

INTERNATIONAL  
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# Clinical Legal Education

## Clinical Practice

Decongesting Prisons in Nigeria: the EBSU Law Clinic model  
*Dr Amari Omaka C*

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  
*Ibijoke Patricia Byron*

Clinical Legal Education and Cultural Relativism – The Realities in  
the 21st Century  
*Professor Oluyemisi Bamgbose and Omolade Olomola*

Legal Education And Challenges of Contemporary Developments  
in Nigeria  
*Dr Bagoni A. Bukar*

Meeting the Required Reforms in Legal Education in Nigeria:  
Clinical Legal Education – Ten Years After  
*Charles Olufemi Adekoya*

Assessing Law clinic – the use of digital patch text assessment as  
an alternative to traditional portfolios  
*Karen Clubb*

A Client-Focused Practice: Developing and Testing Emotional  
Competency in Clinical Legal Interviews  
*Felicity Wardhaugh and Colin James*

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# Volume II Clinical Practice

# Contents

Page

## Articles

- Decongesting Prisons in Nigeria: the EBSU Law Clinic model  
*Dr Amari Omaka C, Associate Professor of Law* .....533
- 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  
*Ibijoke Patricia Byron* .....563
- Clinical Legal Education and Cultural Relativism – The Realities in the  
21st Century  
*Professor Oluyemisi Bamgbose and Omolade Olomola* .....579
- Legal Education And Challenges of Contemporary Developments in Nigeria  
*Dr Bagoni A. Bukar, LL.B (Hons.), B.L, LL.M, Ph.D* .....593
- Meeting the Required Reforms in Legal Education in Nigeria: Clinical Legal  
Education – Ten Years After  
*Charles Olufemi Adekoya* .....603
- Assessing Law clinic – the use of digital patch text assessment as an  
alternative to traditional portfolios  
*Karen Clubb* .....615
- A Client-Focused Practice: Developing and Testing Emotional Competency  
in Clinical Legal Interviews  
*Felicity Wardhaugh and Colin James* .....633



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# Decongesting Prisons in Nigeria: the EBSU Law Clinic model

*Dr Amari Omaka C<sup>1</sup>*

*Associate Professor of Law*

## **Abstract**

Due to the growing problems of overcrowding and prison congestion in Nigeria, the need to conduct this pro bono study became imperative. This study is a needs assessment, evaluation and fact finding of the challenges and access to judges problems of detainees of Abakaliki and Afikpo Federal Prisons in Ebonyi State Nigeria. Bearing in mind the UN Standard Minimum Rules and other instruments in international law, the project report generally captures the following information:-

- State of the Structure of the prisons
- Infrastructure at the prisons
- Facilities at the prisons
- Welfare of the inmates at the prison
- Welfare of the prisons staff
- Access to Justice by the inmates and

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<sup>1</sup> This paper was presented by Prof Dr Amari Omaka C at the 8<sup>th</sup> IJCLE Conference at Northumbria University Newcastle Upon Tyne, England United Kingdom July 7, 2010. he carried out this project in liaison with clinicians of Ebonyi State University Law Clinic Abakaliki. Financial Support for the exercise was provided by Open Society Justice Initiative (OSJI). Special thanks to the Network of University Legal Aid Institutions (NULAI) and Open Society Justice Initiative (OSJI) for facilitating and sponsoring this prison project respectively. We appreciate the Vice Chancellor of Ebonyi State University Abakaliki, Prof. Francis Idike and Ebonyi State University management for giving us the enabling environment to conduct this study. We specially thank the Deputy Controller of Prisons in Charge of Abakaliki prisons DCP Oluwasemire S.I for facilitating our visit to the prisons. We also thank the Deputy Controller Afikpo prisons for allowing then students access to the prisons for this work, despite several challenges and bottlenecks. We also remain grateful to the Chief Judge of Ebonyi State, Justice Aloy Nwankwo, the Attorney General of Ebonyi State, Barr. Jossy Eze among numerous others that participated in imbining ethical values to our students before entry to the prisons for the pro bono work.

- Other ancillary issues such as children in prison, over age in prison, nature of offences etc.

In carrying out this study, empirical method of data collection and analysis was used. The two prisons in the state were visited and 250 prisoners responded to both the questionnaire and direct interview. Some staff of the Nigerian Prison Service and warders were also interviewed. The findings of this study were significant and highly revealing. The study specifically highlights certain issues of concern and proffers recommendations to address identified challenges. The report would serve as a national and international reference material as well as a programmatic tool for working out specific programmes and interventions to address the myriad problems facing the Nigerian prison system specifically, and the criminal justice administration system in Nigeria generally. The findings in this project are significant, the recommendations rich, we enjoin the government and development partners to implement them.

