analysis and presentation was not done, however visit the following link to view filled questionnaires by the students, as the point made or emphasised is quite clear from viewing the filled questionnaires. https://drive.google.com/drive/folders/1LDzmsUtLnRXhaMT2w1SxXFsZ0M7Yy7Vv?usp=sharing

Consequently, from the above, Social Justice and Public Interest lawyering is important not only because of its effect upon clients and community at large, but also because it takes students out of their comfort zone and puts them in a place where they are not familiar which inevitably, enables them to interact with indigenous people. It teaches them to face certain human rights issues and basically the realities of life; such as the consequence of Statelessness. This in turn will help achieve the general outcome and objectives of Clinical Legal Education- to develop the perception, the attitudes, the responsibility and the skills to become a lawyer after completion of the course from law schools[68].

5. Recommendations

Finally, based on the above analysis, this a paper recommends the following;

a) **Partnership:** This paper recommends that UNHCR should partner with Law Clinics in Nigeria for the fight against Statelessness. This partnership is recommended for a number of reasons

   i) The UNHCR has already mapped out some strategies like sensitization and awareness in their effort to combat statelessness in

[68] Jayadev Pati, Madhubrata Mohanty, Clinical Legal Education—A Bare Necessity in the Scientific Era, Retrieved from https://journals.sagepub.com/doi/abs/10.1177/2322005815607143?journalCode=alea last visited 1st July, 2019

Nigeria. These are activities that could easily be done through a project in Social Justice and Public Interest Lawyering via outreach programs and other activities alike. The students/clinicians will be involved in the proposed activities; they will be the 'foot soldiers' that will go to communities and market places to hand out fliers and do jingles, organise seminars in various schools and other organisations just to educate the Nigerian public on statelessness. Moreover, from the data analysis and presentation section of this paper, there is seemingly lack of knowledge on statelessness, thus, sensitisation and awareness is quite paramount in the fight against Statelessness in Nigeria.

ii) Secondly, the UNHCR has identified that accurate data in Nigeria to know an estimated number of stateless persons, those who are at risk of being Stateless and other information alike is missing and getting such data is difficult. The clinicians through the out-reach programs mentioned, which could lead to in-house clients in the various law clinics, with proper documentation and necessary questions asked during client interviews, so much data could be retrieved for the benefit of the fight against statelessness. Besides, the little research conducted for the benefit of this paper shows it is indeed possible to

retrieve information for the proposed project from the public in Nigeria.

iii) This partnership will not only benefit UNHCR's fight against statelessness. It will be of tremendous benefit to the students/clinicians. It is believed that embarking on this project, especially during outreach programs for awareness, sensitization and in-house advocacy students/clinicians will learn; client interview skills, communication skills, file management and advocacy skills just like they have in a similar project at Baze University. After collecting the data the clinicians will eventually be required to write reports to the UNHCR and other stakeholders especially the high level Government officials and policy makers the UNHCR mentioned in the NAP draft. This will improve their legal writing and research skills.

iv) Another important advantage of the recommended partnership is that eventually, victims of statelessness in Nigeria or those that risk being stateless and consequently do not enjoy their fundamental rights will have access to justice. More so, sensitization and awareness programs will educate Nigerians on the serious and dangerous concept of statelessness which they need as indicated by the data presentation and analysis section of this paper. It would help

them protect themselves and those around them from the dangers the concept poses.

Therefore, this partnership will yield a win-win situation for all stakeholders involved.

b) Another partnership recommended by this paper is between law clinics and Government-based agencies involved in issuing means of identification or nationality to Nigerians. They could open a one-stop outlet in the law clinics. Any client that comes for in-house advocacy on statelessness could be assessed by these agencies and may be processed for issuance of means of identification that will show a bond to the state according to the Law. An example of such agency is the National Population Commission. At this juncture; Clinics are advised to uphold the highest standard of ethics for in-house services. Ethical issues like Confidentiality and privacy for the client must be upheld at all times.

In the alternative, Law Clinics can also conduct outreach programs where they go to communities to enlighten them on the concept and also in collaboration with relevant agencies may decide to register persons in the community. This partnership would teach students/clinicians the various skills mentioned above and it will also assist the government in Nigeria combat statelessness. Hence, the proposed partnership with these government agencies may lead to clients having a nationality and getting a means of proving Nationality. This means could that the Law clinics and clinicians

would be able to create an avenue for stateless persons in Nigeria to first of all enjoy the right to a nationality as granted by the Universal Declaration of Human Rights which would eventually lead them to enjoy other fundamental rights and eventually have access to justice. An outcome of Social Justice and Public Interest Law is achieved!

c) **More law clinics in Nigeria**: It has been mentioned in this paper that there are 38 law clinics in Nigeria out of the 55 Faculties of Law in the country. This paper is urging other faculties that are yet to start Clinical Legal Education to do so and establish law clinics in the faculties. The advantages are too numerous to count, however some have been mentioned in the discourse of this paper. The clinics can embark on projects similar to the project this paper recommends and many others that seek to address social menace like statelessness within the community. It should be compulsory for all faculties of Law to run a CLE curriculum which includes running law clinics. Here, implementation is key, we just need will power. To all the other law clinics in operation, this paper is encouraging them not to shy away from projects like the one proposed. It will aid in actualisation of CLE objectives and outcomes.

6. Conclusion

To answer the two questions poised in the beginning of this paper which are; can law clinics in Nigeria play a role to help UNHRC eradicate statelessness? Can the law clinics in Nigeria become mechanisms to provide access to justice through Social Justice and Public Interest Law to those stateless persons that are denied their fundamental human rights? The answer will definitely be in the affirmative for both questions flowing from the analysis and recommendations made beforehand.

Statelessness is a serious social issue in Nigeria and the service component of CLE, law clinics can make a tremendous contribution to fight this issue in Nigeria.

Reviewed Article

INDIA'S LAW SCHOOL LEGAL AID CLINICS: THE GAPS BETWEEN ASPIRATION AND PRACTICE

K Rajashree and Sonika Bhardwaj, Christ University, India*

Abstract

The law schools legal aid activities conducted through its clinics has come a long way in India especially since its inception in the early 1970's. Its evolution has been gradual, intermittent and varied. Although The Bar Council of India (BCI) has mandated, establishing legal aid clinics as a pre-requisite for granting the necessary permissions before law schools start functioning, there are limited ideas of its purpose and objectives. An inherent lack of understanding its importance in terms of teaching, learning and research, the legal aid practices are largely left to the discretion of the individual law schools and interpretations of the individual faculty members. Combined with ideas heavily borrowed from the law schools in the US and individual experiences of the faculty members, legal aid practices in India are diversified. In the backdrop of this, the author intends to explore and map the aspiration of legal aid through an analysis of the key policy documents of legal education since India's independence through an ontological framework. The ontology maps the aspirations of the legal aid clinics that was intended through these documents. Additionally, a case study of two important institutions have been taken as the case in point in order to verify whether the practices match such aspirations. Thereby, putting forth

arguments that are critical for understanding the gaps between the aspiration and the state of reality.

Key words: Legal aid Clinics, Law schools, Clinical, Legal education, Social justice

Introduction

The Preamble of the Indian Constitution, guides its law makers to formulate avenues, structures and mechanisms, to ensure a society that is inclusive of the masses. As a consequence of which, Article 39A was inserted through the 42nd Constitutional amendment in the year 1976. The amended article casts responsibility on the state to provide free legal aid to the marginalized. [1] The law makers, legal luminaries and the academics realising India's huge population and the potential of the law schools, recommended the possibility of utilization of their tremendous student resources. If mobilized, could be effectively used in addressing some of the social issues and aid in fulfilling the enormous unmet legal needs of the people. Additionally, another important objective of the legal aid clinics being, preparing the students to be professionals who would not only be sensitive to some of these needs but also aid in

* Rajashree. K is a Research Scholar and Dr. Sonika Bhardwaj is an Associate Professor at Christ (Deemed-to-be) University, Bengaluru, Karnataka, India.

[1] Sushant Chandra & Nityash Solanki, *Legal Aid in India: Retuning Philosophical Chords*, 2 BRICS L.J. 68 (2015).

achieving social justice. It was with this intention, the lawmakers introduced the concept of providing legal aid at the law schools through their clinics.[2]

The concept of legal aid in India dates back to the period between 1960 and 1970 where the law schools borrowed the initial program structure from the clinicians in the United States of America. [3] It was in the year 1973, that the Report of the Expert Committee on Legal Aid published by the Ministry of Law, Justice and Consumer Affairs under the chairmanship of Justice V.R. Krishna Iyer that gave recommendations to involve students to make legal aid available to the marginalised communities. [4] The recommendations given by Justice V.R. Krishna Iyer was followed by Justice P.N. Bhagwati through his Report on National Juridicare between 1977-78. The Report highlighted the need and importance of law schools in fulfilling the huge gaps that existed in the system and how they can be utilized to drive social justice goals. [5] Professor Dr. N.R. Madhava Menon, who established the National Law School of India University in the year 1986 [6] modelled it on the lines of involving the law students as 'problem solvers' and 'societal leaders'. [7] Despite various efforts to imbibe

---

[2] Rajashree, K. 'Dissecting the Dichotomy of Skill and Social Justice Theory of Law School Legal Aid Clinics in the USA and India: A Re-look of the Past and the Present', Asian Journal of Legal Education, 8(1), 79–94 (2021).

[3] Frank S. Bloch & Iqbal S. Ishar, *Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States*, 12 MICH. J. INT'l L. 92 (1990).

[4] Manoj Mate, *Two Paths to Judicial Power: The Basis Structure Doctrine and Public Interest Litigation in Comparative Perspective*, 12 San DIEGO INT'l L.J. 175 (2010).

[5] Rajeev Dhavan, *Managing Legal Activism: Reflections on India's Legal Aid Programme*, 15 ANGLO-AM. L. REV. 281 (1986).

[6] N. R. Madhava Menon, *Why Yet Another Law School*, 1 Student ADVOC. 1 (1988-1989).

[7] N. R. Madhava Menon, *Keynote Address at the Seventh Worldwide Conference of the Global Alliance for Justice Education*, 1 Asian J. LEGAL EDUC. 147 (2014).

value education and advance the goals of justice through legal aid in law schools, there were not many documented references to the involvement of students in legal aid clinical activities, except for Benares Hindu University and Delhi University between the said duration. [8]

It was not until 1998, that Bar Council of India framed rules incorporating provisions for inclusion of compulsory practical training component into the law curriculum. Under Schedule III, Rule II, of the said rules, the BCI mandated the law schools to establish legal aid clinics as a pre-requisite for grating permissions to run them. Even the Curriculum Development Committee Report of 2001 prepared by University Grants Commission (UGC) suggested allocation of marks for conducting legal aid activities, but without specifically elaborating anything in terms of its objective and its nature. Part-IV of the 2008 Rules of the Bar Council of India expanded the role of law students to witness proceedings in the office of a lawyer or in a legal aid office and record the same. However, these rules were not in alignment with the aspirations and spirit of social welfare as opined by legal doyens such as Professor Upendra Baxi and Professor Dr. N.R. Madhava Menon.

There is no clarity with regard to the key elements and dimensions of legal aid which are to be followed in/by law schools. With ideas and objectives fragmented, practices being sporadic and intermittent, diverse ideas and concepts are attributed to legal aid.

[8] Frank S. Bloch & Iqbal S. Ishar, *Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States*, 12 MICH. J. INT'l L. 92 (1990).

Hence this article makes an attempt to document and map the aspirations of what are the pathways through which legal aid is to be advanced in/by a law school legal aid clinic. This is done by tracing important documents and reports of legal education in India since India's independence. At the same time, an attempt to verify these aspirations in the background of two types of universities as case studies are taken as a reference. Such frameworks are crucial to understand the aspirations and the ground level-realities of the law schools legal aid practices carried out through its legal aid clinics.

Methodology and limitations

Qualitative method of analysis has been adapted in the paper. The paper is divided into four important parts. In Part-I, the paper conceptualizes the legal aid practices through an ontological method. The framework captures the elements of legal aid as aspired in the key documents of legal education. The conceptualization of the framework was done through observation method and subsequently it was deliberated upon in consultation with experts of legal education to ensure that the framework includes all the necessary elements/ dimensions of legal aid.

In Part-II, the framework has been used to map the dimensions and elements from some of the key legal documents such as the Law Commission Reports, Reports of the Committee established by the Ministry of Law and Justice, Supreme Court of India committees on legal education, University Grants Commission Report and Bar

Council of India Reports on Curriculum Development. Through this, the aspirations of legal aid which are derived at is used for the purpose of verifying if they are in consonance with the practices followed in two different and diverse typologies of universities which are taken as the point of study for the present paper.

In Part-III, two types of Universities have been chosen based on a stratified sampling method. The selection of the University was based on 3 criterions such as year of establishment, geographical representation and the type of institution i.e. government and private. Upon finalization of the units of analysis, the legal aid practices of both the institutions were mapped to the framework where the similarities and the differences were identified. These similarities and differences were used to do content analysis and draw conclusions to render recommendations in Part IV. The names of the University have been assigned codes such as UI and UII for the purpose of anonymity. The paper is backed by a thorough review of literature both recent and old to advance the arguments.

The paper is limited to the study of two typologies of Universities only. There is a need for further analysis to have in-depth understanding of legal aid practices on the field. For which there is a need to conduct in-depth interviews and observe legal aid practices in their natural settings in order to arrive at evidenced based recommendations. This will aid in understanding the efficacy of the working of legal aid clinics across institutions in India. The authors have used primary data and observation method to draw the conclusions. There is a need for conducting in depth

investigations in order to further explore and understand the extent to which these aspirations are realised.

Understanding the objectives of Law School legal aid clinics through a purview of literature

As early as 1930 John S Bradway, opined that it was important for the law school legal aid clinics to render free advice to worthy indigent clients who were unable to afford the services of a lawyer. Bradway, strongly believes that by doing so, it would fulfil dual objectives, firstly, fulfil societal needs and secondly, train the students of law in legal aid clinics. [9] Stephen Wizner and Jane Aiken, state that the law school legal aid clinics started with the intention of providing and expanding access to justice. According to them, when the law school legal aid clinics started it was all about providing free legal services to the poor who were otherwise unable to represent themselves before the court, influencing changes to policies and for future development of legal aid in the society. But they also opine, that there is a need to revisit these ideals and understand whether todays legal aid clinics have the same approach as before. [10]

[9] John S. Bradway, *Legal Aid Clinics,* 8 St. B.J. 261 (1933).
[10] Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997 (2004).

The works of Adam Babich, reflects that while the law schools legal aid clinics deal with real problems and real clients it amounts to integration of 'professionalism' and 'reality' with 'academic idealism'. When these legal aid clinics take over socially relevant issues, they become the voice of the common man. There have been legal aid clinics which have taken over various social issues that plague the society and have been the frontrunners in heralding changes. [11] Philip Alston and Peter Cashman, while talking about the purpose of setting up legal aid clinics at law schools, make the following observations. They state that these clinics fulfil a valuable 'social and educative' role. Such clinics should be instrumental in mitigating poverty and work for the social and legal rights of the common man. [12]

Such views are also resonated in the Indian context as well. The notions that the law schools have a social responsibility to fulfil through the legal aid programmes and clinics are very apt. Legal aid programmes are to be used as instrumentalities of social and economic change. Such involvements aids student learning and enables 'knowledge mobilization'. [13] It is opined that that the law school legal aid clinics through its various community development programmes and activities have

[11] Adam Babich, *Controversy, Conflicts, and Law School Clinics*, 17 CLINICAL L. REV. 469 (2011).
[12] Philip Alston & Peter Cashman, *The Purpose of Setting up Legal Aid Clinics*, 3 Sing. L. REV. 27 (1971-1972).
[13] Jane Schukoske & Roopali Adlakha, *Enhancing Good Governance in India: Law schools and Community-University Engagement*, 3 J. INDIAN L. & Soc'y 206 (2012).

individual benefit and community benefit at large. Such experiences are essential to give exposure to 'real-world situations' through community development. [14]

In India it is argued that there are vast unmet societal needs. With legal aid being a basic human right and a constitutional mandate, there is a need to encourage the law schools legal aid clinics to impart para-legal training amongst the law students. [15] Contemporary literature is also replete with instances which defines the purposes of legal aid clinics. Firstly, to provide the students with a better legal education and secondly, to create/ enhance access to justice for the community. [16] Engaging the students in various pro-bono activities, through legal aid clinic is seen not only as a socially relevant tool for accessing justice but is also an educational experience to motivate students which would help them in subsequent employability. [17]

Legal aid programmes, especially in India grew on the lines of jurisprudential concepts such as 'Rule of Law', 'Equality before law and Equal protection of the laws'.[18] Hence, the law schools have to take some responsibilities upon themselves. It is where the students of law are not just trained to be lawyers, but learn how the law 'works in action' and are able to contribute towards social change.[19] In this regard,

---

[14] Upasana Dasgupta, *The Paradox of Elite Law schools in India - A Comparison with Canadian Legal Education*, 2019 REV. Quebecoise DE DROIT INT'l 147 (2019).
[15] Srikrishna Deva Rao, *Paralegal Education in India: Problems and Prospects*, 1 J. Nat'l L. U. DELHI 94 (2013).
[16] David W. Tushaus, Shailendra Kr. Gupta & Sumit Kapoor, *India Legal Aid Clinics: Creating Service Learning Research Projects to Study Social Justice*, 2 Asian J. LEGAL EDUC. 100 (2015).
[17] Frank Dignan, Richard Grimes & Rebecca Parker, *Pro Bono and Clinical Work in Law schools: Summary and Analysis*, 4 Asian J. LEGAL EDUC. 1 (2017).
[18] Clarence J. Dias, *Legal Aid in Asia: A Basic Human Right*, 1985 THIRD WORLD LEGAL Stud. 89 (1985).
[19] Nidhi Sharma, *Clinical Legal Education in India: A Contemporary Legal Pedagogy*, 8 INDIAN J.L. & Just. 165 (2017).

Stallybrass states that the law universities should provide the students with such training which gives a man the power to handle and deal with everyday problems, develop administration capabilities and not merely endeavour towards imparting education that is only vocational in nature. [20]

Considerable strides have been made in legal education since India's independence, yet many significant issues need to be addressed. There is a dearth of quality teachers who lack a sense of commitment towards the institutions. The reasons for this are aplenty, such as overburdening them with administrative responsibilities leading to limited class room preparations, research and publications. [21] Hence the quality of legal training that is offered through legal aid clinics suffers.

It is for this reason, that Professor Upendra Baxi had raised his concerns that law school would not be in a position to produce a league of new generation of lawyers who would take up social issues and work for the underprivileged. Resonating these views, Professor Dr. Madhava Menon had said that legal aid is that pedagogic tool through which a spirit of public service could be infused into the students. [22] Yet, legal aid still struggles to find a foothold in today's legal education system. Legal aid is yet to be made mandatory and fully incorporated into India's clinical legal education. [23]

---

[20] W. T. S. Stallybrass, *Law in the Universities*, 1 J. Soc'y PUB. Tchrs. L. n.s. 157 (1948).
[21] Lovely Dasgupta, *Reforming Indian Legal Education: Linking Research and Teaching*, 59 J. LEGAL EDUC. 432 (2010).
[22] Shuvro Prosun Sarker, *Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India*, 19 INT'l J. CLINICAL LEGAL EDUC. 321 (2013).
[23] Sital Kalantry, *Promoting Clinical Legal Education and Democracy in India*, 8 NUJS L. REV. 1 (2015).

As mentioned by Richard Grimes, the law schools need to provide legal aid that is on par with what is provided by the state. The role of the clinic is a very prominent one and the clinics need to raise the level of legal literacy and assist the general public. [24] There are clear interlinkages in terms of achieving a twin fold objective of legal aid clinics in law school. Hence this paper, uses the literature and the case study method to verify whether these aspirations of fulfilling the dual mandate are in consonance to each other.

Part I: Conceptualizing legal aid practices through an ontological approach

An ontological approach is a qualitative research methodology that is used to bring clarity through hierarchical deconstruction, for the logical construction of a problem. The aim of ontology is to provide reasoned, deductive account of the things that exist. [25] An ontology brings out the exact nature of the elements to a problem, that is simply presumed most of the times. An Ontology brings out the conceptual overview of a problem. [26]

The method of ontology is based on logic and has the following benefits:

- Makes the research systematic
- Helps in reformulating the problem

[24] Richard Grimes, *Accessing Justice: The Role of Law School Legal Clinics in Conflict-Affected Societies*, 1 Asian J. LEGAL EDUC. 71 (2014).
[25] L.M. Given, L. M., *'The sage encyclopaedia of qualitative research methods'* (2008).
[26] A.J. Mills, Durepos & E. Wiebe, '*Encyclopaedia of case study research*' (2010).

- Brings together the issues in a coherent manner

The below framework encapsulates the various dimensions of legal aid elements that are practised through the law school legal aid clinics and activities. The framework is a derivative of discussions with experts from the academia and the judiciary who have contributed to the area of legal aid in India. Such frameworks are a result of not only discussions, but also follows the process of validation in order to ensure that the framework is complete and comprehensively capture all aspects of legal aid. Hence in this section, legal aid which is within the larger framework of clinical legal education has been deconstructed in three ways, firstly through review of the relevant literature, discussions with experts and a priori knowledge of the authors of engaging with legal aid activities at the institutional level. The framework is an important aspect which is used to map the aspirations from the key policy documents in Section-II.

As depicted below, in *Figure 1,* the framework puts speculations into 'methodologically informed observations'.[27] The framework has been arranged into level 1, level 2 and level 3. Level 1 depicts the dimensions such as Legal education, Level, Activity, Actors and Outcome. Level 2 depicts elements such as Clinical, Undergraduate, Post Graduate, Curricular, Co-Curricular Extra-Curricular, Students, Faculty Members, Administrators, Community, Regulators, Judiciary, Practitioners,

[27] S.G. Hoffman & V. Kumar, '*Ontology.* In: Paul Atkinson, ed.' (2020).

Justice, Holistic Learning and Employability. Level 3 depicts the sub elements of the main elements such as Legal aid, Social and Economic aspects.

Figure 1: Framework for mapping legal aid in institutions imparting legal education

Legal Education	[for]	**Level**	[through]	**Activity**	[by/with]	**Actors**	[for]	**Outcome**
Clinical		UnderGraduate		Curricular		Students		Justice
Legal Aid		Post-Graduate		Co-Curricular		Faculty		Social
Non Clinical				Extra-Curricular		Administrators		Economic
						Community		Holistic Learning
						Regulators		Employability
						Judiciary		
						Practitioners		

Every taxonomy, when read, encapsulates a complete meaning in itself. Hence the above framework depicts 3*2*3*7*5=630 pathways to deal with aspects of legal aid which forms a part of the Clinical legal education. Every statement when read from the left to the right with various permutations and combinations is capable of giving a complete meaning in itself. For example: Clinical Legal Education [for] Undergraduate level [through] Curricular activity [by/with] Students [for] Social Justice. Legal Aid [for] Post Graduate [through] Extra-Curricular [by/with] Faculty [for] Holistic learning and so on.