## **Outline:**

The paper comprises five parts, with the following outline:

### **Part I**

- 1.1 Background of the Study
- 1.2 Statement of the Problem
- 1.3 Project Objectives
- 1.4 Delimitation of the Area of the Project
- 1.5 Significance of the Project / Expected Outcome
- 1.6 Limitations / Challenges of the Prison Project

### **Part 2**

#### **RESEARCH METHODOLOGY**

- 2.1 Selecting Sample Population
- 2.2 Research Design
- 2.3 Sample Design
- 2.4 Instruments of Data Collection
- 2.5 Modus operandi

### **Part 3**

#### **PRESENTATION, ANALYSIS OF DATA AND FINDINGS**

- 3.1 Introduction
- 3.2 Data Presentation from Abakaliki Prison Respondents
- 3.3 Data presentation from Afikpo Prisons Respondents

## **Part 4**

### SUMMARY OF FINDINGS

## **Part 5**

### RECOMMENDATIONS AND CONCLUSION

#### 5.1 Recommendations

#### 5.2 Conclusion

## **Appendix A: Questionnaire**

## **Part I**

### **1. 0 Introduction**

The Abakaliki and Afikpo prison project is a programme designed to ascertain the number of inmates at the prison. Those that are awaiting trial, those that are serving their sentence and those that are just remanded there by the magistrate or such like courts that have no jurisdiction on that particular matter. In addition, this project aims at knowing the welfare of the inmates in Abakaliki prisons. This welfare includes their feeding, health condition, educational support. To know whom amongst them needs a lawyer. This study became imperative because, from the available literature, the prison service in Nigeria has for many years been faced with many challenges. This is as a result of many factors, including overcrowding, inefficient criminal justice system, inadequate accommodation for both inmates and prison officers, high number of awaiting trial cases, obsolete/dilapidated infrastructural facilities. Others include; lack of recreational and vocational facilities, poor feeding for inmates, etc. The study was conducted with a view to collating data on these and bringing such to the attention of Government and development partners in order to reverse the trend.

### **1.1 Background of the Study**

From available statistics,<sup>2</sup> there are 227 prisons in Nigeria, spread across the six geo-political zones of the country. Available literature<sup>3</sup> shows that these prisons, most of which were built by the colonial government, harbour more untried inmates than those properly convicted, some of which include children and women. The facilities are dilapidated and most of the inmates have no access to justice, and the facilities are in a state of decay.<sup>4</sup> The prisons' congestion is a serious affront

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2 However 133 prisons was reported as visited during the National Prison Audit Report 2007-2008, conducted by the National Human Rights Commission in partnership with UNDP, NORAD et al

3 Nigeria National Prison Audit Report 2007-2008

4 Ibid

to human rights. In pre-trial cases, nationwide, most detainees have no legal representation<sup>5</sup>, case processing is slow, remand periods are exceeded, charge sheets frequently get lost and many cases lack the necessary evidence to prosecute them, making a mockery of a five-year wait for a trial that can only end in acquittal<sup>6</sup>. In Nigeria, prisons are grossly congested. Records<sup>7</sup> have it that they are overcrowded to a capacity of as much as 250%. Kirikiri Maximum Prison for instance, built for 956 prisoners is occupied by over 2,600 inmates, the majority of whom are awaiting trial.<sup>8</sup> Prison overcrowding is a major concern of the Nigerian criminal justice system. Remand prisoners account for a substantial contribution to the problem of congestion in Nigerian prisons.<sup>9</sup> A greater part of awaiting trial detainees in the prisons are held under the *holding charge*<sup>10</sup> and many have spent up to ten years awaiting trial<sup>11</sup>.