Part II: Mapping the aspirations to the ontological framework

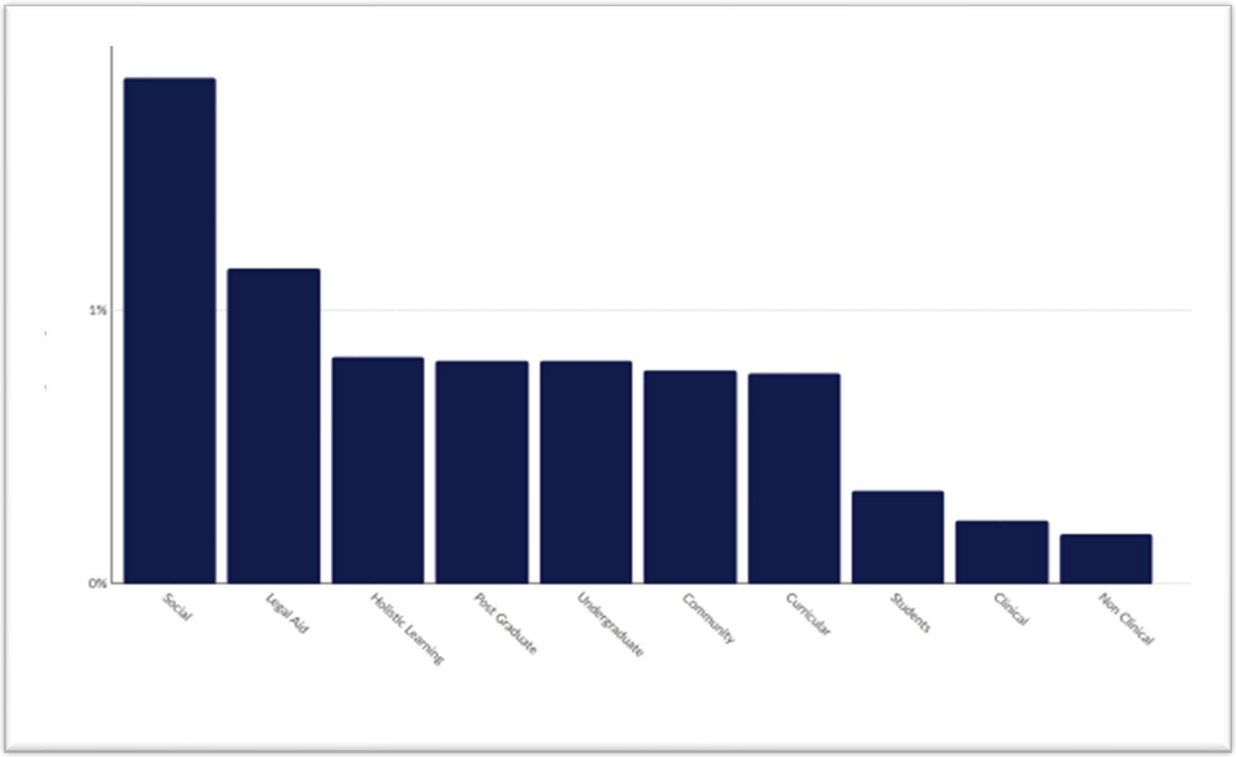
This section, synthesizes the aspirations of the key policy documents to the ontological framework. Upon the logical deconstruction of the key components in the form of a framework, elucidated in the previous section, this section, picks the key elements of the framework from the policy documents which are then mapped together in order to help visualize patterns and draw reasoned conclusions.

Essentially the framework is used to understand and analyse how many times these elements appear in the policy documents to determine the weightage that has been accorded by the policy makers. Every dimension inclusive of elements and sub-elements of the framework were mapped using binary coding from the key documents of legal education in India. Binary coding is a method in which the key policy documents are kept vertically and all the elements of the ontology are placed horizontally. If any elements appearing in the ontology are aspired in the documents, they are coded as 1 and in its absence are coded as 0. This helps in deriving maps that shows how many times, the elements and sub-elements appear in the policy documents which helps in analysing and arriving at conclusions.

The following chart is a depiction of the expectations that the key policy documents aspired for. The chart helps in visualizing patterns in the coded taxonomies elaborated in the ontological framework. Any element of the framework which were present in the key documents were mapped to derive at patterns. These patterns are in the form of a hierarchy chart that depict the aspirations that have unfolded through the key

documents. This map *(Figure 2)* sets the context to verify, through the case study approach in Part-III, to understand if institutional practices match the state of aspiration.

Figure 2: Hierarchy Chart



An analysis of the framework and its subsequent coding, connotes the aspiration of the documents perused here. The chart indicates, that there is an aspiration for integrating legal aid into the curriculum as a clinical paper. It elaborates that legal aid practices are to be pursued both at the undergraduate and post-graduate level with the intention of advancing social justice goals. It indicates that, it is essential that while

students are involved in legal aid activities, community needs are fulfilled and at the same time enable holistic learning amongst the students.

The objective of legal aid is twofold according to the reports, that while it keeps the end result of achieving social justice in mind it equally provides an opportunity to the students to be sensitive to the needs of the society. The reports do not make distinction between students of undergraduate and post graduate domains in respect of their involvement in legal aid activities. On observation it is found that legal aid activities were to be incorporated into the curriculum as a clinical paper. The law schools have a very categorical role to play in fulfilling the needs of the society. The law school, from where the vast majority of the professionals such as judicial officers, lawyers, social workers, administrative officers graduate year after year, have a responsible role to play in the society. Through involvement in legal aid activities, it provides the students an opportunity to not only deal with the problems faced by the common man but also prepare them to deal with their professional challenges and commitments in future.

The mapping of the documents to the dimensions, elements and sub elements of the ontology, gives us clarity as to the key aspirations of the documents which provides impetus to the arguments that are advanced with the help of review of literature. The hierarchy chart has been instrumental in verifying the common objectives of legal aid, thus providing succour to the commonalities and the inconsistencies that exist between the key mapped documents and the reviewed literature . This is further

verified in the next section with the case study of two unique and different types of institutions.

Part III: Case analysis of institution I and institution II

Case study is adopted to capture the complexity of specific cases within a defined boundary and space. Typically, in a case study which is conducted in an educational set-up, captures specific components such as the institution programmes and any activity that is usually carried out in its natural setting. Such observations enable the researcher to derive at logical and coherent conclusion about such cases. [28] A case study involves the selection of the case samples, strengthening the arguments with evidences and finally analysing the cases. [29] The idea of a case study is to understand and analyse concepts and situations from within the set-up rather than an external view. [30] At the same time, comparative case studies, also may be conducted to compare and draw similarities, contradictions and patterns across dual or multiple cases. [31]

University 1: the setting

University 1 (U1) is an institution which was established with the vision of imparting education that is in alignment to global standards. With diversity in the courses that

[28] M. Tight, *'Origins and Applications of Case Study. In: Understanding Case Study Research: Small-scale Research with Meaning* (2017).
[29] R.K. Yin, '*How to do Better Case Studies: Handbook of Applied Social Research Methods'* (2009).
[30] A.J. Mills, Durepos and E. Wiebe, *'Encyclopaedia of case study research'* (2010).
[31] *Id.*

it offers, it has maintained standards in delivering quality legal education in India. The courses are in consonance with the Bar Council of India Rules and Regulations. They have been designed with a view to meet the interdisciplinary challenges of today's context. U1 not only ensures achievement in academic excellence, but also fosters scholarship through research and collaborations.

Legal aid practices at University I

The legal aid clinic of U1 was established with the objective of empowering and engaging with the communities through awareness programmes and offer legal solutions. The clinic envisions the objective of achieving 'social justice' through varied activities, programmes and projects. At the same time, it wishes to afford an opportunity to the law students to apprise them with the ground level realities and to use the instrument of law to usher 'social change'. The activities of the clinic are not just confined to offering legal solutions to problems but moves beyond that and strives towards providing solutions to an entire range of socio-legal problems prevalent in the country. The clinic has a dual mandate, firstly, creating awareness and secondly, providing legal aid. The clinic has taken an active role in engaging with people from the lower socio-economic strata, and in particular children. These activities are conducted by the students as an extension activity.

The clinic has been instrumental in filing public interest litigations (PIL's) before various forums for the purpose of social cause. They have even undertaken projects to look at the efficacy of the legal aid clincs in India. The Legal aid clinic regularly

organizes conferences and conclaves both at the national and international level on areas that revolves around rural governance, legal aid clinics and human rights issues. The activities also extend towards making recommendations through policy changes to various governmental departments. The clinic has made use of technology in order to effectively reach out to the community and has always been vocal in supporting the cause of the marginalized community. The clinic intends to reach out to more legal aid clinics across the country through its initiatives in the forthcoming days. Due to the innumerable activities undertaken, the clinic as well as the students are recipients of various awards for the considerable work that they are doing for the society. Hence the activities of the legal aid clinic of U1 is varied and diversified.

University II: the setting

University II (UII) is one of the oldest institutions that imparts legal education in India which was established right after India's independence. The vision of UII is aligned towards achieving excellence in education to ensure an inclusive society. Whereas its mission is oriented towards integrating theoretical knowledge and practical skills in teaching and research. The Vision and Mission are aligned to make legal education accessible and inculcate social sensitivity amongst its students. The students of the institution are from diverse backgrounds who hail from different socio-economic, rural, semi-urban and urban background. The programme offers single course at the undergraduate and post graduate level since its very inception. The institution is

established in a multi-disciplinary set-up, but with limited interactions with other disciplines.

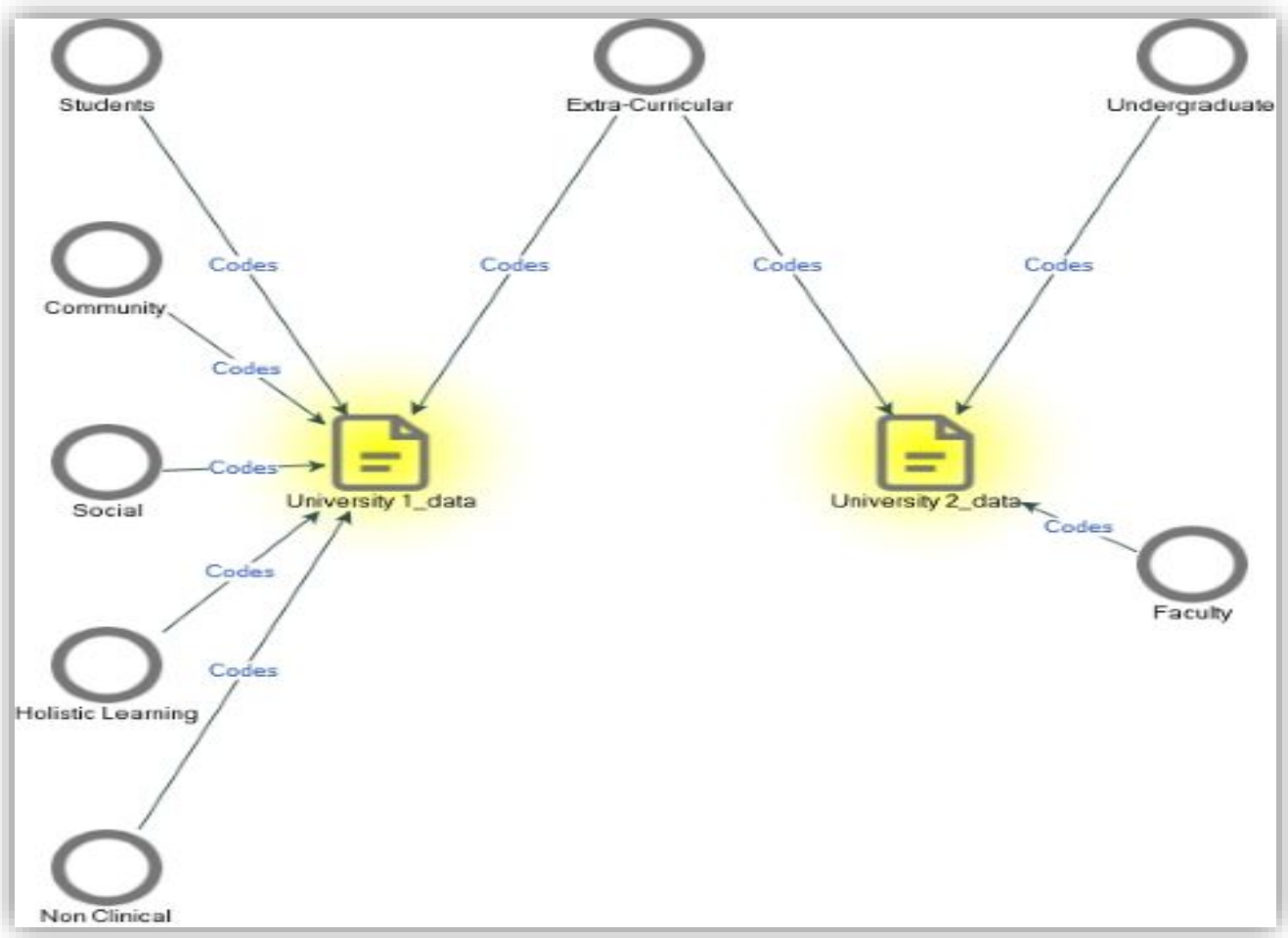
Legal Aid Practices at University II

Annual legal aid camps are conducted by UII where the students of the undergraduate courses are taken to a village annually. There the programmes are split into two aspects, legal awareness and legal aid. During these camps, legal awareness is rendered by the faculty members in the village community spaces covering topics such as malnutrition, hygiene, consumer related issues and various social welfare legislations. Secondly, the students visit the village, collect information on various issues that the villagers face through a questionnaire and submit the same to the concerned faculty members for future action. In such camps, the role of the student is limited in terms of conducting the survey who are unsure of the outcome of such exercise. The institution lacks an active legal aid clinic on campus, with a non-functional legal aid structure situated on campus. The reports of legal aid activities are not available in the public domain nor do they provide any information on how such activities contribute to student learning. The annual legal aid camps are a co-curricular activity, which is conducted to/ with the aid of final year students.

Analysing University I and University II: the commonalities and the distinctions

In order to understand the gaps that exist between the aspirations and practice, the case of University I and University II are analysed in reference to the framework. A comparative analysis of both of these universities is also carried out to identify the commonalities and the differences that exists between these two types of institutions. With innumerable institutions offering legal education in India, it is important to map such commonalities and distinctions in its legal aid practices.

Figure 3: Comparative analysis between University 1 and University II



University I and University II: the commonalities

An extension activity

Legal aid practices at both the institutions are conducted as an extra-curricular activity. With no course credits being accorded to them, they largely remain an activity that is carried outside the scope of the academic programmes. The students along with specific faculty members carry out the activities more as a requirement to fulfil the mandate of the Bar Council of India. The legal aid activities are not integrated into the curriculum either as a clinical course nor is it offered as an optional or value added course. This connotes that the mandatory regulation of establishing a legal aid clinic on campus have been duly carried out by both the universities. Nevertheless, without its integration into the teaching-learning mechanisms. Hence, while carrying out the legal aid activities, it is largely left to the discretion of the interested students to engage themselves and contribute to/ through the society. Whereas the aspirations *(Figure 1)* indicates the incorporation of legal aid into its curriculum as a clinical paper.

There is a level of seriousness that is attached to any subject when it is integrated into the curriculum. This motivates and affords an opportunity to the students to work towards their overall development and at the same time contribute to the society. With legal aid activities, being largely left to the discretion of individual students, it may not be in a position to achieve its end outcome. With activities spread, without any specific objective and plan of action, the institutions will not be able to meet the aspirations of ensuing an egalitarian society nor will it be able to garner the support

and attention of the student community. The student resources, if properly channelized can be effectively used in making contributions to the society. The idea of sensitizing the students to the needs of the society may largely remain elusive, if legal aid is not taken up seriously by the Universities that offer legal education.

Undergraduate level

The uniqueness of University I and University II lies in its diversity of programmes that are offered at the undergraduate, post-graduate and at the research level. Despite, the variety of its courses and programmes, legal aid activity is largely confined to the under-graduate level. There exist no distinctions in the aspirations of the framework, when it came to involving the students at both undergraduate and post graduate level. The framework casts an incumbent duty on the Universities to carry out the legal aid activities in alignment to its Vision and Mission statement.

A deviation is seen in both UI and UII in terms of involving the students from across the undergraduate and post graduate programmes in its legal aid activities. These distinctions create barriers for the effective functioning of the legal aid clinics and clearly acts as an impediment to clearly understand and effectuating the objective of achieving social justice.

University I and University II: the distinctions

Community engagements

The common attribute of legal aid practices at UI and UII is to engage with the community. Nevertheless, the legal aid clinic of UI has been engaging with the community in continuum whereas UII's activities are confined to conducting annual legal aid camps. The activities of U1 is not only vast but varied as well. The campus has an active legal aid clinic which is run with the help of student volunteers and in-charge faculty coordinators. Every day, time is dedicated by the students to spend time in the legal aid clinics to render legal advice to clients who walk-in. Additionally, the students participate in continuous legal awareness programmes throughout the year on topics that are diverse and relevant. Social justice projects are undertaken for creating access to justice and are actively involved in the filing of public interest litigations. The trend connotes involvement in activities that are essentially outside the scope of extra-curricular activities, but also suggests involvement in research related activities. Hence U1 is actively engaged with the community on a continuous basis. These activities to an extent are in alignment with the objectives of the legal aid clinic.

Whereas in UII, the vision and the mission is oriented towards social sensitivity, but does not offer an in-depth objective that is aligned towards social justice goals. In order to develop a sense of empathy towards the society, yearly legal aid camps are conducted at nearby villages. The activities are annual events with minimal

intervention of the students. As awareness programmes are usually rendered by the faculty members, the role of the student is confined to filling questionnaires based on the responses of the village members on a single day. Hence how much of sensitivity is developed in the final year students in less than half a day is something that needs to be contemplated upon. This shows a lack of follow-up actions that need to be conducted by the students to look at the problems that are reported by the students through the questionnaire. All though some awareness is conducted through the National Service Scheme (NSS) activities, but much cannot be said about its effectiveness.

Holistic learning

Involvement of students on a continuous basis with diversified activities are crucial in the learning and development process. There are various skills, both hard and soft that are important for a law student, as they fit into multiple roles and responsibilities in the society as 'social engineers'. Engaging with the community on a continuous basis ensures in development of the requisite skill-set and at the same time in shaping the personality of the individual student who is involved in legal aid activities. With limited and intermittent legal aid activities, it may not necessarily lead to holistic learning and development of a student, a trend which is visible in UII in sharp contrast to U1.

The Vison and the Mission statement of UII is limited to the overall development of the student. No doubt it does mention about training the students of law, but it is not

specifically oriented towards the overall development of the individual student. The Vision and the Mission statements reflect training the law student for incorporation of specific skills such as lawyering skills through moot court activity. In traditional Universities, more focus is given towards honing the skills of a student, specifically in training them in lawyering skills.

Conclusions and recommendations

There are clear distinctions between the aspirations that are embodied through the literature and the framework. When these aspirations are compared to the case studies of the universities that are presented and analysed herein. The aspirations can be summarized as follows:

[Clinical Legal aid] for/at [Under Graduate] and [Post Graduate] level through [Curricular] Activity by/with [various actors] for [social Justice] and [holistic learning].

Contrary to the aspiration, the following summarizes the ground level realties of legal aid that are found through the present case study approach:

[Legal Aid] at [Under Graduate] level through [Extra-Curricular] Activity by/ with [students/faculty].

Hence there is a need for the Universities in consultation with the regulatory authorities to define the clinical component of practical training of students through

legal aid activities. Involvement of the students is beneficial not only in meeting the demands of the societal needs but also aid in developing the individual self. The above analysis, indicates a trend that there is minimal involvement of students. With limited focus towards legal aid activities, it is not achieving and may not be able to achieve in future its actual objectives and aspirations. The above framework and comparative study provides the foundation for various Universities across India to see if legal aid activities are achieving the desired results. It will also be instrumental in answering critical questions such as how it is able to translate to social justice and if not, why it is not able to achieve the constitutional mandate of social justice.

Hence the following Recommendations have been suggested:

1. Integration of legal aid as a clinical paper. This brings in sufficient focus towards the activities of legal aid by the institution

2. According credits for conducting legal aid activities. Due to which there will be an element of seriousness amongst the students to strive towards making such activities meaningful

3. Involvement of students of law both at the undergraduate and post graduate level from the first year onwards gives the students sufficient time to engage with the community and build their professional commitments around the ethics that is built over the years through their involvement in legal aid activities

4. Integration into the curriculum as Optional papers/ Bridge Courses or value added Courses. These courses give them the option to explore legal aid activities to make informed choices

5. The Universities in consultation with the relevant stakeholders to define the objectives and outcomes and ensure its compliance through regular audits. This brings is accountability amongst the institutional stakeholders

Reviewed Article

CLINICAL LEGAL EDUCATION AS AN EFFECTIVE TOOL FOR IMPROVING THE ACCESSIBILITY OF PROTECTIVE INJUNCTIONS FOR VICTIMS OF DOMESTIC ABUSE: A CASE STUDY EXAMPLE OF THE MODELS OF SUPPORT AVAILABLE AT NORTHUMBRIA UNIVERSITY

Ana Speed, Northumbria University, UK*

ABSTRACT

Protective injunctions are at the forefront of the family justice system's response to protecting victims of domestic abuse. The accessibility of orders, however, has been compromised by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which has reduced the availability of public funding for victims of domestic abuse and led to an increase in victims representing themselves in such proceedings. Research indicates that without legal support, a victim's prospects of securing protection can be adversely affected, demonstrating a need for pro bono assistance for those who cannot afford to pay privately for legal services. Whilst the provision of pro bono support in areas of unmet need is a principal aim of clinical legal education, research shows that few clinical programs in England and Wales offer specialist services for victims of domestic abuse. This paper therefore considers the role that clinical legal education can play in improving the accessibility of protective injunctions. Part one sets out a review of recent reforms within the family justice system and analyses how they have created an increased demand for pro bono legal

support for victims of domestic abuse. Part two examines the clinical landscape and the potential benefits to students of providing support to victims. By drawing on the case study of the Student Law Office at Northumbria University, part three sets out the various models of clinical legal education that may be utilised to support victims of domestic abuse. The benefits and limitations of each option for students and victims will also be considered. The paper is a helpful point of reference for clinicians and family law practitioners working in partnership with law school clinics who are considering offering support in this area.

INTRODUCTION

Since the 1970s protective injunctions have been at the forefront of the family justice system's response to protecting victims of domestic abuse. The demand for protective injunctions can be attributed, in part, to the low rates at which domestic abuse offences are prosecuted[1] and to victims prioritising their protection and that of any relevant children above the punishment of the perpetrator.[2] Over the last decade, however, reforms have taken place within the family justice system which have compromised

* Ana is a senior lecturer and clinical supervisor in the School of Law at Northumbria University.

[1] Over the last five years, there has been a decrease in the number of successful domestic abuse prosecutions year on year – from 70,853 in 2017, to 45,532 in 2020. This represents a fraction of the 758,941 domestic abuse offences which were recorded to the police in England and Wales in 2020. See Office of National Statistics, *Domestic abuse in England and Wales: year ending March 2017* (ONS: 2017); Office of National Statistics, *Domestic abuse in England and wales overview: November 2020* (ONS: 2020).

[2] C. McGlynn, J. Downes, J and N Westmarland, 'Seeking Justice for Survivors of Sexual Violence: Recognition, Voice and Consequences' in E. Zinsstag and M Keenan eds *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions* (2017) Routledge Frontiers of Criminal Justice, 179–191; J Herman, 'Justice from the Victim's Perspective' (2005) 11:5 *Journal of Violence Against Women*, 571-602.

the accessibility of protective orders. The most notable change has been the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which has reduced the availability of public funding for victims of domestic abuse.[3] Research indicates that LASPO has led to an increase in both the number of victims who do not take any action to secure protection through the family courts and the number of victims appearing as litigants in person in applications for protective injunctions.[4] Many litigants in person experience difficulties navigating the court process[5] and this is exacerbated for victims of domestic abuse whose ability to effectively participate in proceedings may be compromised by having to face their abuser in court.[6] Research indicates that without legal support, a victim's prospects of securing protection can also be adversely affected, demonstrating a need for pro bono assistance for those who cannot afford to pay privately for legal services.[7] Whilst the provision of pro bono support in areas of unmet need is a principal aim of clinical legal education, research shows that

[3] D. Hirsch, *Priced out of Justice: Means Testing Legal Aid and Making Ends Meet* (Loughborough University Centre for Research in Social Policy, 2018).

[4] Rights of Women, *Evidencing Domestic Violence: Nearly Three Years on* (London: Rights of Women, 2015); Ministry of Justice and National Statistics, *Family Court Statistics Quarterly: October to December 2020* (Ministry of Justice and National Statistics, 25 March 2021).

[5] L. Trinder, R. Hunter, E. Hitchings, J. Miles, R. Moorhead, L. Smith, M. Sefton, V. Hinchly, K. Bader, and J. Pearce, *Litigants in Person in Private Family Law Cases* (Ministry of Justice, 2014).

[6] J. Birchall and S. Choudhry, *What About my Right not to be Abused? Domestic Abuse, Human Rights and the Family Courts* (Women's Aid, 2018); M. Coy, K. Perks, E. Scott and R. Tweedale, *Picking up the Pieces: Domestic Violence and Child Contact* (Rights of Women, 2012); M. Coy, E. Scott, R. Tweedale and K. Perks, 'It's Like Going Through the Abuse Again: Domestic Violence and Women and Children's (Un)safety in Private Law Contact Proceedings' (2015) 37:1 *Journal of Social Welfare and Family* Law, 53-69.