For a long time, Nigerian prisons have been centres of human rights abuses.<sup>12</sup> People are detained unlawfully for as long as the police want.<sup>13</sup> Nevertheless, in spite of the sad fact that prison congestion has become a “national embarrassment”, not much has been known about the issue of prison decongestion in law textbooks in the country. A careful research and perusal of our books have unearthed the sad reality that our libraries do not contain much information about prison decongestion.<sup>14</sup> Prison congestion can be said to result if the number of prison inmates in a prison yard exceeds the number it is originally meant to accommodate, leading to inconveniences on the inmates as well as difficulty of control on the authorities concerned. Prison decongestion thus means the reduction in the amount of inmates.<sup>15</sup> Reduction of the inmate intakes in prison to the available space becomes necessary if one looks at the inconveniences obtainable, to the inmates, the authority and the public. Little wonder, disease spread, violent break up of prisons and general public fear occurs, negating the essence of prison for reformation.<sup>16</sup>

In a public discourse organised recently by the “Detainees and Indigent Help Centre”, resource fellows identified undue delay in criminal trial as one of the causes of prison congestion. This is more so because the cases of awaiting trial detainees are not disposed of in a good time. The forum further observed that where advice is sought from the Director of Public Prosecution, it may take months or even years to obtain because of the bureaucratic bottleneck in the administration of

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5 The Prison Decongestion Project in Nigeria: An Appraisal by Mbanefo Ifeyinwa.  
See [www.lawfirmsinnigeria.com](http://www.lawfirmsinnigeria.com)

6 Anon, the poor state of the prisons. [www.clearinternational.org](http://www.clearinternational.org) downloaded on April 11, 2010

7 The Prison Decongestion Project in Nigeria: An Appraisal by Mbanefo Ifeyinwa.  
See [www.lawfirmsinnigeria.com](http://www.lawfirmsinnigeria.com)

8 Ibid

9 Omaka C. A. Assessing justice: A challenge to Nigerian Prison Detainees. Daily Trust, April 4, 2008

10 Detention order under the ruling of a magistrate because the magistrate has no jurisdiction to try the case.  
This is an aberration as there is no law backing this unfortunate judicial tradition.

11 Ibid

12 Omaka C. A. Assessing justice: A challenge to Nigerian Prison Detainees. Daily Trust, April 4, 2008

13 [www.newswatchngr.com](http://www.newswatchngr.com) op cit

14 The Prison Decongestion Project in Nigeria: An Appraisal by Mbanefo Ifeyinwa.  
See [www.lawfirmsinnigeria.com](http://www.lawfirmsinnigeria.com)

15 Ibid

16 Omaka C. A. Assessing justice, op cit p.7



justice and administration in Nigeria.<sup>17</sup> Furthermore, the resource noted that inadequate number of judges and magistrates to try cases is also one of the causes of congestion of prisons in Nigeria. They further observed that a situation where the same judge or magistrate handles both criminal and civil cases is no more acceptable in the developed world because it does not make for rapid dispensation of justice. In addition, the forum noted that vehicles conveying awaiting trial detainees to courts are not enough. Added to this as observed by the forum is the constant strike by the judiciary workers thereby keeping detainees in custody for many months without hearing their cases at all<sup>18</sup>.

Another factor identified as one of the causes of prison congestion is the centralisation of the management of Nigerian prisons.<sup>19</sup> Another factor leading to congestion of prisons in Nigeria is the inadequate number of prisons. It was disclosed at the forum<sup>20</sup> discussed above that there are 227 prisons in Nigeria, which accommodate over 40,000 inmates. This number is grossly inadequate because if the facilities are inadequate in number and in size, there will be over congestion.

In his contribution on the issue of prison congestion, Prince Olagunsoye Oyinola, Osun State Governor, in the Daily Sun issue of March 16, 2010 implored the judiciary to evolve ways of tackling cases of those awaiting trial across the nation's prisons. Further, Prince Oyinola observed that the problem of prison congestion was caused by the judicial process and awaiting trial syndrome. According to Chief Bayo Ojo, former Attorney-General of the federation and Minister of Justice, there are 45,000 inmates in our prisons out of which 65% are awaiting trial. Chief Ojo posited that the problem of over congestion was also occasioned by missing case files among other things.

In a similar vein, Mohammed Fawehinmi, son of human rights activist, Chief Fawehinmi, recently disclosed after his tour of the various prisons in the country that he found about 28,000 awaiting trial inmates (ATI) in our prisons across the country. This corroborates the above disclosure made by the former Federal Attorney-General and Minister for Justice, Chief Bayo Ojo to members of the House of Representatives on October 13, 2005 that there are 25,000 Awaiting Trial Inmates rotting away in various Nigerian prisons. One clear deduction from the disturbing revelations of Fawehinmi and Ojo is that over-congestion in Nigerian prisons is caused by ATI.

In the course of his lecture with final year students of Ebonyi State University, Abakaliki on 18/01/2010, Dr. Okpara Okpara, Human Rights lecturer, maintained that the "holding charge" as used by the police to arrest and detain people without charge is also a cause of prison congestion, as well as violation of citizens' human rights. Contributing still to the cause of prison congestion, Chief Bayo Ojo traced over-congestion to long delays in bringing people to trial.