[7] A. Speed and K. Richardson, 'Should I Stay or Should I Go Now? If I Go There will be Trouble and If I Stay there will be Double: An Examination into the Present and Future of Orders Regulating the Family Home in Domestic Abuse Cases in England and Wales, Unpublished Paper; A. Durfee, 'Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders' (2009) 4(1) *Feminist Criminology*, 7-31.

few clinical programs in England and Wales offer specialist services to support victims of domestic abuse.

Against this backdrop, this paper considers the role that clinical legal education can play in improving the accessibility of protective injunctions. Accessibility is interpreted broadly and within the paper is used to refer to the ease with which victims can access the family court to pursue an application and thereafter navigate the court process. Further, it refers to the rates at which orders are granted compared to the rates at which they are applied for, since this is indicative of a victims' prospects of securing protection. Part one sets out a review of recent reforms within the family justice system and analyses how they have created an increased demand for pro bono legal support for victims of domestic abuse. Part two then examines the clinical landscape and the potential benefits to students of providing such support. By drawing on the case study of the Student Law Office (SLO) at Northumbria University, part three sets out the various models of clinical legal education that may be utilised to support victims of domestic abuse. The benefits and limitations of each option for students and victims will also be considered. The paper is a helpful point of reference for clinicians and family law practitioners working in partnership with law school clinics who are considering offering support in this area.

PART ONE: A REVIEW OF THE CONTEXT AND EXISTING LITERATURE

Injunctive protection for victims of domestic abuse

In England and Wales, victims of domestic abuse can apply for injunctive protections in the civil courts or at the conclusion of a criminal trial (post-conviction or acquittal) under the Protection from Harassment Act 1997. More commonly, however, injunctive relief will be sought through the family courts because of the wider range of orders available and because 'the issues surrounding an abusive relationship can rarely simply be dealt with by way of an injunctive order alone and other interrelated family proceedings may be required'.[8] The two main forms of injunctive protection available through the family courts are non-molestation orders and occupation orders (although more specialised forms of protection exist in forced marriage protection orders[9] and female genital mutilation protection orders[10]). Non-molestation orders aim to 'prevent domestic abuse, stalking and harassment by prohibiting the offender from contacting the victim and/or attending certain places'.[11] In contrast, occupation orders regulate the family home. They can be used to declare existing rights in the

[8] K. Richardson and A. Speed, 'Two Worlds Apart: A Comparative Analysis of the Effectiveness of Domestic Abuse Law and Policy in England and Wales and the Russian Federation' (2019) 83(45) *The Journal of Criminal Law*, 324.

[9] The Forced Marriage (Civil Protection) Act 2007 introduced provisions into section 63A(1) of the Family Law Act 1996 to protect a person being forced into a marriage, from any attempt at being forced into a marriage and by providing protection and assistance for those already forced into a marriage.

[10] Section 73 of the Serious Crime Act 2015 inserted a new section 5A and Schedule 2 into the FGMA 2003 making provision for FGM protection orders.

[11] L. Bates and M. Hester, 'No Longer a Civil Matter? The Design and Use of Protection Orders for Domestic Violence in England and Wales' (2020) 42(2) *Journal of Social Welfare and Family* Law, 135.

property, determine who should or should not live in the property and can potentially exclude one of the parties from living in or attending a specified area around the home.[12] The remedies available to protect victims of domestic abuse are set to undergo reform shortly with the introduction of Domestic Abuse Protection Orders (DAPOs) through the Domestic Abuse Act 2021. The Home Office has stated that DAPOs will 'bring together the strongest elements of existing protective orders into a single comprehensive, flexible order which will provide more effective and longer-term protection to victims of domestic abuse and their children'[13]. Whilst there is no intention at this point to repeal non-molestation orders and occupation orders, the Home Office has acknowledged, 'it is our intention that DAPOs will become the 'go to' protective order in cases of domestic abuse'.[14] DAPOs are likely to be more accessible than non-molestation orders and occupation orders as it is anticipated that third parties (i.e. the police, domestic abuse support services, and friends and family of the victim who have leave of the court) will be able to pursue an application on the victims' behalf. Nonetheless, it is still envisaged that victims will be the main category of applicant given that protection orders are praised for empowering victims to decide when and how to access protection.[15] At this point, however, there is no set date for the introduction of DAPOs, as the Home Office have announced their intention for regional pilots prior to a full nationwide rollout.

[12] Family Law Act 1996, ss 33-38.
[13] Home Office, *Policy Paper: Domestic Abuse Protection Notices/Orders Factsheet* (Home Office, 2020).
[14] Ibid.
[15] Bates and Hester (n 11).

Research indicates that for many victims, protective injunctions are an effective means of reducing post-separation violence and abuse. Cordier's systematic review, for example, found that across 25 studies, protective orders reduced the quantitative occurrence of abuse.[16] This aligns with the findings of Humphreys and Kaye's study that the presence of a protective order made some women feel better protected.[17]

Proceedings for non-molestation orders and occupation orders are started by completing the relevant application form[18] and preparing a witness statement which addresses the circumstances leading to the application. It is anticipated that the same procedural requirements will apply for DAPOs in most cases.[19] There is currently no court fee to apply. The court may grant an injunction without notice to the respondent where it considers it 'just and convenient to do so'[20], having regard to the circumstances set out in the legislation.[21] If the application is made without notice, the reasons why notice has not been given must clearly be stated in the witness statement.[22] Where an order is made following a without notice hearing, the court must afford the respondent an opportunity to make representations relating to the order as soon as is just and convenient at a full hearing.[23] At the 'return' hearing,

[16] R. Cordier, D Chung, S. Wilkes-Gillan and R. Speyer, 'The Effectiveness of Protection Orders in Reducing Recidivism in Domestic Violence: A Systematic Review and Meta-Analysis' (2019) *Trauma, Violence and Abuse*, 1-25.
[17] C. Humphreys and R. Thiara, 'Neither Justice nor Protection: Women's Experiences of Post-Separation Violence' (2003) 25:3, *Journal of Social Welfare and Family Law*, 195-214.
[18] Form FL401 applies to both forms of protection.
[19] Domestic Abuse Act 2021, ss 27-49.
[20] Family Law Act 1996, s 45(1).
[21] Family Law Act 1996, s 45(2).
[22] Family Procedure Rules 2010, rule 10.2(4).
[23] Family Law Act 1996, s 45(3).

negotiations will take place to determine whether the respondent is in agreement to the order continuing, or whether a contested hearing to determine the truth of the allegations is required. Proceedings which are not contested may therefore be concluded relatively quickly (i.e., within one month of the application) whilst those which are contested are likely to take up to six months to reach a disposal.

Barriers for victims of domestic abuse to access the family courts and secure protection

Reduced accessibility of legal advice and representation

The family justice system has undergone significant reform over the last decade, driven by the introduction of LASPO which came into effect in April 2013. LASPO removed legal aid from the scope of most private family law cases, except where strict criteria are met regarding domestic abuse (including forced marriage and female genital mutilation), child abduction or child abuse.[24] Victims applying for a protective injunction do not need to provide evidence that they have been a victim of domestic abuse to secure funding (as they would if they were starting divorce or child arrangements proceedings), however they must still satisfy the means and merits tests, which research indicates is prohibitive for many victims.[25] LASPO introduced changes in respect of means testing for legal aid including freezing the financial

[24] Legal Aid, Sentencing and Punishment of Offenders Act 2012, sch 1.
[25] Hirsch (n 8).

thresholds, requiring all applicants to have capital under the assessed threshold and increasing the financial contributions which applicants may be required to make towards their legal costs. Despite the government's objective that victims of domestic abuse should continue to be eligible for legal aid, research suggests that in 2017, over 40% of victims were no longer able to access public funding.[26] More recently, there have been judicial developments which should positively impact the availability of legal aid in applications for protective injunctions, such as the Judgment in *R (FR) v Director of Legal Aid Casework*[27] which provides that the full amount of a person's mortgage will now be deducted when considering the value of a property for the purpose of the means test. Further, the Judgment will allow the Legal Aid Agency to afford a 'nil' value to capital that victims cannot access ('trapped capital') in cases where they would otherwise pass the means assessment. Nonetheless, even with these deductions some victims will still have capital over the threshold. Other victims will not satisfy the means test based on having an income that exceeds the prescribed limits. As such, this development will not result in all victims of domestic abuse being eligible for funding.[28]

Research indicates that the availability of funding directly impacts a victim's decision to seek protection. A survey of 239 women in the UK found that over half took no action in respect of their family law problem because they were not eligible for

[26] Legal Aid Practitioners Group (LAPG) *Manifesto for Legal Aid* (Second Edition, 2017).
[27] *R (FR) v Director of Legal Aid Casework* [2020] EWHC 3140 (Admin).
[28] Speed and Richardson (n 7).

funding.[29] Similar findings were reported by Speed who noted that more than half (54%) of the domestic abuse specialists in her study felt that barriers to funding led to an increase in service users not pursuing legal claims where they may have done so previously.[30] Alternatively, victims who do not qualify for funding but who cannot afford to instruct a solicitor on a privately paying basis may, through limited alternatives, choose to represent themselves should they pursue proceedings.[31] Statistics on representation group all 'domestic violence' family court cases together. However, they demonstrate a yearly increase in the number of unrepresented applicants since LASPO was introduced in April 2013, with 23.9% of applicants self-representing in applications for injunctive protection in 2013, compared to 31% in 2014 and 51.6% in 2019.[32]

Difficulties securing legal advice and representation have been compounded by austerity measures which have de-funded support services and charitable organisations who otherwise may have been well placed to guide victims through the court process on a pro bono basis.[33] As a result, it is now common for third sector organisations to provide one-off 'general' information about the court process (often by unqualified volunteers) rather than tailored advice or full casework due to high

[29] Rights of Women (n 4).
[30] A. Speed, 'An Exploration into Provision by Specialist Domestic Abuse Support Services for Victims/Survivors in Family Court Proceedings in England and Wales, Unpublished Paper.
[31] Trinder et al (n 5).
[32] Ministry of Justice and National Statistics (n 4).

[33] J. Organ and J. Sigafoos, *The Impact of LASPO on Routes to Justice. Research Report 118* (Equality and Human Rights Commission, England; 2018).

levels of demand.[34] Whilst domestic abuse support services are likely to be an exception to this, with research showing that many organisations have stepped up to offer some casework in family court proceedings, often these services are limited in the amount of time they can work with victims.[35] Further, support workers who are not qualified as Independent Domestic Violence Advisors (IDVAs) receive very little (if any) legal training. Research suggests that as a result, some professionals misunderstand the law or fail to appropriately manage victims' expectations about the legal process.[36] This has also been recognised by the Transparency Project who noted that 'parents are often given (well meaning) information or advice by support agencies (*domestic abuse services*... etc) that may include a mixture of what those services *think* the law *is* or *should* be, but which isn't really what is likely to happen at all'.[37]

Research demonstrates that, at least in the early days of the pandemic, Covid-19 exacerbated pre-existing barriers to accessing advice and support for many victims. The respondents to Speed et al's study highlighted the existence of physical barriers to seeking support where victims remained in the same home as their perpetrator.[38] In addition, they considered that as most victims are women, they were

[34] Ibid.
[35] Speed (n 30).
[36] Ibid.
[37] The Transparency Project, *How do The Family Courts Deal with Cases about Children Where There Might be Domestic Abuse? A Guidance Note for Parents & Professionals* (The Transparency Project; 2018), 9-10.

[38] A. Speed, K. Richardson and C. Thompson, 'Stay Home, Stay Safe, Save Lives: An Analysis of the Impact of Covid-19 on the Ability of Victims of Gender-based Violence to Access Justice' (2020) 84:6, *The Journal of Criminal Law*, 539-572.

disproportionately more likely to take on physical and psychological burdens as caregivers, resulting in time barriers to accessing support. Ivendic et al found that whilst many support services had experienced a greater demand for their services, this was all driven by third party reporting/referrals, suggesting that under-reporting of domestic abuse was still present, particularly during periods of lockdown.[39] The impact of reduced support was exacerbated by an increase in the rates at which non-molestation orders and occupation orders were sought over the first year of the pandemic.[40] Although there has now been some return to 'normality' following the vaccine rollout, it is likely that some services will have not survived the pandemic whilst others will still be operating at a reduced capacity. Statistics from January to March 2021 suggest that rates of applications for injunctive protection have not yet slowed and are 12% higher than the same period in 2020.[41]

Navigating the family court as a victim litigant in person

It is well documented that without a professional advocate, many litigants experience difficulties understanding the law and legal process. Moorhead and Sefton found, for example, that litigants struggle to 'translate their dispute into legal form, i.e.

[39] R. Ivandic, T. Kirchmaier and B. Linton, *Changing Patterns of Domestic Abuse During Covid-19 Lockdown: Discussion Paper.* (Centre for Economic Performance, 2020).

[40] A. Speed, K. Richardson, C. Thomson and L. Coapes, 'Covid-19 and the Family Courts: Key Practitioner Findings in Applications for Domestic Violence Remedy Orders' (2021) 33:3 *Child and Family Law Quarterly*, 215-236.

[41] Ministry of Justice and National Statistics, *Family Court Statistics Quarterly: January to March 2021* (Ministry of Justice and National Statistics; 2021).

understanding the purpose of litigation, confusing law with social and moral notions of 'justice' and identifying which legally relevant matters are in dispute'.[42] Unrepresented litigants are also more likely to experience difficulties in securing and funding evidence to help prove their case.[43] These issues are exacerbated for victims of abuse whose effective participation may be compromised by facing their perpetrator in the courtroom, notwithstanding that improvements to the current law around special measures and prohibitions on victims being cross examined by their perpetrator are set to be introduced by the Domestic Abuse Act 2021.[44]

Studies indicate that without legal representation victims' prospects of securing injunctive protection may be compromised. Durfee, for example, noted that 'even with 'victim-friendly' procedures and forms, individuals without legal representation are significantly less likely to have their requests for protection orders granted'.[45] Her study found that 'in cases where the abuse was severe and/or externally documented, the use of legal assistance by the respondent did not appear to affect hearing outcomes… in contested cases, however, where respondents retained a lawyer and/or filed affidavits disputing the petitioner's claims of abuse, there was no external documentation of the abuse, or it was unclear whether the incidents described met the

[42] R. Moorhead and M. Sefton, Litigants in Person: Unrepresented Litigants in First Instance Proceedings (London: Department for Constitutional Affairs; 2005), 256.
[43] K. Richardson and A. Speed, 'Restrictions on Legal Aid in Family Law Cases in England and Wales: Creating a Necessary Barrier to Public Funding or Simply Increasing the Burden on the Family Courts?' (2019) 41(1) *Journal of Social Welfare and Family Law*, 135-152.
[44] Family Procedure Rules 2010 rule 3A and Practice Direction 3AA; Domestic Abuse Act 2021, ss 63 and 65.
[45] Durfee (n 7), 7.

legal criteria for a protection order; variations in the form, content and structure of the narrative had important implications for case outcomes'.[46] Factors which seemingly made a difference to the outcome in these cases included that statements of case prepared by legal representatives were more focussed on satisfying the threshold criteria, contained very specific descriptions of events and were more likely to include supplemental supporting evidence. In contrast, applications filed by litigants in person were often short, contained incomplete information or focussed on general details about the relationship rather than specific incidents. Applications containing information about specific incidents were successful in 74% of cases compared to 39% for those which did not. Whilst Durfee's study was conducted in the USA, similar findings have been reached in relation to applications for injunctive protection in England and Wales. Speed and Richardson's study into the accessibility of occupation orders, for example, found evidence of applications being refused for containing substantive deficits (i.e., insufficient information about the abuse) and minor procedural deficits (i.e., applications for occupation orders and non-molestation orders being filed as two separate application forms rather than on the same form), whilst a separate study also suggested that this issue continued once hearings were moved online because of Covid-19, as part of the Remote Access Family Court.[47]

[46] Ibid, 24.
[47] Speed and Richardson (n 7), Speed et al (n 40).

PART TWO: CLINICAL LEGAL EDUCATION AND SUPPORT FOR VICTIMS OF DOMESTIC ABUSE

The literature examined in the preceding section demonstrates that there is a clear need for pro bono legal advice and representation for victims of domestic abuse in applications for injunctive relief. Given that some of the central goals of clinical legal education are to render services to those who are unable to afford legal services, challenge injustice and imbue students with a social and professional responsibility to pursue social justice in society'[48] supporting victims of domestic abuse in applications for injunctive protection would appear to be a worthwhile endeavour for clinical programmes, capable of promoting and upholding these ambitions. This has been recognised by the American academics Breger and Hughes, who identify four main benefits – for victims and the students who support them – of incorporating teaching about domestic abuse into the clinical curriculum.[49] Firstly, they argue that it promotes access to justice for families in need. This argument draws on the idea considered above that 'the legal system is currently confronted with increasing numbers of victims of family violence, primarily children and women, who are in dire need of legal representation and facing a system that simply cannot accommodate them… the unfortunate reality is that but for student clinic representation, many litigants would

[48] I. Byron, *The Relationship Between Social Justice and Clinical Legal Education: A Case Study of The Women's Law Clinic, Faculty of Law, University of Ibadan, Nigeria* (2012) Paper presented at the 11th International Journal of Clinical Legal Education Conference, Entering the Mainstream: Clinic for All.

[49] M. Breger and T. Hughes, 'Advancing the Future of Family Violence Law Pedagogy: The Founding of a Law School Clinic' (2007) 41 *University of Michigan Journal of Law Reform*, 167-188.

have no representation at all'.[50] Secondly, they argue that clinical teaching in the context of domestic abuse can provide an important foundational tool for teaching lawyering skills. Whilst this is arguably true of most practice areas, they note that cases involving domestic abuse typically possess characteristics that make them 'particularly appropriate for clinical study' including that applications for injunctive protection return to court regularly over a short period of time.[51] Thirdly, Breger and Hughes recognise that domestic abuse is an evolving area of law and practice which intersects with many other legal topics which are typically taught in an undergraduate legal curriculum including personal injury/trespass to the person within tort law and offences against the person under criminal law. Finally, they argue that enabling students to engage with domestic abuse law in clinic can be a vehicle to inspire law graduates to practice family violence law and to educate the future bar and bench. Whilst inevitably not all students will go on to become family practitioners, law students are 'future judges, policy specialists, prosecutors and criminal defence attorneys' who need to be 'well-informed and sensitive to the issues they will encounter in practice'.[52] Although Breger and Hughes were writing in the context of the American legal system, similar issues have been identified in England and Wales where despite there being extensive practice guidance, some professionals (including

[50] Ibid, 174.
[51] Ibid, 176.
[52] Ibid, 179.

legal practitioners, the police and the judiciary) demonstrate a poor understanding of the dynamics of domestic abuse.[53]

The above argument highlights a need for greater understanding of the impact of trauma and vulnerability in family court proceedings. Canadian clinicians Smythe et al recognise that practising areas such as domestic abuse law in clinic can address this gap by enabling students to become 'trauma informed' practitioners, capable of understanding 'how trauma occurs and its consequences, as well as being educated about the political context in which it has arisen'.[54] In turn, this enables clinical students to 'communicate, interpret narrative, and build trust – all of which are foundational to the lawyer-client relationship'.[55] Smythe et al acknowledge there are particular advantages of such work taking place in a clinical setting. Whilst recognising that trauma is a universal human experience, they also argue that it is 'experienced more often, and often with greater impact, by people who are marginalised within dominant power structures'.[56] This makes understanding trauma particularly relevant for lawyers in student clinics given that many clients who seek their support experience multiple intersecting forms of marginalisation.[57]

---

[53] R Hunter, A Barnett and F Kaganas, 'Introduction: Contact and Domestic Abuse' (2018) 40:4 Journal of Social Welfare and Family Law, 401-425; Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final* Report (Ministry of Justice: 2020), 1-216; M. Burton, 'Civil Law Remedies for Domestic Violence: Why are Applications for Non-Molestation Orders Declining?' (2009) 31(2), *Journal of Social Welfare & Family Law*, 110-20.

[54] G. Smyth, D. Johnstone and J. Rogin, 'Trauma-Informed Lawyering in the Student Legal Clinic Setting: Increasing Competence in Trauma Informed Practice' (2021) 28:1 *International Journal of Clinical Legal Education*, 161.

[55] Ibid, 149.

[56] Ibid, 150.

[57] Ibid.

Building on the idea that teaching clinical students to litigate on behalf of women subjected to abuse exposes them to different approaches to lawyering, Goodmark argues that clinics can develop students' understanding and experience of 'client-centered lawyering', which prioritises the empowerment of victims through assisting women to 'make their own choices and then working with them to realise those choices'.[58] She also argues, however, that with their focus on challenging injustice, clinics also encourage students to think beyond advocating for a particular individual and consider the ways that 'systems work to benefit or harm their clients and what they can do to improve or change those systems'.[59] In turn, they can contribute to the development of domestic abuse law and policy. She notes that in comparison to campaigners, practitioners and law makers, students can be 'less dogmatic about the appropriate responses to domestic violence, less tied to the current law and policy and more open to thinking about a range of experiences and opportunities, enabling them to be more creative in their thinking'.[60] They are also more willing to acknowledge the limitations of the law in addressing domestic abuse and think about 'ways to find justice beyond the justice system'.[61] This could include engaging clients in restorative justice, mediation and community-based justice. As this paper will go on to consider in part three, such forms of alternative dispute resolution continue to be largely

[58] L. Goodmark, 'The Role of Clinical Legal Education in the Future of the Battered Women's Women' (2013) 22 *Buffalo Journal of Gender, Law and Social Policy*, 32.
[59] Ibid.
[60] Ibid, 44.
[61] Ibid, 35.

discounted as a means of achieving a resolution for victims of domestic abuse, both within and outside a clinical setting in England and Wales.

In one of the only studies to discuss domestic abuse and clinical legal education in the context of England and Wales, Speed and Richardson evaluated student participation in the 16 Days of Activism against Gender-Based Violence campaign, part of which involved students providing one-off advice to victims of domestic abuse as part of an outreach clinic.[62] Supporting Smythe et al, Speed and Richardson found that students who participated in the project demonstrated increased competency in understanding the breadth and scope of abusive conduct and recognising triggers that may indicate a client had been subject to abuse. In turn, this allowed the students to ask more effective fact-find questions, produce higher quality research and offer more tailored support. Their data also suggests that law students are often drawn to legal issues which allow them to support individuals through a time of crisis. The students described finding value in the work, with feedback including 'working in this project has helped me learn and grow and I think become a more well-rounded individual never mind practitioner' and 'working in communities and with women where they seemingly have no other access to legal advice made it more satisfying that I was able to be a part of it'.[63] Supporting Breger and Hughes, following their participation in the

[62] A. Speed and K. Richardson, 'Promoting Gender Justice Within the Clinical Curriculum: Evaluating Student Participation in the 16 Days of Activism against Gender-Based Violence Campaign' (2019) 26:1 *International Journal of Clinical Legal Education*, 87-131.
[63] Ibid, 115.

campaign several of the students decided to pursue a career working with victims of domestic abuse, albeit not in the legal sector.

Reflecting that many clinics with an offering for victims of domestic abuse are based in the USA and Canada, most of the literature considered above is based on the experiences of North American clinicians. It is estimated, for example, that in 2010, there were 40 clinics in the USA dedicated primarily to domestic violence and a further 39 clinics primarily practising family law which were also likely to deal with domestic abuse cases.[64] Goodmark attributes this, in part, to the availability of funding through The Legal Assistance for Victims Grant Program which many legal clinics have been able to access. She notes that the funding was a 'tremendous boon for domestic violence clinics, because it made money available to provide civil legal services and train future generations of lawyers to provide civil legal assistance to women subjected to abuse'.[65] Accordingly, she recognises that clinical legal education and the Violence against Women and Girls (VAWG) movement have had 'parallel and intersecting paths' with both movements developing alongside each other.[66] In contrast, the clinical legal education movement in England and Wales developed much later than in the USA.[67] Further, in England and Wales very few law school clinics hold legal aid contracts, and most are funded entirely by their institution,

[64] Goodmark (n 58), 30.
[65] Ibid, 31.
[66] Ibid, 27.
[67] O. Drummond and G. McKeever, *Access to Justice through University Law Clinics* (Ulster University and the Legal Education Foundation, 2015).

leading to restrictions both on the areas of practice and the extent of work that can be carried out for clients.[68]

Whilst 70% of the 78 law school clinics in the United Kingdom who responded to the 2020 LawWorks survey reported providing family law services, less than 30% offered services in relation to domestic abuse.[69] This is an increase, however, on the position in 2014 when only 10 clinics offered family law services, one clinic specialised in supporting victims of domestic abuse and four clinics reported sending students on externships with a partner organisation which specialised in domestic abuse.[70] In terms of services offered, half of the respondents to the 2020 survey reported that their clinic provided generalist advice only, half provided quasi-legal services such as form filing and McKenzie Friend services, 36% provided specialist advice and around 20% offered representation in court proceedings for clients.[71] Either alongside or instead of client services, 30% of clinics engaged in law reform projects and nearly 70% offered students an opportunity to undertake public legal education. The conclusions that can be drawn from this data are that whilst domestic abuse is a growing area of practice in clinics, it is still relatively uncommon for students to engage in this area within their clinical curriculum. Further, for those that do, it is often in relation to discrete aspects

[68] One exception to the basic position that law clinics in England do not offer legally aided services is the University College London who were awarded a contract for housing and community care law in 2018.
[69] J. Sandbach and R. Grimes, *Law School Pro Bono and Clinic Report 2020* (LawWorks and CLEO; 2020).
[70] D. Carney, F. Dignan, R. Grimes, G. Kelly and R. Parker, *The LawWorks School Pro Bono and Clinic Report 2014* (LawWorks 2014).
[71] Sandbach and Grimes (n 69).

of a case (i.e., akin to an unbundled service) or through providing non case work related services.

PART THREE: METHODS OF INCORPORATING SUPPORT FOR VICTIMS OF DOMESTIC ABUSE INTO THE CLINICAL CURRICULUM – THE CASE STUDY OF THE STUDENT LAW OFFICE

All Northumbria University students enrolled on the four-year M Law Exempting law degree (a programme which combines the undergraduate law degree with the requirements of the Legal Practice Course (LPC) or Bar Practitioner Training Course (BPTC)) undertake a year-long assessed clinical module in the SLO in the penultimate year of the degree programme. This option is also available to students on the LLB programme, and for LPC and BPTC students as an elective module in the second semester. Students provide pro bono advice and potentially representation to members of the public under the supervision of a qualified solicitor, barrister, or caseworker. Alongside their client work, students may also engage in public legal education work which aim to educate members of the public about their legal rights and responsibilities. More recently, with the development of a policy clinic within the SLO[72] students have also been able to work in partnership with an external

[72] R. Dunn, L. Bengtsson and S. McConnell, 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students' (2020) 27:2 *International Journal of Clinical Legal Education*, 68-102.

organisation to research, critique and make proposals for reforming the existing law. Around 200 students undertake work in the clinic each academic year.[73]

Two of the clinicians (Kayliegh Richardson and the author) are family solicitors specialising in supporting victims of domestic abuse. Between them, they supervise around 24 clinical students each year. The development of initiatives to support victims of domestic abuse was the result of these two practitioners joining the SLO team in 2015 and 2016 respectively, together with an increase in requests for support within the clinic from victims of domestic abuse often in desperate need for protection and with no other prospects of assistance. It should be noted that this increase in requests is anecdotal given that the SLO does not maintain a record of the number of enquiries specifically from victims seeking injunctive protection and indeed, any such records would likely be unhelpful given that it is often only after receiving advice that some victims become aware that they require protection. Whilst advice and representation services are available every academic year, some of the other models of support operate on a more discrete basis, for example, where a partner organisation approaches the SLO to engage in a collaborative venture. The different initiatives, together with the benefits and limitations associated with each model, are considered in detail below.

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

(a) Providing initial advice

In line with the adage that knowledge is a route to empowerment, the provision of early advice is recognised as a cornerstone of access to justice.[74] Trinder et al note that 'without some form of informed guidance at the initial stages, litigants face great difficulties in attempting to understand and act upon the substantive law' and may resort to unofficial sources which contain inaccurate or incomplete information.[75] The provision of initial advice in the SLO therefore aims to increase victims' knowledge about their legal options so they can make an informed decision about whether it is in their interests to seek protection. In this sense, the SLO embraces client-centered lawyering, as discussed by Goodmark, by recognising that 'the client is best suited to assess her tolerance for risk and to determine the possible non-legal consequences of legal intervention'.[76]

As with any client who comes to the SLO, the students take the lead on conducting the initial factfind appointment, researching the merits of the case, conducting an advice appointment, and confirming the advice in writing. However, the nature of domestic abuse cases means there are some additional considerations. Firstly, students must quickly become familiar with the legal aid criteria to enable them to carry out a preliminary assessment of the client's eligibility. In cases where it appears that a client is eligible, a referral will be made to a legal aid firm and the SLO will have

[74] Organ and Sigafoos (n 33).
[75] Trinder et al (n 5), 37.
[76] Goodmark (n 58), 31.

no further involvement given that this is a preferable funding option. Supporting Goodmark, who argued that clinics encourage students to think beyond advocating for a particular individual, this provides students with an important introduction to the different options for funding cases and often sparks a conversation about the fairness of the decision-making criteria and the recent legal aid reforms.

Secondly, in contrast to other cases, advising a victim of domestic abuse requires the students to think about what other needs – such as for housing, welfare benefits and therapeutic counselling – a client may have. Whilst the students are not expected to act upon this, discussions should take place with the client about whether referrals to appropriate services should be made. The need for a holistic approach to advising clients suggests that there is also value in clinical models where students work in partnership with external organisations, meaning a range of services can be provided under one roof. An example of such a project is the Future Living Hertford Family Law Clinic where students provide initial legal advice to victims at the facilities of a specialist provider of counselling and therapeutic support.[77]

Thirdly, although true of all practice areas, but particularly evident in domestic abuse cases, safeguarding student wellbeing must be prioritised during the conduct of a case. At the start of the module, students are asked to confirm whether they feel comfortable working on cases involving domestic abuse and other sensitive issues.

[77] See https://www.herts.ac.uk/study/schools-of-study/law/pro-bono-activities/future-living-hertford-family-law-clinic.

However, even where students have agreed to this, they may still experience vicarious trauma through their clients or else relive their own trauma.[78] As identified by Smythe et al, it is therefore vital that they 'employ modes of self-care' to counterbalance these effects.[79] Within the clinic, students are encouraged to prepare reflections on their experiences which can remain private or be shared with their supervisor. Regular de-briefings also take place during weekly firm meetings. Whilst the author is not aware of any circumstances where this has been needed because of a students' participation in domestic abuse work, free on-site counselling services also exist for Northumbria University students.

The final consideration which distinguishes domestic abuse from other practice areas is the speed at which advice often needs to be provided. In many cases, the students will be aware that the case relates to domestic abuse protection, and this allows them to consider what additional information they require, conduct research, and begin formulating some basic advice in advance of the appointment. Invariably, however, there are some clients who will come to the SLO seeking advice about a separate matter (usually divorce or child arrangements) and it is only during the factfind appointment that it becomes apparent the client is experiencing domestic abuse and requires urgent protection. This may be identified as part of basic screening questions that the students have asked or because the students have picked up on subtle disclosures made by the client, which have been identified because of training the

[78] Smythe et al (n 54).
[79] Ibid, 161.

students receive at the start of the module. From a supervisory perspective, the need to identify disclosures is crucial in reducing the risk of a negligence claim where we fail to advise clients about any claims which may arise out of the abuse.[80] However, it also protects the client because otherwise requiring them to recount their experience on multiple occasions risks retraumatising them.[81] Where domestic abuse is identified at an initial appointment, it is not acceptable for the usual process of researching and advising the client (which may take some weeks) to take place. Instead, the supervisor will need to work with the students to consider the extent of the retainer and, where this is limited to initial advice only, conduct some basic research about the process of applying for protection and the merits of the client's application, so that the client receives some oral advice on the same or the following day. The supervisor may also join the advice appointment so that any of the client's questions can be addressed fully. More detailed research can then be carried out by the students before the advice is confirmed in writing. Consideration will also be given to whether there are any other local pro bono organisations who may be able to support the client through proceedings or whether a referral through CourtNav should be made.[82]

On the one hand, the speed at which advice is provided in these cases is more reflective of legal practice (thereby upholding the clinical aim of giving students a

[80] M. Drew, 'Lawyer Malpractice and Domestic Violence: Are We Revictimising our Clients?' (2005) 39:1 *Family Law Quarterly*, 7-25.
[81] Ibid.
[82] CourtNav is a digital tool provided by RCJ Citizens Advice which can support a victim to prepare an application for injunctive protection. More information is available at: https://injunction.courtnav.org.uk accessed 14 October 2021.

realistic experience) where emergency applications are often issued on the same day that initial instructions are taken. On the other hand, however, the supervisor will likely need to provide higher levels of direction than in non-urgent cases. Whilst it is correct that this is somewhat counterintuitive to clinical objectives, it is the author's position that student autonomy cannot come at the cost of client safety. Further, the limitations of this are offset by the fact that alongside general clinical skills (i.e., research skills and written communication) working on a domestic abuse case also allows students to develop enhanced or specialised skills compared to other areas of law. Breger and Hughes argue, for example, that whilst the statutes which govern applications for protection orders (in the English context, the Family Law Act 1996 and the Domestic Abuse Act 2021) are relatively straightforward instruments, meaning students are quickly able to develop a working understanding of the law and legal process, factually, cases are often 'complex and nuanced… enhancing law students' mastery of fact investigation, interviewing and client counselling'.[83] Further, in the author's experience, working with victims of domestic abuse challenges many of the students' initial misconceptions and judgements, such as a belief that physical abuse is more harmful than emotional abuse, that some forms of abusive conduct do not constitute domestic abuse (i.e., financial abuse) and failing to understand why many victims remain in abusive relationships. This suggests that working in clinic can improve students' understanding of the dynamics of domestic abuse, whilst also

[83] Breger and Hughes (n 49), 176.

resulting in them becoming more sensitive, trauma informed practitioners who are capable of understanding how trauma occurs and its consequences.[84]

From a client perspective, receiving tailored advice through the clinic empowers victims to make informed decisions about whether and when to seek protection. In contrast to online sources, where the relevance and quality of information is often difficult for victims to determine[85] advice received through the clinic has been tailored to an individual client's circumstances and approved by a qualified practitioner. Through facilitating referrals to other support services, clinics can also help clients gain access to non-legal forms of support, including refuge accommodation and resettlement services, therapeutic support and community-based services.[86] A limitation of this model, however, is that support does not extend to preparing the initial application form or witness statement. Research consistently demonstrates that this is where assistance is particularly valuable, given that 'errors and omissions in the preparatory work done by litigants in person impact on court staff workloads and on the conduct of the hearing itself'[87] and that applications prepared by victims without any assistance may in some circumstances be more likely to result in an application being refused.[88] For those clinics already offering initial advice in these cases, consideration should therefore be given to whether there is the capacity and expertise

[84] Smythe et al (n 54).
[85] Trinder et al (n 5).
[86] L. Kelly, *Combating Violence against Women: Minimum Standards for Support Services* (Directorate General of Human Rights and Legal Affairs, Council of Europe; Strasbourg, 2008).
[87] Ibid.
[88] Speed and Richardson (n 7); Durfee (n 7).

to extend support to the application stage. Where resourcing is an issue, clinics could follow the partnership model, such as between City University London law school and the National Centre for Domestic Violence, where the students conduct a telephone appointment and thereafter prepare the witness statement for court.[89] Without such support, clinics may improve accessibility of protective orders by empowering victims to pursue an order, but fail to arm clients with the skills to increase the prospects of their application being granted.

(b) Casework/representation

In appropriate cases, such as where the victim has no other form of support and the supervising solicitor has capacity and sufficiently enthusiastic students, the SLO will conduct casework and representation on behalf of victims in injunction proceedings. Whilst it is the supervising solicitor who will go on the court record as the representative, the students remain the point of contact with the client, conducting research and preparing advice as required, complying with court directions, and assisting the client to collect evidence. It has been recognised that injunction proceedings are well suited to being practised within a clinical setting because proceedings are usually concluded in between one and six months, meaning students can 'typically draft at least one pleading, interview several witnesses, negotiate,

[89] V. Lachkovic, *McKenzie Friends for Victims of Domestic Violence: Training Law Students to Assist the Court and the* Victim (Paper delivered at the 8th Worldwide GAJE Conference, Eskisehir, Turkey, July 2015).

appear in court and potentially conduct a trial all within a single academic period'.[90] Whilst the workload is likely to be relatively high throughout this period, the students are rewarded by gaining a holistic understanding of the law and the legal process. In turn, they gain more opportunities to develop their case management skills, ability to strategise and experience managing a client relationship than when services are restricted to initial advice.

Injunction proceedings also differ from other types of cases in that they are often started on an ex-parte (i.e., without notice) basis. This provides students an opportunity to exercise their advocacy skills in an uncontested and therefore potentially less challenging environment. Following the ex-parte hearing, research suggests that less than 14% of respondents in injunction proceedings secure representation (based on figures from 2019 and 2020)[91], meaning that even at the return hearing stage, students are likely to have more understanding of the legal and factual issues in dispute than their opponent. As recognised by Speed et al, injunction applications (at least until they become contested) are usually conducted by junior fee earners and it is in such proceedings that paralegals and trainee solicitors cut their teeth in the courtroom.[92] Accordingly, for those students seeking a career in family law, the opportunity to develop their advocacy skills at such an early stage is useful experience for what is to come. Proceedings for injunctive protection are typically

[90] Breger and Hughes (n 49), 177.
[91] National Statistics and Family Court Statistics, *Family Court Statistics Quarterly Jan – March 2021* (National Statistics and Family Court Statistics, 2021).
[92] Speed et al (n 40).

heard in judge's chambers within the family court or in the magistrate's court.[93] Whilst prima facie clinical students do not have rights of audience, the Legal Services Act 2007 provides that a person is an exempt person for the purpose of exercising a rights of audience before a court if they are conducting litigation under the supervision of an authorised person (i.e. a qualified solicitor).[94] These rights have subsequently been extended to apply in the family court under the Crime and Courts Act 2013.[95] The provisions do not, however, apply to cases heard in the magistrates court and therefore a students' ability to conduct advocacy will depend on which court the hearing is allocated to. In the author's experience, when faced with the opportunity to conduct advocacy, most students opt to clerk the hearing (i.e., by observing the proceedings and keeping an attendance note of the matters discussed). This is potentially reflective of student demographics in the SLO where most students are prospective solicitors in the third year of their undergraduate studies. The position may, therefore, be different for clinicians supervising prospective barristers or those who undertake a clinical programme as part of a postgraduate programme, who may have more confidence and incentive to develop advocacy skills from this early stage.

It is recognised that starting a full representation model is not viable in all clinics, principally due to limitations on resourcing. In contrast to the USA, where full representation domestic abuse clinics are popular, many law school clinics in the UK

[93] Kelly (n 86).
[94] The Legal Services Act 2007, sch 3 para 1(7).
[95] The Crime and Courts Act 2013, sch 10 part 2 para 98(1).

are poorly resourced.[96] Academics have acknowledged that law is a particularly underfunded subject area due to a misconception that it is a solely classroom-based subject, meaning it attracts the lowest level of per student funding.[97] Funding issues have been exacerbated by cuts to state funding for higher education which have led to increased scrutiny of the resources allocated to clinical activity[98] and more recently, by Covid-19 which has impacted income streams at many institutions, at least in the short term. Resourcing can impact a law school's capacity to conduct injunction proceedings because clinics need to be staffed by solicitors and barristers, whose practising certificates must be renewed each year. Further, staffing resources affect the amount of time that can be dedicated to clinical activities. The LawWorks study identified that 70% of clinical supervision in the UK is provided by members of law school's academic staff.[99] Academic staff typically teach across multiple modules and increasingly have administration and research commitments which may reduce their capacity to develop and lead new clinical offerings. In the author's experience, supervising injunction proceedings can be particularly onerous at the outset where cases are made on an urgent basis, given that cases are usually taken on at the start of the academic year when the students have the least experience. Moreover, only 65% of clinics in the UK currently operate outside of term time.[100] This would preclude the

[96] Drummond and McKeever (n 67).
[97] J. Marson, A. Wilson and M. Van Hoorebeek, 'The Necessity of Clinical Legal Education in University Law Schools: a UK Perspective" (2005) 7 *International Journal of Clinical Legal Education*, 29-43.
[98] Drummond and McKeever (n 67).
[99] Sandbach and Grimes (n 69).
[100] Ibid.

remaining 35% from providing a full representation service, given that cases may operate all year round. From an institutional perspective, however, there are merits in supporting clinicians to deliver ambitious projects, both because students report considering the availability of clinical programmes in deciding where to apply to/attend university and because of the availability of awards which can enhance a university's reputation. Supporting this, Northumbria Law School was awarded the 'Best New Pro Bono Activity' at the LawWorks and Attorney General Student Pro Bono Awards 2018 in recognition of the SLO's work supporting victims of abuse.

From a client perspective, there are clear benefits to providing casework assistance. As Trinder et al recognise, 'much of the work in a family case is conducted before and between hearings rather than in the courtroom itself'.[101] Offering casework can therefore alleviate this pressure on victims at a time when they may be uprooting their lives following the end of an abusive relationship. The important role of casework, however, does not detract from the need for full representation services given that 'the court process is predicated upon a full representation model, and this becomes even more apparent when litigants in person reach the courtroom'.[102] Litigants in person are more likely to participate in hearings at a 'lower intensity' yet make more mistakes.[103] In the context of domestic abuse, representation also has value in preventing victims from being required to present their case in the presence of her

[101] Trinder et al (n 5), 35.
[102] Ibid, 53.
[103] Moorhead and Sefton (n 42), 255.

perpetrator, which is likely to be distressing notwithstanding the availability of special measures.

Regardless of the scope of support offered by law school clinics, there will always be limitations on such services. The number of victims who can be supported by the SLO, for example, is correlated to the level of support offered, meaning that the two SLO family practitioners who specialise in domestic abuse only have capacity to take on a handful of cases on a full representation basis each year (the exact number will depend on the number of cases which are resolved after the return hearing and the number which are contested). In addition, some cases will be taken on with a more limited retainer. Supervisors may also take on non-domestic abuse cases. If support was provided on an advice-only basis, however, higher numbers could receive *some* assistance. Family court statistics show that there are between 4,500 and 5,500 applications for occupation orders each year (and more than 20,000 applications for non-molestation orders) with between a third and half of applications in any given year being made by litigants in person.[104] As such, the number of victims supported through the clinic is a drop in the ocean compared to the number of victims seeking support, albeit it is anticipated that with the introduction of DAPOs some of these applications may be pursued by VAWG stakeholders (i.e. the police and domestic abuse support services) once DAPOs are introduced. A further limitation concerns

[104] Figures directly obtained from Ministry of Justice and National Statistics, *Family Court Statistics* (Ministry of Justice) <https://www.gov.uk/government/collections/family-court-statistics-quarterly> accessed 23 September 2021.

inter-related proceedings. As highlighted elsewhere by the author, injunction proceedings usually precede other family applications, including divorce and child arrangements.[105] Due to the limitations on capacity, it would be unusual if support could also be provided in interrelated proceedings. As such, victims may find that whilst they benefit from legal representation from the clinic in one set of proceedings, they face no choice but to act as a litigant in person in the other proceedings.

(c) Policy work

Covid-19 posed challenges for victims of domestic abuse, with reports that in the first lockdown the frequency and severity of abuse worsened for many victims who remained in a relationship with their abuser.[106] Covid also posed challenges for law school clinics, with clinicians identifying that supervisors had to think creatively and act fast to keep clinical programmes running.[107] Given that there was a marked reduction in the availability of pro bono support for victims in family court proceedings at the early stages of the pandemic[108] the most effective way to support victims seeking protection during this time would arguably have been to continue offering client services remotely. Whilst some clinics have reported setting up remote

[105] Richardson and Speed (n 8).
[106] Ivandic et al (n 39); Women's Aid, *A Perfect Storm: The Impact of The Covid-19 Pandemic on Domestic Abuse Survivors and the Services Supporting Them* (Women's Aid, August 2020).
[107] A. Thurston and D. Kirsch, 'Clinics in Time of Crisis: Responding to the Covid-19 Outbreak' (2020) 27:4 *The International Journal of Clinical Legal Education*, 179-195.
[108] Speed et al (n 38).

advice-only clinics serving victims of abuse during this period[109] the SLO ultimately did not operate a live-client model during the 2020/21 academic year because of concerns around protecting client data and maintaining confidentiality where students were not able to attend the clinic due to university closures. As a result, Covid-19 presented an opportunity for the SLO family law practitioners to find innovative solutions to supporting victims seeking protection, whilst also meeting the educational aims of the module. In response, a decision was made to undertake a policy project which clinicians may otherwise not have had capacity to supervise due to the amount of time ordinarily dedicated to providing a full representation service. Whilst it is well-documented that in the USA clinics are involved in 'domestic abuse task forces and coordinating councils; engage in legislative reform to address deficiencies in the legal system and in the law; and study the operation of police and courts, making suggestions for improvement' the author is only aware of one other policy project (which was supervised by the author's colleagues Kayliegh Richardson and Rachel Dunn in 2019 and which is not discussed further in this paper) conducted in a clinic in relation to domestic abuse. The author has not been able to find any published case studies from similar projects taking place in the UK, suggesting that policy work in the context of domestic abuse is relatively uncommon.[110]

The project saw 15 clinical students conducting research on behalf of the national charity Surviving Economic Abuse (SEA). The research explored trends in the rates at

[109] Thurston and Kirsch (n 107).
[110] Goodmark (n 58), 33.

which occupation orders were sought and granted and aimed to identify any barriers victims face to securing protection. SEA was motivated to commission the project because of a perception that their service users' applications for occupation orders were frequently unsuccessful. The clinicians considered that the project could uphold the social justice aims of clinical education due to its focus on the importance of maintaining a robust legal response to domestic abuse and because the project was underpinned by a shared recognition between the clinicians and SEA that 'women who want to invoke the power of the civil and criminal laws should have access to a system that provides a timely, effective and victim-centered response'.[111] Data was collected through an analysis of family court statistics, a questionnaire of professionals who represented or otherwise supported victims through proceedings for injunctive protection and in-depth interviews with victims who had applied for an occupation order. Whilst this project involved a new partnership with an external organisation, it would also be possible for students to undertake legal research in 'an area of concern raised by a client case'.[112] However, working for an external organisation was beneficial in that it appeared to give the students a sense of ownership of the project and accountability in terms of managing tight timescales.

Supporting Dunn et al's findings the project upheld the pedagogic aims of clinical education by allowing the students to undertake a wide range of activities on behalf of their client including 'conducting a literature review of the relevant area of law to

[111] Ibid.
[112] Dunn et al (n 72), 72.

explore the background and to appreciate the importance of the research', 'analysing the data collected to gain the experience of working with raw data and deciding how to code that data in order to report on their findings' and 'writing up their research findings in an evaluation report for their client which includes recommendations for law and/or policy reform'.[113] In common with the advice and representation models considered above, engaging in policy work allowed the students to develop the skills assessed in most clinical modules, including teamwork, research skills, written communication, critical analysis, the ability to strategise, knowledge and understanding of the law and reflection skills. The project also facilitated the students to develop skills that they otherwise might not have. In contrast to live client work, for example, which only requires students to consider how the present legal position impacts a client, the policy project required the students to examine the law in its context and analyse the impact of past and forthcoming changes to the legal landscape including LASPO, Covid-19 and the Domestic Abuse Act 2021. Moreover, participating in the project gave the students an opportunity to develop 'first-hand experience of the crucial role a lawyer can play in recommending and influencing law reform for the greater public good'.[114] This supports the idea that policy work in the field of domestic abuse can bring together scholarship and activism, when these worlds may ordinarily be quite separate.[115] The data analysed by the students

[113] Ibid, 73.
[114] Ibid, 77.
[115] E. Schneider, 'Violence against Women and Legal Education: An Essay for Mary Joe Frug' (1992) 26 *New England Law Review*, 843-875.

highlighted clear deficiencies in the law including that the strict threshold criteria is difficult for victims to satisfy, that the courts are hesitant to grant victims extensive protection over the family home and that barriers to securing orders particularly impact litigants in person. These findings make a significant and original contribution to the existing knowledge in this area, suggesting that policy work conducted in clinics can be 'an essential part of the dedicated working on behalf of women subjected to abuse'.[116]

A limitation of the project from a student perspective, however, was that due to the participants involving potentially vulnerable subjects, ethical approval was refused for the students to conduct interviews with the victims. As such, this restricted their involvement in some parts of the project and placed an increased workload on the supervising solicitors. This decision is somewhat at odds with the fact in the ordinary course of the module, the students would have been able to conduct fact-find and advice appointments with victims as part of a live client case. A further limitation was that as the students were not also running a live client case in conjunction with their policy work, there were some gaps in the students' practical experience of the law, meaning they were not always able to appreciate the 'symbiosis between individual representation and policy work'.[117] This suggests that there would be value in engaging in hybrid policy/live client model, as discussed by Dunn et al. [118]

[116] Dunn et al (n 72).
[117] Goodmark (n 58), 33.
[118] Dunn et al (n 72).