These shortcomings notwithstanding, Nigeria has not closed its eyes or folded its hands on the problem of congestion as to ameliorate the situation. Many propositions, policies and private opinions have been generated, some applied, in a bid to neutralise the menace of this congestion.

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17 A non-governmental organisation at the conference hall of the University of Lagos on how to decongest the heavily congested Nigerian prison. See [www.lawfirmsinnigeria.com](http://www.lawfirmsinnigeria.com), op cit

18 Ibid

19 Peter Onu, Prison chaos: what went wrong? Daily Mirror March 6, 2009. Note also that the management of the Nigeria prisons is placed under the exclusive legislative list and therefore being controlled solely by the Federal Government by virtue of the Constitution of the Federal Republic of Nigeria, 1999.

20 "Detainees and Indigent Help Centre", op cit

In a recent knee-jerk approach to decongest Nigerian Prisons, the 36 Governors have consented to the execution of condemned prisoners. The governors took the decision after debating the challenges posed by prison congestion at the National Economic Council (NEC) meeting in Abuja on April 20th 2010<sup>21</sup>. The decision was sequel to a presentation by the Nigerian Prison Service informing the gathering that the governor's inability to approve the execution of condemned prisoners, in some cases years after their sentences were passed was partly responsible for prison congestion. The problem of congestion is indeed a major challenge in Nigerian prisons, Abakaliki and Afikpo prisons in Ebonyi state are not exceptions. This is a time for action.

### **1.2 Statement of the Problem**

From the above background, it is evident that prison congestion and violation of the fundamental human rights of inmates is a challenge to criminal justice administration in Nigeria. Preliminary findings in Abakaliki prison show that it is operating above built capacity; in addition, both Abakaliki and Afikpo prisons have more Awaiting Trial Men (ATM) than convicts. Again, most of the inmates had no legal representation nor access to justice. For example, our preliminary needs assessment findings revealed that 714 inmates were detained in Abakaliki prison whose carrying capacity is a maximum of 387. Following the need to be part of the Federal Government of Nigeria and Development partners, multifaceted approach to prison services and consequent decongestion, we in Ebonyi State University Law Clinic<sup>22</sup> decided to make prison projects one of her cardinal projects for 2009/2010.

### **1.3 Project Objectives**

The purpose of this study is not only geared at assisting the inmates of the two federal prisons in the state to access legal service, but also to avail the pivotal law students an opportunity to work and learn with real live clients, viz the ATI and those wrongly detained. The objectives of the project specifically:

1. To train the clinical law students on the dos and don'ts in prisons, especially in relation to inmates;
2. To identify the precise legal needs of Afikpo and Abakaliki prisons' inmates;
3. To identify the available legal aid facilities presently available to the inmates of the two prisons;
4. To investigate or access the impact of available legal aid, if any, to identify legal needs most imperative to them;
5. To carry out advocacy on the legal aid need of the inmates;
6. To secure bail, and as much as practicable, secure release of the inmates.

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21 Prison Congestion: published 28/04/2010–[www.thenationonline.net](http://www.thenationonline.net)

22 Succinctly known as 'EBSU Law Clinic'

#### **1.4 Delimitation of the Area of the Project**

The scope of this project will be restricted to the two available prisons in the Ebonyi State, namely:

- Afikpo, and
- Abakaliki prisons.

Incidentally, the areas where the two prisons are located reflect the two political blocs (carved out of Abia (Afikpo) and Enugu (Abakaliki) state) that make up the present Ebonyi State. The project is mainly a research project and also embodies *pro bono* legal aid.

#### **1.5 Significance of the Project / Expected Outcome**

It is hoped that this publication would be a useful benchmark and reference point to governments, the United Nations agencies, development partners, researchers and relevant stakeholders x-raying the prevailing conditions in prisons across the country with a view to using the data contained here-in as a basis for strategising on necessary interventions. This would help in improving the physical and mental health of officers and inmates and especially achieving the overall goals of imprisonment as a means of reform and rehabilitation while complying with human rights standards. In addition, if the recommendations are implemented:

- Justice would be more accessible to the detainees/convicts;
- There would be proper identification and categorisation of the legal needs of prison inmates;
- Documentation of the legal needs of prison inmates in Ebonyi state would be easy;
- There would be better understanding of the legal aid needs of the prison detainees;
- The law students would know the role of law clinics in prison projects and be part of the solution through their free legal aid services;
- The law students would learn the law by doing, which will ultimately translate to functional and effective law practices by graduates of EBSU the clinic.