In terms of the benefit to victims of domestic abuse, policy work has the potential to make a difference to greater numbers than live client work. In contrast to advice services, the policy work undertaken for this project could not lead to a reduction the numbers of unrepresented litigants. However, insofar as the recommendations made within the report are taken on board, it could contribute to improvements in the court process. As such, it offers a qualitatively different form of support for victims. Effecting change through policy research is not, however, a guaranteed outcome and whether the recommendations are reviewed by the appropriate bodies and thereafter acted upon will ultimately depend on the channels through which the work is disseminated, the connections between the clinic and/or underlying client and law reformers and the quality of the research. This is something which clinicians involved in policy work must consider at the outset of a project to maximise the prospects of the work achieving its goals. Given that our policy work for SEA only concluded in May 2021, it is potentially too soon to see what, if any, impact the work will have. A further benefit to victims may result from engaging in policy research as a research participant. Many of the victims who were interviewed as part of the study with SEA volunteered that their rationale for participating was to improve the family court process and the effectiveness of remedies for other victims, often because of their own difficult experience. Studies also suggest that participating in research around

domestic abuse and 'sharing their story' is a key component of 'thrivership' for victims – the transition from surviving to thriving after domestic abuse.[119]

(d) Public legal education: developing the capacity of others to assist victims

It is well documented that specialist domestic abuse organisations offer advocacy services to support victims throughout legal proceedings.[120] Research suggests that in contrast to other pro bono organisations, support services often engage in more extensive levels of casework, including assisting women to identify their legal needs, prepare and file court paperwork, comply with court directions, and attending hearings in a supportive capacity.[121] Whilst it is promising that such support is available to victims, it is nonetheless concerning that research has identified that some support workers lack a sufficient working understanding of the law and this compromises the quality of information provided to service users.[122] This is particularly worrying in light of the introduction of DAPOs which may permit support workers to make applications for protection on behalf of victims.[123] The data

[119] I. Heywood, D. Sammut and C. Bradbury-Jones, 'A Qualitative Exploration of 'Thrivership' Among Women who have Experienced Domestic Violence and Abuse: Development of a New Model' (2019) 19:106 *BMC Women's Health*, 1-15.
[120] Speed (n 30); Kelly (n 86).
[121] Speed (n 30).
[122] Ibid.
[123] The Domestic Abuse Bill Delegated Powers Memorandum suggests that the third parties who might be specified by the Secretary of State as capable of applying for DAPOs without prior permission of the court include 'local authorities, probation service providers, *specialist domestic abuse advisers* and specialist non-statutory support services (for example, *refuge support staff*). See Home Office, Ministry of Justice and Ministry of Housing, Communities and Local Government, *Domestic Abuse Bill: Delegated Powers Memorandum* (Home Office, 2021), para 24.

therefore identifies a need for better training for IDVAs and support workers to improve the quality of support for victims in family court proceedings. Alongside this, there is a recognised need for legally accurate, accessible, and up-to-date materials for litigants in person themselves.[124]

Drawing on these findings, the family clinicians in the SLO held discussions with a local women's organisation to identify their (and their service users') legal needs and consider how these could be met. Three needs were identified (1) training for IDVAs/support workers about the options available for victims of domestic abuse to pursue a civil claim for compensation against their perpetrator (2) training for IDVAs/support workers about preparing an effective application for protective injunctions and (3) written factsheets for victims of domestic abuse about the process of applying for a non-molestation order or occupation order which could be distributed to service users from the women's organisation. Whilst in this case there was an existing relationship between the clinicians and the support service, given that research supports a need for training within these organisations and the fact that third sector organisations often do not have the budget to pay for such training, there would be merit in developing new relationships to achieve this purpose. Alternatively, given that only 38% of the participants to the Civil and Social Justice Panel Survey claimed to understand their rights in the case of domestic abuse, there would also be value in

[124] Trinder et al (n 5).

clinical students offering training directly to women's groups about their legal options.[125]

This project is currently ongoing and therefore the benefits and limitations of this model are still being experienced. To date, the students have prepared and delivered a training session on civil claims for compensation and the factsheets are being finalised. It is anticipated that training on preparing effective applications for protective injunctions will take place in the next academic year, which will likely coincide with the introduction of DAPOs. Given that this work does not attract strict deadlines, the benefit of public legal education activities is that they can be delivered at any point in the academic calendar, either as a standalone project or to bolster other clinical activities. Further, whilst the materials need to be approved by a clinician with a good knowledge and understanding of the law, this does not necessarily need to be a qualified practitioner. From a student perspective, public legal education activities allow students to work on behalf of VAWG stakeholders who operate outside a legal setting. This is particularly valuable for those students who may be interested in pursuing a career in domestic abuse work but who do not wish to qualify as a solicitor. For those who do wish to have a career in law, it is common for junior practitioners to deliver Continuing Professional Development training to external organisation and

[125] Reported in L. Wintersteiger, *Legal Needs, Legal Capability and the Role of Public Legal Education: A Report by Law for Life, The Foundation for Public Legal Education* (Law for Life and the Legal Education Foundation).

therefore such activities are reflective of work the students may be expected to undertake from an early stage in their career.

The support service has provided feedback that the training which has been delivered to date has improved the knowledge of support workers and increased their capacity and confidence to support women in these claims. Further, following Durfee's findings, it is anticipated that improving support workers' ability to prepare an effective court application may improve victims' prospects of securing protection.[126] In relation to the factsheets, it is recognised that the provision of informative materials is not an adequate substitute for tailored legal advice and that 'the support needs of litigants in person will not be met solely by relying upon written or online materials'.[127] Further, such materials are unlikely to assist litigants who experience language and/or literacy difficulties. This suggests that the provision of written materials may be most effective when used in conjunction with other models outlined above, such as where clients receive tailored one-off advice about their case and are able to discuss some of the information contained in a factsheet. Whilst invariably such an approach will not be possible in all cases, it would address concerns raised by academics that some litigants in person also need to have the opportunity to have verbal explanations or face-to-face support and that the effective use of written

[126] Durfee (n 7).
[127] Trinder et al (n 5), 108.

materials is also 'dependent upon a baseline level of legal knowledge and understanding'.[128]

Nonetheless, the use of written resources is not redundant. By providing information about the process of applying for a protective inunction written directly for a litigant in person audience, the factsheets will go some way to help address the 'overwhelming need for more and better information for litigants in person at every stage of the court process'.[129] Further, given many litigants in person take a 'reactive or passive approach to help-seeking'[130] it is hoped that making the resources available at a venue where they may be attending for other therapeutic services (i.e., the women's organisation) will assist their accessibility. Preparing the materials as part of a clinical module can also provide some assurance about the quality of information. This can be achieved by including the university/clinic logo and, if applicable, a statement indicating that the information has been reviewed by a qualified practitioner.

A note on models of dispute resolution outside the formal justice system

Academics have observed that 'from their inception, clinics recognised that there are women for whom the legal system provides no benefit and, in fact, can be harmful'.[131]

[128] Moorhead and Sefton (n 42), 257; Trinder et al (n 5), 108.
[129] Trinder et al (n 5), 105.
[130] Ibid, 106.
[131] Goodmark (n 58), 33.

Some scholars have therefore queried whether clinics can play a role in supporting victims of domestic abuse to resolve their disputes away from the formal justice system. Goodmark, for example, notes that 'few clinics restrict themselves to litigating within the criminal or civil justice systems; most domestic violence clinics seek other forms of justice for their clients'.[132] She argues that in comparison to practitioners and advocates in the VAWG movement, law students are not 'entrenched in the position that interventions like mediation are unsafe and, therefore, unsuitable for women subjected to abuse' and are better able to think creatively to find innovative solutions for women.[133] Further, she posits that to develop responses to domestic abuse, clinics could 'test and assess' what role models of dispute resolution such as mediation, victim-offender dialogue and restorative justice could play in domestic violence cases 'before attempts are made to implement such schemas more broadly'.[134]

None of the models pursued at Northumbria University involve supporting women to seek protection through routes outside of the formal justice system. Whilst elsewhere the author has weighed up the potential merits of victims of domestic abuse entering into alternative dispute resolution in financial and children matters[135] these approaches are simply untenable for victims seeking protection, where an order of the court is required to obtain legally enforceable protection. Research consistently

[132] Ibid, 46.
[133] Ibid.
[134] Ibid.
[135] A. Speed, 'Just-ish? An Analysis of Routes to Justice in Family Law Disputes in England and Wales' (2020) 52:3 *The Journal of Legal Pluralism and Unofficial Law*, 276-307.

demonstrates that the threat of criminal action is a powerful means of securing compliance with an injunction, a finding which has led to breach of non-molestation orders and forthcoming DAPOs becoming a criminal offence.[136] Accordingly, supporting a victim to secure an agreement which has no legal standing through alternative dispute resolution would be a disservice to victims by leaving them with substantially weaker protection than is available through the courts.

In relation to other family law disputes where domestic abuse is or has been prevalent, it remains the case that alternative dispute resolution is still widely discouraged in England and Wales. The Domestic Abuse Guidelines for Prosecutors[137] and the ACPO Guidance on Restorative Justice[138], for example, provide that police policy does not support the use of restorative justice for domestic abuse in intimate partner cases due to the complex and protracted nature of domestic abuse offences. Likewise, the Family Procedure Rules 2010 seek to remove obstacles to victims accessing the courts, by providing an exemption for victims of domestic abuse (and those needing to issue proceedings urgently) to attend a preliminary Mediation Information and Assessment Meeting (MIAM) prior to starting court proceedings.[139] In relation to victims who do not receive legal aid, court proceedings also remain a more cost-effective means of securing protection given that there is no court fee to apply for a protective injunction

[136] Bates and Hester (n 11).
[137] Crown Prosecution Service (CPS), *Domestic Abuse Guidelines for Prosecutors* (CPS; 29 September 2021).
[138] Association of Chief Police Officers (ACPO), *Restorative Justice Guidance and Minimum Standards* (2011).
[139] Family Procedure Rules 2010, rule 3.8.

and litigants in person will not incur any costs of representation. This can be contrasted to mediation where the charge (outside a clinical setting) is around £140 per hour.[140]Accordingly, whilst in other practice areas clinicians have recognised the need to reform clinical education to account for the fact that 'litigation is no longer the default model of resolution of legal disputes'[141] facilitating alternative dispute resolution with victims of domestic abuse in a clinical setting could give students a misleading impression of practice, which is counterintuitive to the educational aims of clinical education. It is recognised that outside a clinical setting, LASPO has resulted in both a decline in the overall number of family law cases being mediated[142] and an increase in cases being mediated which exhibit 'higher conflict levels and/or more complex problems such as… where there are significant power imbalances between the parties', because of pressures on mediators not to screen out cases.[143] Barlow notes that by 'withdrawing legal aid for (prior) legal advice (as well as representation at court) and making mediation the only legally aided out of court dispute resolution option, those who could not pay were effectively given the stark choice of mediating an agreement or representing themselves in court'.[144] She therefore describes that mediation was 'likely to become a Hobson's choice for many, a constraint which in

[140] Family Mediation Council, *Family Mediation Council Survey Results* (FMC; 2019).
[141] K. Tokarz and A. Appell, 'Introduction: New Directions in ADR and Clinical Legal Education' (2010) 34 *Washington University Journal of Law and Policy*, 1-9; K. Emery, 'Assisting Indigent Families in Conflict: A Pro Bono Test Drive for a Family Alternative Dispute Resolution (ADR) Clinic (2010) *Washington University Journal of Law and Policy*, 239-259.
[142] A. Barlow, 'Rising to the Post-LASPSO Challenge: How Should Mediation Respond?' (2017) 39:2 *Journal of Social Welfare and Family Law*, 203-222.
[143] Ibid, 205.
[144] Ibid, 204.

itself often militates against a successful mediated outcome'.[145] Accordingly, it is suggested that the use of mediation within the current landscape is not indicative of a progressive or creative approach to supporting victims, but is instead the product of a family justice system at breaking point where desperate attempts are being made to divert cases elsewhere.[146]

CONCLUDING THOUGHTS

By examining the various models through which the SLO supports victims of domestic abuse, this paper has sought to highlight how clinical legal education can be an effective tool for improving the accessibility of protection orders. The analysis demonstrates that whilst the number of law school clinics offering domestic abuse services is still low, such services can be incorporated into most clinical settings, whether through more resource intensive models like case work and policy projects or in less onerous models such as public legal education activities. Further, the analysis suggests that the impact of clinical activities in improving the accessibility of protective orders can be evidenced in various ways, including through a reduction in the numbers of litigants in person in applications for protection (even if not in a way that is statistically significant), in building the capacity of others to support victims in proceedings (and with the introduction of DAPOs, to potentially make applications

[145] Ibid, 205.
[146] Speed (n 135).

on their behalf) and in making evidenced-based proposals to make the legal process for securing protection more victim-focussed. Just as significantly, however, the literature also suggests that by exposing clinical students to domestic abuse work at an early stage in their career, future practitioners will enter practice with a strong understanding about the dynamics of domestic abuse and a commitment to supporting clients in a way that is client-centered and trauma-informed. These findings, it is argued, provide a compelling case for practitioners to consider extending their clinical offering and develop the presence of domestic abuse in clinics in the UK.

LAW SCHOOLS AS LEGAL AID PROVIDERS IN KENYA: CHALLENGES AND LESSONS LEARNT FROM PRACTICE

Asha Mikinyango[1] and Judith Nguru, Daystar University and Mount Kenya University, Kenya[2]

Abstract

Legal aid is the provision of free or subsidized legal services to mainly poor and vulnerable people who cannot afford advocate fees. The right to legal aid is well rooted in the international, regional human rights treaty framework to which Kenya party. The provision of legal aid addresses the concerns of the poor and vulnerable by focusing on challenges that foil access to justice. In recognition of this, the Government of Kenya promulgated the Legal Aid Act, 2016 establishing the National Legal Aid Service to provide legal aid services to needy, marginalized, and vulnerable persons. This was a very important move, propelling the Government to prioritize legal aid provision as a right as well as a necessity for promotion of rule of law and access to justice. However, it is imperative to understand that the duty does not squarely fall on the State alone. There is need for non-state actors' support from private entities like law firms, NGOs, Law schools and any other qualified legal personnel. Without a

[1] Asha Mikinyango is an advocate of the High Court of Kenya and teaches law at Daystar University School of Law, Nairobi Kenya. ORCID ID 0000-0002-7346-4709.
[2] Judith Nguru is an advocate of the High Court of Kenya and a lecturer at Mount Kenya University School of Law. ORCID ID 0000-0002-5768-850X.

doubt, several non-state actors are actively offering free or subsidized legal aid and the purpose of this paper is to look at the lessons faced by a non-state actor from the experience of the authors organizing and running events to offer free legal aid. This includes expounding on challenges faced such as constrained funding, language barrier, illiteracy, and ignorance of legal rights. The punchline here is that there is room for all stakeholder to come together and forge a way forward for an improved legal aid framework in Kenya.

Keywords: Law schools, Legal aid clinics, Legal aid, Free legal services, Kenya, access to justice, rule of law.

1. Introduction

In recent years, the value of law schools involvement in legal aid delivery has gained footing in Kenya. Law schools, through legal aid clinics, have come to play a significant role in providing meaningful legal services that are responsive to the community's demand. This article is designed to assess the role of law schools in promoting the right of legal aid through running legal aid clinics in Kenya. The article highlights the challenges faced by law schools in the provision of legal aid and proposes strategies for sustainable legal aid service. The authors bank on their personal experience in coordinating and organizing legal aid clinics while teaching at a local University.

The article is organized in five parts. Part I generally provides the legal foundation for legal aid provision in Kenya. Part II looks at the role of law schools as legal aid

providers. A contrast is drawn from the status of law school-based legal aid clinics in Kenya with those in South Africa. This is followed by Part III that entails a detailed description of how the legal aid clinics ran by the Mount Kenya University School of Law were organized by the legal aid committee, of which the authors were members of. Thereafter, Part IV sets out the internal and external challenges faced in the running of the legal aid clinics, and lastly Part V discusses the lessons learnt together with proposals on how to mitigate those challenges.

Part I Provision of Legal Aid in Kenya - The Legal Foundation

Legal aid has for long been deemed a necessary component attached to several human rights established by international laws such as of rule of law, right to fair trial and access to justice all of which empower individuals.[3] Legal aid refers to providing legal advice, representation in court or alternative dispute resolution mechanisms, as well as creating awareness for persons who cannot afford to pay for legal services.[4] The right to free legal assistance for persons accused of crimes is a widely accepted principle of law as it is believed to empower individuals and communities, contribute to the reduction of poverty and promote the protection of human rights.[5] It is therefore

[3] Henry Brooke, The History of Legal Aid 1945 -2010' (2007) Bach Commission on Access to Justice – Appendix 6 <file:///C:/Users/User/AppData/Local/Temp/Bach-Commission-Appendix-6-F-1.pdf > accessed 11 November 2020.

[4] Section of the Legal Aid Act, No 6 of 2016 (hereinafter known as the Act).

[5] United Nations Office on Drugs and Crime, *Global Study on Legal Aid: Global Report* (2016) <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi9gOvNl_3sAhUJUBUIHXZ3ASsQFjAAegQIARAC&url=https%3A%2F%2Fwww.unodc.org%2F

an essential tool for providing access to justice and promoting the rule of law. In recognition of this, legal aid programs have been implemented in many States all over the world, including Kenya in the form of the State, bar associations and non-governmental organizations free legal services to the financially challenged citizens.[6] For example, the Kenyan Constitution paved way for individuals accused of crime punishable by death to be provided an advocate by the State where they could not afford one.[7] At the same time independent bodies such as the Law Society of Kenya and Kituo cha Sheria were already providing pro bono services.[8]

The global movement on access to legal aid has been strengthened by the adoption of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.[9] These principles form the first international instrument that deals with legal aid and has propelled member states to provide, protect and promote the right to legal aid as a stand-alone statutory right. These principles provide for both

documents%2Fjustice-and-prison-reform%2FLegalAid%2FGlobal_Study_on_Legal_Aid_-_FINAL.pdf&usg=AOvVaw3iO7h-ZeuJyedxXDsVpwT1> accessed 12 November 2020.

[6] Ibid 3

[7] Constitution of Kenya 2010, Art 50(2) (g). Also see *John Mbugua and another* v *the Attorney General and 16 Others* (2013) eKLR

[8] Also referred to as pauper briefs, mean a case that is conducted by a volunteer advocate at nominal or no cost at all. The Judiciary Government of Kenya, 'What is Pro bono/pauper brief?' (Judiciary) <https://www.judiciary.go.ke/what/ > accessed 12 November 2020; Kenya Gazette, Practice Directions Relating to Pauper Briefs Scheme and Pro Bono Services (Notice no 370) 20 January 2016 <http://kenyalaw.org/kl/index.php?id=6006 > accessed 12 November 2020.

[9] United Nations Office on Drugs and Crime, 'United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems' Res A/67/458 (20 December 2012) <https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf> accessed 12 November 2020.

criminal and civil cases and it encompasses legal advice, legal education and legal drafting.[10]

Consequently, the Government of Kenya has promulgated the Legal Aid Act, a *sui generis* legislation that recognizes the right to legal aid.[11] Under this Act, the Government undertakes to provide quality and effective legal aid services to all inhabitants of Kenya who are unable to afford legal fees. This entails putting in place functions, processes and systems that ensure the quality requirement of legal aid services is met. This is to be primarily done by the establishment of the National Legal Aid Service to provide legal aid services to needy, marginalized, and vulnerable persons.[12] However, it is imperative to understand that this duty does not squarely fall on the State alone. The increasing demand for legal aid services in Kenya outstrips the supply of State – funded legal services and thus there is an apparent need for non-state actors' support from entities like law firms, non-governmental organizations, faith – based institutions as well as law schools. [13]

---

[10] United Nations Office on Drugs and Crime, *Handbook On Ensuring Quality of Legal Aid Services in Criminal Justice Processes :Practical Guidance and Promising Practices* (2019) <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi9gOvNl_3sAhUJUBUIHXZ3ASsQFjABegQIAxAC&url=https%3A%2F%2Fwww.unodc.org%2Fdocuments%2Fjustice-and-prison-reform%2FHB_Ensuring_Quality_Legal_Aid_Services.pdf&usg=AOvVaw0VvN7J-OeU_itafI4uQ9t_ > accessed 12 November 2020.

[11] The Legal Aid Act, 2016. For a summary of the National Legal and Policy Framework on Legal Aid in Kenya, see Table 3 of Office of the Attorney General and Department of Justice Kenya, ' National Action Plan, Legal Aid 2017 – 2022 Kenya' 11 (< https://kecosce.org/national-action-plan-legal-aid-2017-2022-kenya/> .

[12] Legal Aid Act 2016, s 5.

[13] Office of the Attorney General and Department of Justice Kenya, ' National Action Plan, Legal Aid 2017 – 2022 Kenya' 22 (< https://kecosce.org/national-action-plan-legal-aid-2017-2022-kenya/ > accessed 14 December 2020.

In view of this, the Act defines a legal aid provider to include 'an advocate operating under the pro bono programme of the Law Society of Kenya or any other civil society organization, a paralegal; a firm of advocates; a public benefit organization or faith based organization; a University or other institution operating legal aid clinics; or a government agency, accredited under the Act to provide legal aid'.[14] Through this provision, law schools have the ambit to be providers of legal aid services by running legal aid clinics. These legal aid clinics provide a grand opportunity for law students to become agents of social change and transformation as they provide free and professional legal services to indigent persons.

Part II Law Schools as Legal Aid Providers

Like most African countries, the provision of legal aid services by Kenyan law schools is closely associated with the use of clinical legal education. Simply put, clinical legal education is learning by doing whereby the law students play varying degrees of the role of a lawyer representing clients with legal issues.[15] This form of experiential learning 'enables law students to play an active role in the learning process and to see how the law operates in real-life situations'.[16] Clinical legal education serves two

[14] Legal Aid Act 2016, s 2.

[15] Adrian Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (2017 ANU) 48 < https://press.anu.edu.au/publications/australian-clinical-legal-education > accessed 17 December 2020

[16] David McQuoid-Mason and Robin Palmer, African Law Clinicians Manual' (2013) 1 <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwivrK6i49HtAhWtQkEAHcOHDrEQFjABegQIAhAC&url=https%3A%2F%2Fir.canterbury.ac.nz%2Fbitstream%2Fh

purposes: one of student learning, the other of community service. It allows for law students to gain practical professional skills and values whilst delivering legal services in a social justice environment.[17] The provision of legal aid services by law schools is thereby hinged on the social justice objective. As Iya rightfully puts it, 'law students can play a valuable role in assisting the majority poor and ignorant members of the society by satisfying their needs for access to justice through engaging in a variety of community service programmes, while at the same time acquiring legal or professional skills and values'.[18]

As a pedagogical approach, clinical legal education boosts of a variety of models of learning that are generally called legal clinics.[19] These legal clinics can be defined as offices staffed by law students under the supervision of qualified lawyers, providing free legal services to indigent members of the community. The term 'legal clinic' can broadly extend to clinics that operate to deal with clients or simulated legal practice that does not deal with clients.[20] Thus, legal clinics can range from in-house clinics, outreach clinics, externships, street law clinics, simulated clinics to clinical

---

andle%2F10092%2F15366%2FAfrican-Law-Clinicians-Manual-McQuoid-Mason.pdf%3Fsequence%3D2&usg=AOvVaw2JKcdhq49yPaI1yLX0YID9> accessed 14 December 2020.

[17] David McQuoid-Mason and Robin Palmer, African Law Clinicians Manual' (2013) 1 <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwivrK6i49HtAhWtQkEAHcOHDrEQFjABegQIAhAC&url=https%3A%2F%2Fir.canterbury.ac.nz%2Fbitstream%2Fhandle%2F10092%2F15366%2FAfrican-Law-Clinicians-Manual-McQuoid Mason.pdf%3Fsequence%3D2&usg=AOvVaw2JKcdhq49yPaI1yLX0YID9> accessed 14 December 2020.

[18] Phillip F Iya, 'Fighting Africa's Poverty and Ignorance through Clinical Legal Education: Shared Experiences with New Initiatives for the 21st Century' (2000) I JCLE 17 < https://doi.org/10.19164/ijcle.v1i0.128> accessed 16 December 2020.

[19] The terms 'legal clinic' and 'law clinic' are often used interchangeably.

[20] David McQuoid-Mason, 'Teaching Social Justice to Law Students through Community Service – The South African Experience' < http://clarkcunningham.org/LegalEd/SouthAfricaMason1.pdf. > accessed 12 December 2020.

components in doctrinal courses.[21] In this article the focus is on legal aid clinics, which we define as live – client clinics whereby law students offer pro-bono legal aid services under the supervision of qualified academic staff.

Legal aid clinics are invaluable as they offer immense benefits. Grimes best summarizes these benefits to be that 'clients receive a free, professional and customized service; students learn experientially; law schools serve a wider community mission; and the legal profession stands to inherit lawyers who are beginning to acquire and appreciate the need for legal practice awareness and to develop pragmatic, problem-solving skills'.[22] Thus, these clinics provide a win – win situation for all.

The following part looks closely at the status of law school – based legal aid clinics in South Africa for a comparative basis. South Africa's experience offers an exemplar model for the establishment of these clinics as it has a comparable legal, socio – economic context to Kenya.

---

[21]Richard Grimes, 'Accessing Justice: The Role of Law School Legal Clinics in Conflict-Affected Societies' (2014) 1 AJLE 73 < https://doi.org/10.1177/2322005814530327> accessed 17 December 2020.; Adrian Evans et al *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (2017) 48 < https://press.anu.edu.au/publications/australian-clinical-legal-education> accessed 17 December 2020; David McQuoid-Mason and Robin Palmer, African Law Clinicians Manual' (2013) ch 4 <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwivrK6i49HtAhWtQkEAHcOHDrEQFjABegQIAhAC&url=https%3A%2F%2Fir.canterbury.ac.nz%2Fbitstream%2Fhandle%2F10092%2F15366%2FAfrican-Law-Clinicians-Manual-McQuoid-Mason.pdf%3Fsequence%3D2&usg=AOvVaw2JKcdhq49yPaI1yLX0YID9> accessed 14 December 2020.

[22] Richard Grimes, 'Accessing Justice: The Role of Law School Legal Clinics in Conflict-Affected Societies' (2014) 1 AJLE 86 https://doi.org/10.1177/2322005814530327 accessed 18 December 2020.

The clinical movement in Africa is still growing - South Africa leading with highly developed clinical programmes based in their law schools. The emergence of legal aid programmes in South African law schools began in the 1970s with the aim of providing access to legal services to the poor and vulnerable. [23] At that time, law schools bridged the gap created between the limited State-funded legal aid system and the increasing social and political needs of the society.[24] The typical legal aid clinics that existed were low-budget student run initiatives that were supported by some academics and persons in private practice.[25] The type of legal matters carried out in the clinics were mostly civil in nature and consisted mainly of family, employment and housing matters.[26]

Today, all law schools in South Africa have established legal aid clinics.[27] The spur in the numbers of legal aid clinics can be attributed to key motivating factors such as funding received by Universities from the Legal Practitioners Fidelity Fund since the 1990's (formerly the Attorneys Fidelity Fund) and the establishment of the South African University Law Clinics Association (formerly Association of University Legal

[23] MA (Riette) du Plessis, 'Forty-Five Years of Clinical Legal Education in South Africa' (2019) 25 Fundamina 17 <http://ref.scielo.org/6cwsxx> accessed 3 December 2020;. DJ McQuiod – Mason, 'Access to Justice and the Role of Law Schools in Developing Countries: Some Lessons from South Africa – Pre 1970 until 1990: Part 1 (2004) 29(3) JJS 33< https://journals.ufs.ac.za/index.php/jjs/article/download/2899/2812> accessed 18 December 2020.

[24] MA (Riette) du Plessis, 'Forty-Five Years of Clinical Legal Education in South Africa' (2019) 25 Fundamina 17 <http://ref.scielo.org/6cwsxx> accessed 3 December 2020.

[25] Willem De Klerk, 'University Law Clinics in South Africa' (2005) 122 SALJ 930.

[26] DJ McQuiod – Mason, 'Access to Justice and the Role of Law Schools in Developing Countries: Some Lessons from South Africa – Pre 1970 until 1990: Part 1 (2004) 29(3) JJS 35 < https://journals.ufs.ac.za/index.php/jjs/article/download/2899/2812> accessed 20 December 2020.

[27] DJ McQuiod – Mason, 'Access to Justice and the Role of Law Schools in Developing Countries: Some Lessons from South Africa: Part 2: 1990 until the present (2005) 30(1) JJS 7 < https://journals.ufs.ac.za/index.php/jjs/article/view/2906> accessed 20 December 2020.

Aid Institutions).[28] Notably, legal aid clinics in South African law schools get significant external funding. The Legal Practitioners Fidelity Fund (LPFF) grants bursaries to legal aid clinics at South African universities to facilitate quality legal education.[29] These monies enable the effective operationalization of the clinics and the hiring of clinical staff such as a director of the clinic, attorneys and legal practitioners.[30] In addition, the formation of the South African University Law Clinics Association (SAULCA) also promotes the growth of the legal clinics in South African law schools. SAULCA is the umbrella body that represents all law school- based legal aid clinics in South Africa.[31] It seeks to promote the provision of free legal services to indigent persons and the practical legal education of law students, to lobby and network with relevant stakeholders and to ensure the sustainability of clinics amongst other objectives.[32] Through SAULCA, a standard curriculum and teaching manual, a guide to clinical assessment methods, a manual on clinical teaching methodology and a student textbook on clinical education have been developed for a structured approach to clinical legal education.[33]

---

[28]MA (Riette) du Plessis, 'Forty-Five Years of Clinical Legal Education in South Africa' (2019) 25 Fundamina 18 <http://ref.scielo.org/6cwsxx> accessed 3 December 2020.; Willem De Klerk, 'University Law Clinics in South Africa' (2005) 122 SALJ 930.

[29] Legal Practitioners Fidelity Fund South Africa, 'Bursaries' (Legal Practitioners Fidelity Fund, 2020) < http://www.fidfund.co.za/bursaries/> accessed 14 December 2020.

[30] David J McQuoid-Mason, 'The Delivery of Civil Legal Aid Services in South Africa' (2000) 24 FILJ S111, S129 < http://clarkcunningham.org/LegalEd/SouthAfrica-MM-Fordham.pdf. > accessed 14 December 2020.

[31]South African University Law Clinics Association, 'Home' <https://www.saulca.co.za/ accessed on 1 December 2020.

[32] South African University Law Clinics Association, 'Home' <https://www.saulca.co.za/ accessed on 1 December 2020.

[33] Willem De Klerk, 'University Law Clinics in South Africa' (2005) 122 SALJ 931.

Legal aid clinics are now a core part of the law degree as they have been integrated into the mainstream law degree curriculum either as mandatory or elective courses.[34] The legal aid clinics constitute the clinical experience of a broader clinical course or program.[35] Student participation in this clinical experience is based on clinic time or shifts, taking turns to receive walk in clients, assess cases to decide which cases to accept and providing whatever service the client needs, all under supervision.[36] This hands – on learning makes the most valuable experience as it has proved to be 'effective in developing respect for clients, increased student confidence and the educational outcome of rapid, but sustained and comprehensive student learning'.[37]

Though law school – based legal aid clinics in South Africa have progressed tremendously, they still face some challenges such as meeting the clients and law students' needs, difficulties in assessing clinical work, imbalances in student learning amongst others.[38] Despite these challenges, these clinics continue to greatly impact how the South African citizens access justice.

---

[34] Willem De Klerk, 'University Law Clinics in South Africa' (2005) 122 SALJ 932.

[35] The clinical course or program is ideally structured to include a clinical experience, a classroom component and a tutorial session. See M A Du Plessis, *Clinical Legal Education: Law Clinic Curriculum Design and Assessment Tools* (2017 Juta SA) 26.

[36] Donald Nicolson, Our Roots Began In (South) Africa: Modelling Law Clinics to Maximise Social Justice Ends' (2016) 23.3 IJCLE < https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/532/922 > accessed 12 December 2020; MA du Plessis, 'Clinical Legal Education Models: Recommended Assessment Regimes' (2015) 18 < https://www.ajol.info/index.php/pelj/article/view/131490/121088 > accessed 13 December 2020.

[37] MA du Plessis, 'Clinical Legal Education: Identifying required Pedagogical Components' (2015) 40(2) JJS 69 < https://journals.ufs.ac.za/index.php/jjs/article/view/3260> accessed 18 December 2020.

[38] SH Mahomed, 'United in our challenges: Should the model used in clinical legal education be reviewed? (2008) JJS 61< file:///C:/Users/User/AppData/Local/Temp/juridic_v33_specialissue_a4.pdf> accessed 17 December 2020.

In contrast, Kenya's clinical movement is under – developed. This clinical movement can be considered to be in the 'first wave of modern clinical legal education' that was characterized by the sprouting of voluntary student programs for practicing lawyering skills and advancing a social justice mission. [39] While evaluating the development of clinical legal education in Kenyan law schools, Osiemo observed that, 'CLE [clinical legal education] is applied in some Kenyan universities to varying extents, but not in a systematic or sustainable manner as happens in many other universities in other countries around the world. Although efforts have been made over the years to establish law clinics in a number of law faculties, most remain at levels that do not meet the characteristic features of CLE'.[40] Thus, this status of clinical programs in Kenyan law schools is mirrored in the embryonic state of law school – based legal aid clinics in Kenya.

Most of the legal aid clinics that exist in Kenyan law schools run as extra – curricula activities separate from the mainstream law curriculum. For instance, in the University of Nairobi, legal aid clinics are organized by the Students Association for Legal Aid and Research (SALAR).[41] SALAR is a student club that works in conjunction

[39]Margaret Martin Barry; Jon C Dubin; Peter A Joy, 'Clinical Education for This Millennium: The Third Wave'
(2000)7(1) CLR 6 < file:///C:/Users/User/AppData/Local/Temp/SSRN-id2548228.pdf> accessed 17 December 2020.

[40] Lynette Osiemo and Anton Kok, 'Promoting a Public Service Ethic in the Legal Profession in Kenya: The Imperative Role of Clinical Legal Education (2020) 64 (2) JAL 191; For a detailed description of the clinical programs in Kenyan law schools, see Anne Kotonya, 'Defining the role of the university law clinician: perspectives from Kenya clinician: (2020) The Law Teacher, DOI:10.1080/03069400.2020.1840054.

[41] UON SALAR, 'The Students' Association for Legal Aid and Research' (SALAR) <https://www.uonsalar.org/Activities.html >accessed 17 November 2020.

with non-government organisations to offer legal assistance that includes employment and labour disputes, human rights, matrimonial disputes, land disputes and child-related matters.[42] Strathmore University also runs the Strathmore Law Clinic which is a student-led institution that seeks to further access to justice by running legal literacy programs in criminal justice entrepreneurship and human rights.[43] Students at the Kabarak University School of Law offer legal aid advice through the Kabarak University Law Students Association (KULSA) to inmates in prisons and also to the surrounding Kabarak community.[44] The student- led Public Interest and Awareness Programme run by the law students at Kenyatta University School of Law offers legal awareness and assistance services in different parts of the country.[45] There also exists a walk – in legal aid clinic that offers generalist legal services. Despite the clinic being extra-curricular, it is supervised by a law lecturer.[46]

---

[42] 'SALAR – Legal Aid' available at *https://www.uonsalar.org/legal-aid.html*, accessed on 12 March 2018. See also Yohana Ouma and Esther Chege, Law Clinics and Access to Justice in Kenya: Bridging the Legal Divide' <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi7u6LRiJHtAhX1WxUIHYHRBmIQFjAAegQIARAC&url=https%3A%2F%2Fpdfs.semanticscholar.org%2Fcb0f%2F975d4b75613c92a0311599981fdbcdceb32d.pdf&usg=AOvVaw239a6-p-AOOK61qn0vIG61 > accessed 17 November 2020.

[43] Strathmore University Law Clinic, Annual Report 2019, Strathmore University Law School 2019 < https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjY6sa0tYXuAhUFXhUIHUF2DwoQFjAAegQIARAC&url=https%3A%2F%2Fwww.strathmore.edu%2Fwp-content%2Fuploads%2F2020%2F09%2FSU-2019-Annual-Report.pdf&usg=AOvVaw2NUrGVUTdP25uDaBUvRNGt> accessed 16 November 2020; Emma Senge Wabuke, Arnold Nciko and Abdullahi Abdirahman, Promoting Access to Justice in Kenya: Making the Case for Law Clinics (The Platform October 11 2018) < https://theplatform.co.ke/promoting-access-to-justice-in-kenya-making-the-case-for-law-clinics/ > accessed 16 November 2020

[44] 'KULSA Programmes' available at <*http://law.kabarak.ac.ke/kulsaprogrammes.php*> accessed 12 March 2018.

[45] Kenyatta University, 'Public Interest and Awareness Programme' (Kenyatta University,17 April 2015) <http://law.ku.ac.ke/index.php/97-school-news/169-legal-aid-awareness> accessed 17 November 2020.

[46] Anne Kotonya, 'Defining the role of the university law clinician: perspectives from Kenya clinician: (2020) The Law Teacher 8 DOI:10.1080/03069400.2020.1840054.

The emerging core features of legal aid clinics in Kenyan law schools are that they are mostly student –led, extra – curricular clinics that offer legal assistance through advice – only clinics and street law programmes. Because these student - led clinics are not incorporated in the mainstream law degree curriculum, they tend to operate in a less formal manner.[47] They lack the structure and use of interactive learning methods that more established clinical programs have. It is therefore argued that the failure to integrate legal aid clinics into the wider law degree curriculum does affect the effectiveness and sustainability of the clinics.

In conclusion, Kenyan law schools can gain from emulating the best practices of South African law schools. Seemingly, the quality, productivity and sustainability of legal aid clinics and clinical programs at large can be improved if a holistic approach is followed. This approach could include adopting strategies like: the curricular integration of legal aid clinics, the development of training materials for clinical legal education, networking and collaboration amongst law schools and also with other legal aid providers and broadening the spectrum of funding to include both internal and external funding sources.

[47] Law schools in Kenya are not obligated by law to incorporate clinical programs into their law degree curriculum.

Part III The establishment of the Mount Kenya University School of Law Legal Aid Clinic

The authors were members of the legal aid committee at the Mount Kenya University School of Law (MKUSOL) that offered free legal services through legal aid clinics.[48] Legal aid clinics were incorporated in the undergraduate law degree curriculum in a mandatory course dubbed 'Public Legal Clinics'. The course engaged fourth year law students and it was akin to a capstone course. It sought to inculcate a variety of skills necessary in the practice of law namely interviewing skills, legal writing skills, drafting of legal documents, legal analysis reasoning, ethical and professional rules and trial advocacy. The same class of students would be required to participate in a legal aid clinic set up by the law school's legal aid committee so as to hone those practical skills.

The design of the legal aid clinic was premised on the advice - only model were legal advice was rendered to the general public. The location of these clinics deferred from areas with a low – income populace like Kibera, Mukurwe Kwa Njenga, Kawangware to prisons such as Langata Women's Prison and the Nairobi Remand and Allocation Maximum Prison.[49] These legal aid clinics were also generalist clinics offering legal

[48] Ms. Mikinyango and Ms. Nguru were part of a four – member team that comprised the Legal Aid Committee during the period between 2015 and 2018 at Mount Kenya University School of Law. Ms. Nguru doubled up as the chair of the committee as well as the course instructor for the Public Legal Clinics course.

[49] Kibera and Mukuru kwa Njenga are both slums situated in Nairobi where residents face financial challenges accessing essential services as reported by Amnesty International, 'Kenya The Unseen Majority: Nairobi's Two Million Slum Dwellers (2009) < https://www.refworld.org/pdfid/4a3660e82.pdf > accessed 7 November 2020

advice on a wide range of legal issues. The nature of legal work highly depended on the target community's needs. For instance, the remandees in prisons needed assistance in understanding the court procedure in criminal cases, while the members of the community mainly sought advice on family and property matters. Others sought a better understanding of various human rights.

The mandate of organizing and coordinating the legal aid clinics lay on the legal aid committee working closely with the law school's administrative staff. The legal aid committee was made up of several lecturers, who are Advocates of the High Court of Kenya, and were assisted by administrative staff from the law school. The committee members played several clinician's roles that included being liaisons to the law school's and University management, creating strategic partnerships with Government officials and local partners, supervision of the clinic, financial management of the clinic resources and the overall coordination of the clinics.[50]

The legal aid clinic were usually scheduled for the end of semester once students had completed the course content. The committee had the task to organize a clinic every semester and this meant that at least three legal aid initiatives would be organized in a year.[51] The location of the clinics would be identified by the legal aid committee together with the attending class of students. The selected area would have to be

[50] For a description of the various roles of a Kenyan clinician see Anne Kotonya, 'Defining the role of the university law clinician: perspectives from Kenya clinician: (2020) The Law Teacher 11 DOI:10.1080/03069400.2020.1840054.

[51] There are three semesters in the academic year in the Mount Kenya University Law School of Law.

populated by citizens that may not be able to afford legal fees in Nairobi and its environs. Once the area has been identified, the next step would be to engage any relevant administrative authority in the area. These could be Government agencies such as County Government officials, Chiefs, the Commissioner of Prisons in Kenya, or Non-Governmental Organizations and Faith-based institutions such as churches. This was a necessary step as the committee's sought partnership and sponsorship in a bid to lessen the University's financial burden. For instance, one legal aid clinic was hosted by a church that offered its church hall and seats. Building relations with community leaders was also crucial as it allowed for buy – in from the community and helped negate the negative public perceptions. One example is when the legal aid committee was allowed access to the community WhatsApp groups to raise awareness of the upcoming initiatives.

The budgetary costs were borne primarily by the University. The committee would need financial support for all these activities and it would submit a budget detailing the operational and administrative costs for running each legal aid clinic. The operational and administrative costs entailed utilities such as telephone call costs, transport, stationery, promotional materials, field visits, hired tents and furniture, meals and refreshments for students. At times, the budget would be subsidized, and this would affect the outreach and quality of legal aid delivered. Also of importance was attaining the necessary licenses to host these clinics as well as creating public awareness to the targeted community. On one occasion, the committee undertook to

do a roadshow in Thika town to create public awareness which required licenses from the County Government and even a license from the Music Copyright Society of Kenya permitting the playing of music during the roadshow.

The structure of the legal aid clinic was simple. On the date of the clinic, there would be a briefing session with the law students and the members of the legal aid committee on site. The purpose was to update them on their student responsibilities during the clinic, the potential clients and legal issues they would handle and remind them of their ethical duty of professionalism and confidentiality. The law students would thereafter be grouped into small groups of three to four to counsel and advise walk in clients under the supervision of the members of the legal aid committee. There would be a group of students tasked to welcome clients, ushering them to the reception so as to register and ensure they are appointed students to advise them accordingly. During the sessions, the students would jot down key facts in attendance notes and offer advice based on their legal knowledge.[52] When needed, the members of the committee would step in to assist the group of students. Clients with legal issues that required legal representation were referred to the relevant legal aid providers. After the legal clinics were completed, the legal aid committee would hold debriefing sessions with the attending class of students to share their experiences, give feedback and reflect

[52] Student participation in the clinics and the marks from the assessment of the attendance notes would contribute towards the grade of the law students.

upon their learning. The information received from these debriefing sessions would work as the benchmark of the effectiveness of the initiatives.

The above discourse reveals that Kenyan law schools are well on their way to becoming formidable partners in legal aid delivery. More specifically, this initial step to establish MKUSOL legal aid clinics gives new impetus to reinvent clinics that pass the quality indicators of legal aid clinic activities.[53] A reflection on the challenges faced and the lessons learnt by the MKUSOL can give insight on what to look out for when establishing viable law school – based legal aid clinics. These are discussed in the next two parts.

Part IV - Challenges faced by The Law School – Based Legal Aid Clinic

This part discusses the challenges faced in the organization and delivery of legal aid services at Mount Kenya University School of Law (MKUSOL). These have been broadly classified into internal and external challenges. Whereas the internal challenges were faced by the law school inwardly, the external challenges were faced while aiding the general public.

[53] For a discussion on quality indicators of activities of legal clinics, see Andrii Halai, 'Quality Indicators of Activities of Legal Clinics: Ukrainian Experience (2016) 3(2) AJLE 209 < https://doi.org/10.1177/2322005816640341> accessed 20 December 2020.

4.1 Internal challenges

The following section outlines the internal challenges faced by the law school and its students.

4.1.1 Constrained funding

As already established, a University seeking to provide legal aid contributes significantly to the quality of legal education for students and the promotion of equality of justice for the community.

As such the Mount Kenya University, through its law school, ran the legal aid clinics as part of the undergraduate law degree. The University was therefore the primary financial source for the activities related to these clinics. The expenditure on operational and administrative needs did rack up quite a bill. Inevitably, the amount of budgetary funds allocated for the clinics started to decrease, making it harder for the committee to organize legal aid initiatives every semester. The constrained budget also meant that the clinic could not afford to employ administrative staff to assist in following up the clients served. Many times, clients served at the legal aid clinic would express the wish to reach out in case of follow up questions or need for advice but the legal aid committee did not have an operating office open to the public. This curtailed extensive legal aid delivery and the ability to evaluate the efficiency of the clinics. The financial burden on the University consequently led to lack of sustainability of these clinics as there were no funds to keep running them.

4.1.2 Inadequate law student supervision

Another challenge faced in legal aid clinics was the low student to faculty members' ratio supervising and participating in the clinics. The low turnout of faculty members would limit the quality of supervision granted to the law students as they offered legal advice. With constrained funding, the law school through the legal aid committee was unable to cover the operational costs of having extra faculty members. Additionally, the scheduling of these clinics would fall on Saturdays when the public would generally be available – this timing would conflict with the professional and personal interests of faculty members. As a result, few faculty members were motivated to volunteer their time when called upon.

4.1.3 Law students restriction to providing legal advice

Following the definition of legal aid by the Act, legal aid includes several services such as legal advice, legal representation, drafting of relevant documents and creating legal awareness among other services.[54] Because the legal aid clinics at the University primarily relies on law students, the services offered are limited to giving legal advice in the form of opinions and provision of legal information. The law students are barred by law from legal representation as such they can only run advice – only legal clinics.[55] This limited the extent of legal assistance granted to those unable to afford

[54]Legal Aid Act 2016, s 2
[55] Advocates Act Cap 16 Laws of Kenya, s 9, 31.

legal advice and legal representation. Anyone in need of such services would be referred to legal aid providers offering such legal aid services in Kenya, without guarantee of help.

4.2 External challenges

Other than the internal challenges, external challenges were faced by the law school as it engaged the general public and these include the following.

4.2.1 Lack of buy-in and mistrust from the legal aided persons

A major challenge arose relating to the target beneficiaries of the clinics gaining public confidence and trust in the initiatives. The negative public perception of lawyers coupled with their twisted notion of free services being offered perplexed the community, many questioning the motive behind providing an expensive, elusive service for free. This mistrust arose partly from the public's growing perception that lawyers are individualistic persons who care less for the society, limited public awareness about legal aid and the social bias against free things. Additionally, the legal aided persons had lost hope in attaining justice the judicial way and preferred to explore other unconventional providers of justice.

4.2.2 Illiteracy and language barrier

Another challenge that arose when serving clients was the inability to communicate because of illiteracy and inability to communicate in either in English or Swahili. Based on the financial constraints, it was impracticable to have proficient interpreters and depending on students or the committee members to translate was not always reliable. As a result, some clients would shy away.

4.2.3 Lack of strategic partnerships with other legal aid providers

As mentioned earlier, the legal aid committee would partner with community leaders, Government agencies and other key institutions to ensure buy-in from the community. However, the lack of a coordinated network of legal aid providers hindered the escalation and final determination of some clients' legal issues. Such a network would also assist in identifying the nearest legal aid provider to the client in need and inadvertently, save on costs and result in effective case management. In some instances, once a client was advised on their rights, the legal issues and the next course of action, they would still need aid in drafting court documents, filing and representation.

The experience of the MKUSOL legal aid clinic depicts the reality facing law school – based legal aid clinics in developing countries. In the words of McQuoid – Mason,

…law schools in developing countries can make a significant contribution to access to justice in both repressive and democratic political environments. They can make a similar contribution by educating ordinary citizens about their legal rights. What sets developing countries apart from developed countries is that law schools in the former have a special duty to serve their communities. This is because they often operate as a privileged island of resources in a sea of scarcity, particularly when it comes to providing access to justice for the poor.[56]

Arguably, the role of law schools in the provisions of legal aid can be enhanced if the above internal and external challenges are systematically addressed with obvious benefits amounting to the law students, law schools and communities at large.

Part V – <u>Lessons Learnt from Practice</u>

This part highlights the lessons learnt from implementing legal aid clinics and offers strategies that can be employed to mitigate the mentioned challenges.

For the successful running of legal aid clinics, there is need for extensive financial and human resources. The law school solely depended on the University to fund its initiatives thus continuity and sustainability of the clinics was pegged on the University's ability to provide. Funding constraints would have a domino effect

[56] DJ McQuiod – Mason, 'Access to Justice and the Role of Law Schools in Developing Countries: Some Lessons from South Africa: Part 2: 1990 until the present (2005) 30(1) JJS 14 <https://journals.ufs.ac.za/index.php/jjs/article/view/2906> accessed 20 December 2020.

resulting in other challenges such as loose supervision of law student by faculty members and the downsizing of operational costs. Law schools need to explore alternative models of funding. Avenues like partnering with like-minded local and international institutions and exploring public-private partnerships through their Universities can be targeted for fundraising.

Legally aided persons came to us to find justice, however our power to help was curtailed to giving legal advice on legal issues. It became blatantly clear that there was need to have coordinated efforts amongst legal aid providers that offered essential legal services like court representation in criminal and civil matters. A referral system formalized between law schools and with other legal aid institutions would offer a start – to- finish solution resulting in better legal aid delivery.

Gleaning in from South Africa's best practices, the formation of an association of law schools with school – based legal aid clinics could significantly change the effectiveness of these clinics and accelerate the development of the clinical movement in Kenya. The association would consolidate the efforts of all law schools, explore fundraising opportunities, carry out evidence – based research, offer capacity building to clinicians and create a platform for lobbying and networking. The association could also develop student and teacher manuals for structured training. Lastly, the

association could promote the financial sustainability of legal aid clinics by targeting the National Legal Aid Fund.[57]

Finally, integrating of legal aid clinics into the law degree curriculum has the potential of anchoring these social justice efforts. By designing the goals, interactive learning methods and assessment criteria of a legal aid clinic could ensure that law students inculcate the necessary legal skills and values for professional competency. A worthwhile proposal is the amendment of The Legal Education [Accreditation and Quality Assurance] Regulations to incorporate clinical courses (including legal aid clinics) as one of the core courses in all law degree curricula in Kenya.[58]

Part VI. Conclusion

Undoubtedly, law schools play an instrumental role in the provision of legal aid services to the Kenyan citizenry. Law schools can achieve high impact with well-established and institutionalized legal aid clinics, adequate funding, and renewed motivation of faculty members coupled with the necessary support from State and Non- State actors. For law schools, the sky is the limit – the sky here being the provision of sustainable and quality legal aid.

[57] Section 29 of the Legal Aid Act establishes the Legal Aid Fund that is to be managed by the National Legal Aid Service.

[58] Legal Education [Accreditation and Quality Assurance] Regulations Legal Notice Number 15 of 2016. Through these regulations, the Council of Legal Education exercises its accreditation and quality assurance mandate. This regulation and others relating to legal education in Kenya are administered by the Council of Legal Education established by s 4 of the Legal Education Act, 2012.

Bibliography

Kenyan Legislation

Advocates Act Chapter 16 Laws of Kenya (Revised 2017)

Constitution of Kenya, 2010

Legal Aid Act, No. 6 of 2016

Legal Education [Accreditation and Quality Assurance] Regulations Legal Notice Number 15 of 2016

Legal Education Act, 2012

South African Legislation

Legal Practice Act, 2014

Cases

John Mbugua and another v the Attorney General and 16 Others (2013) eKLR

Secondary sources

(2000)7(1) CLR 6 < file:///C:/Users/User/AppData/Local/Temp/SSRN-id2548228.pdf > accessed 17 December 2020

Amnesty International, 'Kenya The Unseen Majority: Nairobi's Two Million Slum Dwellers (2009) < https://www.refworld.org/pdfid/4a3660e82.pdf > accessed 7 November 2020

Barry, MM; Dubin, JC and Joy, PA, 'Clinical Education for This Millennium: The Third Wave'

Brooke, H, The History Of Legal Aid 1945 -2010' (2007) Bach Commission on Access to Justice –Appendix 6 file:///C:/Users/User/AppData/Local/Temp/Bach-Commission-Appendix-6-F-1.pdf accessed 11 November 2020.

Du Plessis MA, *Clinical Legal Education: Law Clinic Curriculum Design and Assessment Tools* (2017 Juta SA) 26

Evans, A *et al*, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (2017) 48 < https://press.anu.edu.au/publications/australian-clinical-legal-education> accessed 17 December 2020

Grimes, R, 'Accessing Justice: The Role of Law School Legal Clinics in Conflict-Affected Societies' (2014) 1 Asian J Legal Educ 73 < https://doi.org/10.1177/2322005814530327 > accessed 17 December 2020

Halai, A, 'Quality Indicators of Activities of Legal Clinics: Ukrainian Experience (2016) 3(2) AJLE 209 < https://doi.org/10.1177/2322005816640341 > accessed 20 December 2020

Iya, PF, 'Fighting Africa's Poverty and Ignorance through Clinical Legal Education: Shared Experiences with New Initiatives for the 21st Century' (2000) I JCLE 17 < https://doi.org/10.19164/ijcle.v1i0.128> accessed 16 December 2020

Kenya Gazette, Practice Directions Relating to Pauper Briefs Scheme and Pro Bono Services (Notice no 370) 20 January 2016 <http://kenyalaw.org/kl/index.php?id=6006 > accessed 12 November 2020

Kenyatta University, 'Public Interest and Awareness Programme' (Kenyatta University,17 April 2015) <http://law.ku.ac.ke/index.php/97-school-news/169-legal-aid-awareness> accessed 17 November 2020.

Kenyatta University, 'Public Interest and Awareness Programme' (Kenyatta University,17 April 2015) <http://law.ku.ac.ke/index.php/97-school-news/169-legal-aid-awareness> accessed 17 November 2020

Legal Practitioners Fidelity Fund South Africa, 'Bursaries' (Legal Practitioners Fidelity Fund, 2020) < http://www.fidfund.co.za/bursaries/> accessed 14 December 2020

Mahomed SH, 'United in our challenges: Should the model used in clinical legal education be reviewed? (2008) JJS 61< file:///C:/Users/User/AppData/Local/Temp/juridic_v33_specialissue_a4.pdf > accessed 17 December 2020

McQuiod – Mason, DJ, 'Access to Justice and the Role of Law Schools in Developing Countries: Some Lessons from South Africa – Pre 1970 until 1990: Part 1 (2004) 29(3)

JJS 33< https://journals.ufs.ac.za/index.php/jjs/article/download/2899/2812 > accessed 18 December 2020

McQuiod – Mason, DJ, 'Access to Justice and the Role of Law Schools in Developing Countries: Some Lessons from South Africa: Part 2: 1990 until the present (2005) 30(1) JJS 7 < https://journals.ufs.ac.za/index.php/jjs/article/view/2906 > accessed 20 December 2020

McQuoid-Mason, DJ and Palmer, R, *African Law Clinicians Manual* (2013) 3 < https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwivrK6i49HtAhWtQkEAHcOHDrEQFjABegQIAhAC&url=https%3A%2F%2Fir.canterbury.ac.nz%2Fbitstream%2Fhandle%2F10092%2F15366%2FAfrican-Law-Clinicians-Manual-McQuoid-Mason.pdf%3Fsequence%3D2&usg=AOvVaw2JKcdhq49yPaI1yLX0YID9 > accessed 14 December 2020

McQuoid-Mason, DJ, 'Teaching Social Justice to Law Students Through Community Service- The South African Experience' < http://clarkcunningham.org/LegalEd/SouthAfricaMason1.pdf. > accessed 12 December 2020

McQuoid-Mason, DJ, 'The Delivery of Civil Legal Aid Services in South Africa' (2000) 24 FILJ S111, S129 < http://clarkcunningham.org/LegalEd/SouthAfrica-MM-Fordham.pdf . > accessed 14 December 2020

Mcquoid-Mason, DJ, Ojukwu,E and Wachira, G, 'Clinical Legal Education in Africa: Legal Education and Community Service' in Frank S Bloch, The Global Clinical Movement (OUP 2011)

NAMATI, 'Association of University Legal Aid Institutions' (Namati, 2020) < https://namati.org/network/organization/association-of-University-legal-aid-institutions-aulai/> accessed 14 December 2020

Nicolson D, Our Roots Began In (South) Africa: Modelling Law Clinics to Maximize Social Justice Ends' (2016) 23.3 IJCLE < https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/532/922 > accessed 12 December 2020

Ouma, Y and Chege, E, 'Law Clinics and Access to Justice in Kenya: Bridging the Legal Divide' < https://doi.org/10.19164/ijcle.v23i5.567> accessed 18 December 2020.

Plessis, MD, 'Forty-Five Years of Clinical Legal Education in South Africa' (2019) 25 Fundamina < http://dx.doi.org/10.17159/2411-7870/2019/v25n2a2 > accessed 12 December 2020

South African University Law Clinics Association, 'Home' <https://www.saulca.co.za/ accessed on 1 December 2020

The Judiciary Government of Kenya, 'What is Pro bono/pauper brief?' (Judiciary) <https://www.judiciary.go.ke/what/ > accessed 12 November 2020

United Nations Office on Drugs and Crime, 'United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems' Res A/67/458 (20 December 2012)

United Nations Office on Drugs and Crime, Global Study on Legal Aid: Global Report (2016)

University of Limerick, 'Street Law Project' (2018) < https://www.ul.ie/engage/sites/default/files/2018%20No%2041%20Street%20Law.pdf . > accessed 13 December 2020

UON SALAR, 'The Students' Association for Legal Aid and Research' (SALAR) <https://www.uonsalar.org/Activities.html >accessed 17 November 2020

Wabuke, ES, Nciko, A and Abdirahman, A, 'Promoting Access to Justice in Kenya: Making the Case for Law Clinics' (The Platform October 11 2018) < https://theplatform.co.ke/promoting-access-to-justice-in-kenya-making-the-case-for-law-clinics/ > accessed 16 November 2020

Wabuke, SE, Nciko, A and Abdirahman, A, 'Promoting Access to Justice in Kenya: Making the Case for Law Clinics' (The Platform October 11 2018) < https://theplatform.co.ke/promoting-access-to-justice-in-kenya-making-the-case-for-law-clinics/ > accessed 16 November 2020

Willem De Klerk, 'University Law Clinics in South Africa' (2005) 122 SALJ 930

CYBERSPACE BACK TO THE CLASSROOM: TAKING LESSONS LEARNED FROM TEACHING STREET LAW DURING THE PANDEMIC BACK TO IN-PERSON INSTRUCTION*

Amy L. Wallace, New York Law School, US[1]

I. Introduction

In early spring 2020, when schools around the world were compelled to close their physical doors, educators, administrators and students were forced to re-invent what it meant to teach and to learn. For fifty years, Street Law programs have been dedicated to hands-on, student centered, interactive teaching strategies. Law students, lawyers and teachers have devoted countless hours to creating fun, practical lessons designed to teach young people about practical law that affects their daily lives and also develop the skills they need to use their newly found legal knowledge to improve their lives and their communities. Remote learning upended all the best practices

* With contributions from Şehriban İpek Aşıkoğlu, Samantha Doiron, Rachel Pollak, Betzy Portillo, Eren Sözüer, Tülay Aydın Ünver, Jasmine Ward, Laura Wesley, and Ansley Whiten.

[1] Amy L. Wallace is an adjunct professor of law at New York Law School. Wallace founded and teaches the Street Law experiential course at NYLS. She is a graduate of the University of Toronto (B.A. in Political Science), Georgetown University Law Center (J.D.), and Lehman College (M. Ed. – New York City Teaching Fellows Program). She consults for Street Law, Inc., a non-profit focused on law-related education based outside of Washington, D.C. At Street Law, Inc. she helped design the CHSLSJ Summer Law Program and continues to serve as the Legal Director of that program. She also supports all new law-school-based Street Law programs in the United States.

Street Law practitioners had spent half a century building. We had no choice but to adapt and so we did.

Law students and Street Law professors re-imagined their programs. Some practitioners immediately converted their programs to distance learning. In fall 2020, Street Law, Inc. hosted a workshop outlining early best practices for teaching a virtual Street Law program.[2] That fall, I wrote a practice report detailing the experiences of my law students teaching high school asynchronously in spring 2020 and synchronously during that summer and fall and asking whether it was possible to teach interactive Street Law lessons remotely.[3] In that article, I included the best practices that we had developed for our programs in New York City. I wanted to know if practitioners in other parts of the United States and abroad were having similar experiences and results. This paper examines comprehensive reflections from eight law school-based Street Law programs teaching remotely during the pandemic. The reflections include which suggestions worked for them in practice and which ones did not. In addition, as we look to a return to in-person instruction in the fall of 2021, this paper will examine whether there is anything we have learned from emergency remote instruction that we may want to keep. Is it possible that some of our virtual teaching experiences will strengthen our return to the classroom?

---

[2] Amy Wallace, "Tips and Best Practices for Conducting a Street Law Program Online" at Street Law, Inc. (August 28, 2020).

[3] Amy Wallace, *Classroom to Cyberspace: Preserving Street Law's Interactive and Student-Centered Focus During Distance Learning*, 27(4) INT'L J. OF CLINICAL LEGAL EDUC. 83 (2020).

This paper includes: a summary of the best practices outlined in *Classroom to Cyberspace*; background on the reflections of other law school-based Street Law programs; reflections from other Street Law programs; an examination of most and least successful applied best practices as identified in the reflections; and a discussion of lessons learned from remote teaching that can be incorporated back into in-person instruction[4]. For clarity and consistency, the terms "instructors" and "facilitators" will refer to law students teaching Street Law; the term "students" will refer to high school or secondary school students participating in Street Law classes; and the term "contributors" will refer to law professors and law students who submitted reflections to be included in this paper.

II. Summary of Best Practices Outlined in Classroom to Cyberspace

The best practices outlined in *Classroom to Cyberspace* and the fall 2020 Street Law, Inc. workshop were divided into two broad categories: class structure, and class content. They are briefly summarized here.

Class Structure

Almost all virtual programs in the United States were being taught synchronously via Zoom, Microsoft Teams or a similar platform by the end of remote instruction. However, most schools were understandably unprepared for the complete physical

[4] The author would like to thank Lee Arbetman for his comments on this report.

shut down at the start of the pandemic. For some Street Law programs, like the one at New York Law School ("NYLS") and the Charter High School for Law and Social Justice ("CHSLSJ"), asynchronous instruction was the only option in spring 2020. Synchronous instruction provided greater opportunities for interactivity and assessment of student comprehension. This method was also usually more engaging and fun for students. However, asynchronous elements were helpful if community members struggled with reliable internet or other distractions at home that made live classes challenging.

Class length and "Zoom fatigue" have been frequently debated topics across all fields during the last eighteen months. I recommended that students be on screen for less than an hour – ideally around forty-five minutes. In addition, classes where students are actively engaged with the material rather than passive listeners are preferred. For the 2020 Summer Law Program at CHSLSJ, I implemented a 30/30/30 classroom framework. This schedule was thirty minutes on Zoom, thirty minutes for an independent assignment, and then thirty minutes of Zoom. When we first switched from asynchronous to synchronous we discovered that all the procedural elements of teaching virtually (breakout rooms, polls, screen sharing) were incredibly time consuming. The law student instructors frequently ran out of time. As a result, the schedule was modified for the regular fall semester at the high school to 40/30/40. That breakdown has continued for all classes at CHSLSJ and will be used for the Summer Law Program this year (2021).

I recommended smaller class sizes for virtual instruction if possible. The paper also recommended increasing the number of instructors. As the duration of remote instruction increased, our student engagement levels decreased dramatically. Teachers around the country faced similar struggles with student engagement as the pandemic extended through another academic year.[5] Having instructors in each breakout room to encourage and support students was extremely beneficial.

Finally, I recommended that instructors choose technology that was very easy to use or familiar to the students already. Remote learning was overwhelming for many students so requiring them to learn new programs and applications could have been burdensome. Many of our students struggled when required to run multiple programs simultaneously. Like most programs, we were required to use the platforms chosen by the school. This provided consistency for the high school students.

Class Content

Designing lessons that intentionally incorporated measureable means to check for understanding was listed as a critical best practice. Students were often reluctant to voluntarily participate in response to a direct question or activity. Some students were self-conscious asking for clarification in an online format. In addition, the

[5] Susan Dominus, 'I Feel Like I'm Just Drowning': Sophomore Year in a Pandemic, New York Times (May 13, 2021), https://www.nytimes.com/2021/05/13/magazine/high-school-students-coronavirus-pandemic.html.

overwhelming temptation to focus on off-task activities in a virtual environment existed for both adults and students. This divided focus often led to a lack of comprehension in the virtual space. The NYLS instructors asked the CHSLSJ students to explain instructions in their own words each time an independent or group activity was assigned. Although repetitive, the regular inability of students to explain the task demonstrated the importance of regularly checking for understanding before proceeding with the lesson.

In *Classroom to Cyberspace*, I also identified the best practice of planning to cover and accomplish less during a virtual session. Setting reasonable expectations for what students can process during a virtual class eliminated a great deal of stress for both the instructors and the students. Instructors did not feel that they needed to rush and students had sufficient time to engage with each topic.

I recommended that lessons continue to be interactive in a virtual space. Engaging lessons are a core component of Street Law. This trademark teaching strategy assumed even greater importance throughout the pandemic. During remote teaching, students were disconnected physically from their teachers and their peers. Students often disengaged from class entirely. It was crucial to involve them actively in each component of the class. Breakout rooms were the essential tools for most interactive lessons. Instructors used those rooms together with polls, and voting with reaction emojis to include students at each stage of a lesson.

Street Law lessons frequently incorporate current events. This was also very important during remote learning. In addition to the pandemic, the last eighteen months have seen dramatic social justice movements and fiery political conflict. Not being in a physical school deprived students of a chance to talk through these issues with their classmates. We prioritized including current events in our lessons and we saw the most passionate engagement from the students during those lessons.[6] Our students discussed the Freedom of Speech and protesting, COVID restrictions, voter identification requirements, schools banning LGBTQ books from the library, and state bans on the sale of violent video games.

Finally, I recommended using visual materials to thoughtfully engage students. During the 2020-2021 school year, NYLS instructors started each class with an image and a writing prompt. The students posted responses on screen using an interactive program. Beginning each class with a visual, pulled reluctant students into the topic of the day. The visuals were simple and the instructors did not speak while the students reflected on the image, which allowed students to process what they were seeing.

Many of the best practices outlined in *Classroom to Cyberspace* were adjusted as we continued to teach. Each class had students with their own personalities and

[6] Amy Wallace, *Counterbalancing Teen Reliance on Social Media News: The Importance of Using Street Law Methodology to Teach About Current Events*, PRAVOVA POZYTSIIA (LEGAL POSITION), ASSOCIATION OF LEGAL CLINICS OF UKRAINE (forthcoming fall 2021).

motivations. Class dynamics also changed the longer students remained in lockdown so we continued to adjust our strategies in response.

III. Reflection Questions

In January 2021, I contacted all attendees of the Street Law, Inc. fall 2020 virtual teaching workshop and asked those who were teaching Street Law virtually if they would be interested in reflecting on their remote teaching experience. I sent *Classroom to Cyberspace* to each respondent. The contributors are either law professors who lead credit-bearing law school-based Street Law programs or law student leaders of volunteer programs. Participants were asked to reflect on their experiences teaching Street Law and to highlight the successes and struggles conducting their program remotely. Contributors were asked to use the following writing prompts to guide their reflection:

(a) Basics of your program (where your law students/community members teach, what they teach, are any of those things different now that they are teaching remotely);

(b) Generally, how was the experience teaching remotely?

(c) What tips, if any, were helpful? How did they help? and

(d) What best practices, if any, did not work for your program in practice? Why do you think they didn't work for your program?

Participants were told to write as little or as much as they wanted but were told their reflections would be edited for length if they exceeded the word limit.

IV. Reflections

Included below are reflections (or excepts) from Professors Eren Sözüer, Şehriban İpek Aşıkoğlu, and Tülay Aydın Ünver from Istanbul University, Professor Laura Wesley and law student instructor Betzy Portillo from Southwestern Law School, law student instructor Rachel Pollak from the University of Illinois College of Law, law student instructor Ansley Whiten from the University of Georgia School of Law, law student instructor Jasmine Ward from the University of Missouri - Kansas City School of Law, and law student instructor Samantha Doiron from St. Mary's University School of Law.

Professors Eren Sözüer, Şehriban İpek Aşıkoğlu, and Tülay Aydın Ünver

Istanbul University – Istanbul, Turkey

The Istanbul University Street Law (SL) Program is a year-long, for-credit course in which teams of law student instructors teach either consumer law or cyberlaw (mainly digital rights) at high-schools. The first part of the SL course consists of theoretical classes on these two areas of law, as well as classes on basics and objectives of SL, (interactive) teaching methods, and lesson planning. Toward the end of these classes,

instructors form teams (of four or two, depending on the number of instructors) and prepare lessons plans in accordance with their chosen topic. Law student instructors are given the opportunity to teach mock lessons in which the class and instructors act as high-school students and in the end, provide feedback to the law students. A range of fourteen to twenty-three instructors take the course, but only six instructors were enrolled this year due to reservations about teaching SL remotely. This enabled us to spend more time with the instructors, particularly to work on their lesson plans, and each team was able to teach two mock lessons.

Spring 2021 was our first experience remote-teaching SL synchronously. When schools shifted to remote teaching in Spring 2020, instructors recorded videos of their classes, which were sent to high-schools. However, we were unable to receive feedback from schools as to whether students watched these videos at all, let alone assess their effectiveness. Accordingly, we decided that synchronous remote teaching would be a better method. This year, over a course of three weeks, pairs of instructors taught three classes to 10th graders. Each class, broken into two forty-five-minute lessons and a 15-minute break, was crafted to cover the same amount of material that would normally be taught in a ninety-minute in-person class. Per the agreement with the school administration, each team was supposed to teach a group of ten students. However, actual attendance was much lower, ranging from two to six students. Although students were generally participatory, the low attendance rate made it difficult to carry out many activities and significantly demoralized the instructors.

Our main concern has been ensuring the effectiveness of the classes, which depends both on the lessons and the participation of students. Various tips from the article and SL workshop have been helpful. This year, we coupled written feedback on lesson plans with Zoom meetings to address instructor concerns and issues with lesson plans. As emphasized in the article and the workshop, we insisted on instructors to be "intentional and thoughtful" about lesson objectives and to prepare thorough lesson plans. In this process, the tip regarding online activities taking more time than in-person ones was particularly helpful. It is a difficulty we, as professors, experienced when teaching preparatory classes to law students. We had to go over lesson plans with instructors several times, sometimes up until the last minute. However, this rigorous process enabled instructors to broaden their understanding of and manage expectations for lesson outcomes remote teaching. They were able to tailor lesson plans accordingly and stick to plans in terms of content and timing. Explaining to our instructors that certain suggestions were supported by the experience of remote SL teaching was also helpful to partially dispel their worries regarding online classes.

A major concern was maintaining the attention and participation of high-school students. We took the tip to have a maximum of fifteen students on Zoom a step further and requested from the school administration to designate groups of ten. We also guided instructors in preparing participatory lessons suitable for remote teaching. Instructors used various interactive tools such as media, polls, games, emojis, and virtual backgrounds. We encouraged law student instructors to

incorporate content that would relate to high-school students, like contemporary issues such as pandemic measures affecting the youth. Students were indeed much more responsive to the combination of such methods and content. Furthermore, methods such as hypotheticals enabled students to discover legal concepts without the instructors having to explain beforehand.

As we experienced in our own teaching, using breakout rooms was particularly beneficial. Since high-school students did not have much contact with each other due to remote teaching, they first socialized in the breakout rooms and then proceeded to the assignment. As the high-school students already knew each other and were familiar with Zoom, our students had no problems using breakout rooms. Clear instructions and short tasks kept students from sitting in silence. Using breakout rooms for small groups (each room had 2 participants) allowed each student to participate. Also, we had reminded law student instructors to pay attention to the closing time of breakout rooms, which saved them time.

A particularly helpful tip was the idea that silence on Zoom is acceptable. Our instructors were inclined to move on from discussions if they did not receive a response right away. Referring to our class discussions, we reminded them that a moment of silence is not something to be avoided and that they should give students time to think after posing a question.

Finally, for instructors, we prepared a checklist consisting of tips from the workshop regarding class preparation (e.g. charging laptops, closing unnecessary applications)

and our own tips (e.g. announcements, enabling "gallery view" on Zoom). This checklist was a handy tool and helped instructors avoid unexpected technical issues during class.

We do not think there were any best practices that particularly did not work for our program. We believe that we were unable to implement some best practices due to low attendance. For instance, although there was a school teacher present in most classes, this made no difference as to the students' attendance. Furthermore, law student instructors implemented the practice of reminding the class to turn on cameras, but this did not have an effect on students that had not turned on their cameras in the first place. Instructors also implemented the tip regarding signing on early or logging off late. However, this did not work in our case as students logged in at class time and immediately logged off as the class ended. Nevertheless, instructors spared a few minutes at the beginning of class to chat, in which they incorporated facts from students' lives to bond with them. This practice was indeed helpful to connect with the students. Finally, disabling the chat function would not have worked in our case as for some students, it was their only way of participation.

Practice Report

Professor Laura Wesley

Southwestern Law School, Los Angeles, California

The Street Law Clinic at Southwestern serves high school students ranging in age from 16 to 18 years old, and many of our students are in the foster care system or on probation. We teach at schools throughout Los Angeles County, including schools on-site at residential facilities, charter schools, and continuation schools.

Our law student instructors work in pairs and are assigned to a high school to teach 10, 60-90 minute law-related classes over a semester. The purpose of the course is to help high students transition into adulthood successfully by knowing their rights. Some of the topics covered are: why we have laws, the court process and people, criminal and constitutional law, education law and careers, employment rights, housing rights, healthy relationships, and consumer rights. At the end of the semester, the high school students take a field trip to the law school and participate in a moot court activity. Each high school student leaves the program with a resource binder of local resources and legal information.

Last spring, our instructors were halfway through their teaching assignments when COVID-19 forced schools to shut down. We quickly pivoted to recorded asynchronous lessons and virtual legal binders. In the fall, five of our schools were excited to welcome our Street Law teams back into the classroom virtually, this time teaching to students live. The law student instructors used the school's platform to teach their classes, which in all cases was Zoom. This was fortunate because the

instructors and high school students were already familiar with the platform, which helped transition to virtual learning. I would note that the law student instructors spent more time on icebreakers than usual in order to build trust with the students and create a safe environment to ask questions and share opinions. They also paid special attention to validating their students' responses, which helped build students' confidence and made them feel comfortable sharing in a virtual environment.

Virtual learning also required class time to be adjusted. Although time varied, no classes exceed 60 minutes. Zoom fatigue is real, and we wanted to respect the time limits provided by the school. Video cameras were another issue we experienced while teaching virtually. The majority of students did not turn on their cameras. We learned many schools had a policy that allowed for cameras to be disabled. This was to protect students who might have crowded living conditions or be embarrassed about their surroundings. Despite the challenges of the cameras, many of the students actively participated by unmuting themselves or participating in the chat. This allowed students to participate in a way they felt most comfortable.

For engagement, we used breakout rooms, polls, chats, Google slide decks, Kahoot and Jamboards. We quickly learned the key to breakout rooms was to have a facilitator in each room to start the conversation or provide slide deck prompts for each room to use. The slide deck allowed the Street Law facilitators to see the responses in real-time. The chat feature was also helpful to check for student understanding. The law

students also often used Kahoot to debrief a topic. The high school students enjoyed the competition aspect of Kahoot. We also found Google Jamboards to be especially helpful in getting students to respond to true/false questions, or hypotheticals involving a thumbs up/ down, fair/unfair, agree/disagree activities. The Jamboards provided a way to further probe as to why students felt one way or another. Polling was useful but required questions to be sent ahead of time to the classroom teacher, which wasn't always practical.

Another best practice our law student instructors followed was to have simple, measurable objectives and build in time to transition from one activity to another. Other helpful tips were the use of images, colorful slide decks, and short videos.

Overall the transition to virtual learning was challenging but doable! Any challenges were outweighed by the active learning taking place by the students.

Betzy Portillo

Southwestern Law School, Los Angeles, California

As a law school student who strongly believes that students living in low-income communities lack educational resources and support, I had a strong desire to participate in the Street Law Clinic at Southwestern Law School. I remember attending a Legal Clinic informational session in April 2020 and asking "Will the Street Law

Clinic be feasible virtually if students are not able to return to the classroom?" A few months have passed since I had the opportunity to virtually teach students at Los Angeles Promise High School in Los Angeles, California and I am glad I did.

My partner and I taught a virtual classroom of students at LA Promise High School from September 2020 to December 2020. The ten weeks consisted of weekly lesson plans including what is the law, the legal system, criminal law, constitutional law, education, employment, housing, consumer law, health/healthy relationships, and the last class celebration. Our virtual teaching was done using the Zoom platform and our virtual classroom consisted of twenty-two students. Covid-19 forced students to learn from their homes, so it was no surprise to us that most students did not attend class with their video camera turned on. Therefore, we met students where they are and embraced the idea of teaching to a classroom of black squares.

Virtual teaching is more difficult than teaching inside a physical classroom because instructors are unable to grasp from students' faces whether they are understanding the material or not. Additionally, students who do not comprehend the information or simply have a lot going on at home can hide behind a black screen. Therefore, virtual teaching demands a heightened level of engaging students so that students can remain focused and feel encouraged to participate. To best engage students, we used platforms that the students' teacher was already using with them like Google Jamboard and Kahoot. Using the same platforms ensured that students would already be familiar with how to use them and helped avoid any technical difficulties that could

cause delays in the lessons. We also encouraged students to participate in any method that they could, whether that was virtually raising their hands and unmuting themselves or writing it in the chat box in the case that they could not unmute themself or felt uncomfortable doing so. As an incentive and to bring students some joy during these hard times, we rewarded a few students in every class for their participation with an electronic gift card.

Because virtual teaching makes it hard to assess what lessons students enjoyed the most or what facts resonated with them, we asked the students to jot down their thoughts using Google Jamboard. As Street Law Clinic instructors, our goal was to make a positive impact during these unprecedented times and based on the Google Jamboard responses and their high level of participation throughout the ten weeks, I am happy to say that we did.

Jasmine Ward

University of Missouri – Kansas City School of Law, Kansas City, Missouri

In November 2020, the Black Law Students' Association ("BLSA") of the University of Missouri – Kansas City ("UMKC Law") hosted a virtual Street Law session with Schlage High School (Kansas City, Kansas). This was the second time BLSA hosted Street Law and the first time we hosted the event virtually.

Our first session was hosted in November 2019. BLSA law student instructors, local Black attorneys, and Black UMKC Law professors taught Street Law courses over the span of a few hours. We hosted the sessions in our law school and were able to welcome over 70 high school students. The instructors and high school students enjoyed the sessions so much that BLSA immediately started thinking about hosting a second session – we had no idea that a global pandemic would make in-person sessions impossible.

During the summer months of 2020, BLSA reached out to a few schools and organizations who had expressed interest in the in-person Street Law sessions. Schlagle High School was sure they would still be able to find students interested in participating virtually. This was exciting – but BLSA didn't yet know what a virtual Street Law session would look like.

Even in November 2019, BLSA offered Street Law a bit differently than other schools. Instead of offering a full summer session, we offered about three hours of programming. We split students into different groups and taught each group four different lessons; to achieve this, we rotated each group to different classrooms where specific instructors and lessons awaited them.

Eventually, the working idea for November 2020 was to imitate the November 2019 structure with Zoom breakout rooms.

. . .

We feared the students would not be engaged or enjoy the sessions. Those fears were for naught – the students were so excited to begin, were eager to get back into sessions Zoom had kicked them out of, and profusely expressed their love of the sessions when all was said and done. They seemed to enjoy connecting to people closer to their age, who looked like them, and who were telling them information that could immediately help them if needed. The school itself asked if we could host them again during the Spring semester. Again, our instructors enjoyed the sessions – there's something special about remembering that legal concepts which seem so obvious are *not* obvious to our communities, however practical and important they prove to be. Further, our instructors see Street Law sessions as opportunities to do for others what was done for them – model happy, helpful people of color in fields we aren't typically portrayed as occupying. Personally, it was refreshing and exciting to be with students who were so eager to learn and so excited about who they could become. Knowing they enjoyed the sessions and connected to our instructors helps me remember that these sessions aren't theoretical to them – teenagers don't act excited or say they enjoy something unless they mean it. It makes us all so happy to know they enjoy these sessions and really learn from them.

BLSA is excited to host another session soon. While our virtual session was successful, we hope to be in person next year!

Practice Report

Ansley Whiten

University of Georgia School of Law, Athens, Georgia

This year is the first year that the Street Law Program has been in place at the University of Georgia School of Law. With that being said, we don't have an in-person experience to compare the remote Fall semester to, but we were still able to see where differences would be between the two. Our law student instructors remotely taught middle and high school students that were either volunteers for the juvenile offender diversionary program Peer Court, or first-time offenders who chose or received attending a Street Law session in their disposition. They taught various lessons from the Street Law curriculum, but the students' favorites were the First Amendment Rights and Introduction to the Juvenile Justice System.

In general, teaching remotely was a positive experience for both the law student instructors and the students, with a few challenges, as expected. We found that it was easier for some of the students to attend because it was virtual because they did not have to find a ride to an in-person location. Because of this, even when everything returns to normal, we will probably also offer virtual sessions. One helpful tip from the "Best Practices" session was to give breaks during the sessions. It is much more difficult to keep people attentive via Zoom, especially after being on Zoom all day with school, so we found it helpful to give a 10 minute break for every 30 minutes of instruction. We also found it necessary, if possible, to have the students keep their cameras on. If they were allowed to turn them off, participation dropped drastically.

We also found it helpful to offer sessions during the week and on the weekends, to offer the students more flexibility if they were feeling fatigued after school. We have to offer our sessions outside of school hours since it is associated with an extra-curricular activity. We also found that it was useful to substitute Google Docs for paper handouts so that the students could still write their ideas out when we were doing handouts or discussions. One of the tips in the video was to turn off the chat function, but we found that chat was helpful for the more shy participants or ones having connectivity issues so that they could still participate without having to speak in front of everyone.

When we had a big enough group of students, breakout rooms were very useful and allowed the instructors to interact more directly with the students and increased big group participation because the students had a chance to brainstorm and organize their ideas with their peers before presenting them to the big group.

Rachel Pollak

University of Illinois College of Law, Champaign, Illinois

At the University of Illinois College of Law, the Education Law and Policy Society started Street Law programming in the Fall of 2020. Though members of the law

student organization had been planning to begin work with Street Law for some time, this was the semester we got the initiative up and running.

To kick off our program, we partnered with a small, relatively new high school in Urbana, Illinois. We spent three class periods over three days teaching a lesson about the first amendment and the freedom of speech. These classes were taught remotely over Zoom, by three of our law student instructors. We worked closely with the social studies teacher to determine the appropriate level of content and edited the lesson (provided by Street Law, Inc.), to fit the curriculum and match the students' needs and interests.

As an organization running a brand-new Street Law program, this has been our only experience teaching Street Law so far. Part of what made our first time teaching so successful was the workshop held for Street Law, Inc., in August of 2020. At that workshop, we were able to get a really cohesive idea of what a lesson should look like, how lessons should be facilitated, and how students might participate (through polls, the raise hand function, chat box) on Zoom and generally in a remote setting. We were even able to adapt part of the example lesson from the workshop for our own first Street Law lesson.

One best practice that did not work in our experience was utilizing both synchronous and asynchronous teaching methods for our lessons. However, our inability to make this practice a reality was due only to the structure and format of the social studies class in which we taught. Their schedule was tight and class blocks were short, so

breaks and times to provide asynchronous material were hard to come by. However, we will certainly be using this technique in the future when we can. Another difficulty we encountered was presented by the pandemic – while some of the students participating in our classes were online at home on Zoom, about half the class was learning at school in person, but participating in our lesson on Zoom as a group. While in fact every student was participating online, it was challenging to ensure that the students participating alone at home were as engaged and involved as the students participating in a group with their teacher at school. Our Street Law team looks forward to navigating those challenges—and to learning more tips and best practices from workshops like the one held on August 28, 2020—as we move forward in our Street Law programming.

Samantha Doiron

St. Mary's University School of Law, San Antonio, Texas

The Juvenile Jurisprudence Association at St. Mary's School of Law in San Antonio, Texas is not traditionally a Street Law program. JJA is a teen peer court program, which works closely with underserved high schools within the San Antonio community to encourage reformative justice, provide mentorship, and adjudicate cases with the goal of closing the inequity gap for teenaged defendants. When the campus and local public schools closed because of the pandemic, JJA temporarily lost the ability to run the peer court model, but wanted to continue working with students

from local schools. Street Law came to the Board's attention as an alternative that could work well in a remote setting.

JJA implemented Street Law and taught lessons about reformative justice, the inner workings of the court process, constitutional rights, and voting rights. The semester culminated in a mock trial where students put their knowledge to work in adjudicating a case. Teaching Street Law remotely worked well for our new remote model. The one difficulty we faced was attendance, though this hurdle seemed more a reflection of the pandemic than the program itself. With students doing all of their schoolwork remotely, additional screen time each week was understandably daunting for a lot of our usual participants. Further, while schools did provide some access to technology for their students, the district JJA works most closely with is severely underfunded and the Board is unsure how many JJA students had consistent access to the internet. However, we did have enough interest that the program continued; the Board agreed that as long as even one student showed up, we would not discontinue their access to Street Law.

The model JJA used for Street Law consisted of a lecture on the topic for the week, followed by Street Law activities and discussion about the students' position on issues before and after the lecture. During these activities, we found that the students seemed more intimidated or less willing to open up about their opinions on Zoom, but if a Board member or law student instructor offered an opinion first, the conversation would start flowing with student participation. We also took time each session to

check in on mock trial preparation. Where we lacked high school students, first year law students stepped in to fill out groups and to help facilitate discussion. Street Law suggested using asynchronous classes in conjunction with synchronous, but our Board did not implement this during our Street Law year. Because last year was the first year JJA used Street Law, it was difficult to put together asynchronous sessions where we were a bit unsure of how the program as a whole would work with our traditional model.

Implementing Street Law remotely was successful for our school. We were able to use materials on the Street Law website to plan and execute an entire semester's-worth of lessons and activities for our students. In our traditional model, we touch on some of the subjects we were able to cover with Street Law, but not in such an in-depth way. Although the primary purpose of JJA is to facilitate the local teen peer court, the Street Law model highlighted the importance of legal education for the students we work with. As a new Board takes over for the next school year, the current JJA President stresses the importance of Street Law and hopes that JJA will continue using Street Law lessons and methodology with our students.

V. How Did it Work in Practice?

The feedback from other Street Law programs was helpful to identify what strategies were effective globally compared with tactics that worked for our specific program. Best practices are always evolving and that was especially true here. We continued to

refine our techniques for engaging our students as they grew less and less participatory during online instruction.

Most of the reflections identified similar experiences to ours as outlined in *Classroom to Cyberspace*. Many programs started asynchronously in spring 2020 and were able to move to synchronous instruction when schools were able to make technology more available to their students. One of my suggestions was to include asynchronous elements such as posting short videos or articles since remote schedules often meant instructors saw their students less frequently. Contributors noted that they were not able to include this complement to synchronous teaching. Once NYLS instructors began teaching synchronously, they were not able to include these either. As identified in some of the reflections, producing and preparing to teach synchronous lessons was time consuming and law student instructors, who were also managing their own virtual learning, did not have time or energy for additional projects.

Either intentionally or due to low attendance, programs proceeded with smaller classes during remote instruction. Smaller classes worked well for the NYLS instructors and it enabled other programs to provide students with more individualized attention which is generally lacking in remote teaching. Unfortunately one program reported that despite thoughtful advance planning and fun interactive lessons focusing on current events (very similar to the ones identified as successful by other programs), student attendance was so low that the program could not proceed. We are about to start our second summer teaching a remote Summer Law Program at

CHSLSJ and although I want classes small enough that the students feel comfortable participating, I am worried about online burnout keeping many students from attending.

Most programs incorporated the idea of including more instructors in their virtual teaching. This was without question the most important element of a successful NYLS program. The students were far more participatory in small breakout rooms guided by a law student than they were in the main Zoom. In addition, synchronous instruction requires so many tasks to happen simultaneously while attending to the needs of the students that I am in awe of teachers who have been handling class on their own during this crisis.

Initially NYLS instructors only used applications and programs that were absolutely necessary to teach the lesson. As student and instructor comfort levels increased, the instructors introduced new programs but only after vetting them for accessibility by the students. Contributors identified a number of different programs that aided them in delivering fun interactive lessons, including Jamboard[7] and Kahoot[8]. By spring 2021, NYLS instructors started each class with a question on Padlet[9]. The students responded well to posting their responses to the prompt each week.

Intentionally checking for student understanding was identified by most of the contributors as an essential component of lesson preparation and execution. The

[7] https://workspace.google.com/products/jamboard/.
[8] https://kahoot.com/.
[9] https://padlet.com/.

reflections echoed the experiences of the NYLS law student instructors. Students were often distracted or unwilling to contribute so planning multiple varied strategies for measuring student comprehension was key to a successful lesson.

Most contributors noted that they were able to cover less material during a virtual session and many were happy to have received that tip prior to starting their program. Last summer NYLS instructors were very discouraged because they failed to complete their lessons. Having that information heading into the fall alleviated stress for the Street Law instructors and the students.

Some programs continued to teach the same topics as before the pandemic and that continuity worked for both the instructors and their partner secondary or high schools. Some programs chose to modify their curriculum to address current events of interest to their students. Programs on both paths found success with their lessons.

All programs worked hard to incorporate Street Law's hallmark interactive activities into their virtual programs. Breakout rooms were key to everyone's success this past year. Some programs chose to incorporate polls and in-program interactive elements while others relied on traditional group work and hypotheticals. In *Classroom to Cyberspace*, I suggested disabling the chat function because we noticed when chat was available, students would rely on it exclusively instead of participating verbally. Some programs identified the chat function as essential as the only means available for some students to communicate. NYLS instructors also noticed that students regularly had microphone issues or simply could not motivate themselves to unmute and

contribute. By the end of the spring 2021 semester, we regularly allowed students to respond in the chat though we did notice that once we allowed the chat function, more and more students only responded that way.

VI. Lessons to Take Back into the Classroom

For many law school-based live-client clinical programs, the move online enabled them to broaden their reach and assist more clients. Most professors I have spoken with plan to continue to offer services remotely, some online only and some in conjunction with in-person clinical work.[10] In contrast, all the Street Law contributors plan to return to in-person instruction as soon as possible. One program that operates as an after-school opportunity, reported that remote classes helped accommodate busy high school student schedules and eliminated the need for transportation. They plan to continue to offer some classes remotely. The NYLS program will return to in-person classes in fall 2021 and both the instructors and the students are thrilled. As difficult as remote teaching was for both students and instructors, it gave us a new lens to examine our Street Law work. Some elements incorporated to address the challenges of virtual instruction may strengthen in-person teaching as well.

[10] "Clinical and Public Legal Education: Responses to Coronavirus," at Turning Challenges in Opportunities: Justice Education in Times of Crises, hosted by the Global Alliance for Justice Education, International Journal of Clinical Legal Education, and Association for Canadian Clinical Legal Education, virtually at Northumbia University, Newcastle, U.K. (June 16-18, 2021).

Restricted remote schedules forced us to choose the most important lessons to teach our students. The CHSLSJ Summer Law Program curriculum has been cut in half to accommodate remote instruction. This is an opportunity to evaluate what is most important to and relevant for our students. We should take this thoughtfulness into the fall semester and be just as selective even though we will return to our regular class schedule.

Active learning is always preferred over passive. However, students responded well to short videos (under five minutes) explaining complicated topics. Use of media as a complement to an engaging Street Law lesson could fortify student learning in the fall. Some in-person classes may have access to technology in their classrooms. For those programs, continuing to incorporate fun interactive technology (Kahoot, Jamboard) may be an effective strategy to review other components of a Street Law lesson.

Virtual platforms enabled more guests to visit classes and contribute to lessons. Increased student engagement demonstrated the benefit of including community members in class. Even if they can only join classes virtually, we should encourage greater involvement of community members going forward. Community members can be especially impactful when addressing current events and political movements.

There is always a tension between reaching more students versus giving a smaller number of students more personalized attention. Class sizes were often smaller for remote Street Law programs. A return to in-person instruction will likely mean a return to pre-COVID class sizes. Classes should incorporate opportunities for

individualized one-on-one student/law student interaction in order to foster community and mentoring. As NYLS returns to in-person instruction in fall 2021, we are fortunate to have two former Street Law instructors as teaching assistants for our Street Law program. We are hoping the teaching assistants will enable the instructors to spend more time with each student.

It was critical to regularly check for student understanding over the past year. Although that technique has always been a fundamental component of a Street Law lesson, it has been more intentional during remote learning. Hopefully the high school students will not be as distracted or disengaged when we return to in-person classes, but ensuring that each student understands each part of the lesson will be equally important.

At NYLS, before going into the classroom the law students spend weeks in seminar focusing on teaching methodology, classroom management strategies, and learning about the students and community where we teach. We discuss the importance of respect, compassion, and empathy for our students as teenagers learning in underserved communities. Most programs include similar discussions in their Street Law programs. During the pandemic, the law student instructors witnessed the severe economic and technological disparities present in our city. This enabled them to instantly understand the inequities faced by their students. These challenges were always there, but were not always apparent to law student instructors teaching in-person. The high school students routinely had internet issues which prevented the

camera or microphone from working properly. Some students lost their connection to the Zoom multiple times each class, only to return and ask what they missed. Students unmuted and the background noise made it impossible to hear them because they share space with a large number of family members. Despite the difficulties of teaching remotely, the law student instructors remained outwardly enthusiastic, patient, and encouraging because they understood their students were struggling.[11] As we return to in-person teaching, the challenges may be less obvious but will not be less real and it is critical that the law students develop the same compassion and understanding as they did this year.

[11] Thank you to my spring 2021 NYLS Street Law instructors: Kristen Bulka; Saher Chaudhary; Emily Devlin; Cheyenne Matus; Filomena Stabile; Tabetha Tufariello; Alan Vaitzman; Kassy Vazquez; and Serena Zachariah. Thank you also to my summer 2021 NYLS Street Law Summer Law Program instructors: Caitriona Carey; Olivia Faljean; Daniel Glicker; Catherine Gumarin; Julia Ismail; and Rishai McDermott.