#### **1.6 Limitations / Challenges of the Prison Project**

The problems encountered in the course of this work include:

1. The difficulty of embarking on this project together with other demanding academic works;
2. The decline of interest in the project by some prison staff;
3. The absence of official EBSU Law Clinic bus;
4. Institutional/in-house administrative delays, bottlenecks and challenges;
5. The protracted ASUU<sup>23</sup> strike delayed the projected timing of the project.

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<sup>23</sup> This acronym means Academic Staff Union of Nigerian Universities.

## Part 2

### RESEARCH METHODOLOGY

#### 2.1 Selecting Sample Population

This research deals with prison decongestion and access to justice. It is not often easy to carry out a study in all the prisons in Nigeria. Consequently, the Abakaliki and Afikpo Federal Prison were selected for study, simply because of accessibility to the two prisons and because they fall within the jurisdiction of EBSU Law Clinic. Not all staff and detainees were interviewed in the two prisons, rather a random sample of the population was selected to be studied. This sample was deemed to be a true and fair representation of the entire population.

#### 2.2 Research Design

The research design to be utilised was field survey.<sup>24</sup> The data collection was done through valid and reliable questionnaires administered to the sample population and personal interviews by the researchers with the controller of the two federal prisons involved in the stress area as well as the wealth of literature that exist helped the researchers to conceptualise the area which served as the basis for the formulation of the questionnaire. The questionnaire was designed in such a way that it contains a blend of fixed alternative questions that are meant to specifically limit the responses of the respondents to specific alternatives and an open ended question that offers the respondents opportunities of expressing their opinions. Again, personal interviews were used to augment information obtained through questionnaire, and in some cases, to assist those who could not read and write.

#### 2.3 Sample Design

As at the time of this study there were 227 prisons across the country. Due to time and financial constraints, this research work was specifically carried out in the two federal prisons located in Ebonyi State. In the selected prison, the controllers and the deputy controllers and other principal staff and inmates either responded through questionnaires or were physically interviewed, because of their expert knowledge of the workings of prisons.

#### 2.4 Instruments of Data Collection

Primary sources of data on the other hand are sources from which raw data can be obtained. Data or information that were received from the prison staff and detainees constitute the primary data. The following methods were used in the collection of primary data.<sup>25</sup>

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24 Ogbazi, J.N., & Okpala, J. (1994). *Writing Research Report: Guide for Researchers in Education, the Social Sciences and Humanities*. Enugu: Press Time Ltd.

25 Olaitan, S.O. (1983). Likert research style adopted by author while considering factors associated with non-utilisation of hospital services for antenatal care by pregnant women in rural communities of Anambra State of Nigeria. In O.S. Okobiah, A. Ali & G.B.I. Onuoha (Eds.), *Occasional publication of Institute of Education, University of Nigeria, Nsukka* (No. 4, 65-70). Nsukka: Institute of Education, University of Nigeria.

**I. Questionnaire survey** – A well structured EPDAFEQ was designed.<sup>26</sup> The questionnaire survey was the major method of data collection. It was also a basis for opinion assessment. Questions contained in the questionnaire were intended to ascertain the condition of prisoners and access to justice. To achieve the reliability of the data, the questionnaires were administered on the prisoners, together with oral interview. As the prisoners' answer in the interview, their responses in most cases were recorded in the questionnaire. Others interviewed were persons in key positions namely, the Controller, the Deputy Controller and principal staff of the prisons in the stress areas.

**II. Interviews** – In addition to questionnaires, interviews were used to collect data. This proved effective as it helped the researchers in determining in time the actual scope of the topic that was being studied and the identification of contemporary problems in the management of prisons and accessibility of justice.

**III. Observation** – During the research process, the researchers examined some documents that relate to the area of study, and the physical condition of the prisons and detainees.

In addition, the researchers found valuable unpublished lectures delivered by individuals with adequate knowledge of the topic. These no doubt are very good sources of secondary data collection. Although this research work is a field one which involves extensive use of communication, observation and interviews, comprehensive review of related literature was made. This derives from primary and secondary sources, communication and observation were based on primary sources while review of related literature was based on secondary source literature which was obtained from various libraries. In order to collect accurate and reliable data, we extensively visited the Abakaliki and Afikpo federal prisons all in Ebonyi State, Nigeria.

## **2.5 Modus operandi**

Before the commencement of the research, a pre-field training workshop on the code of conduct in prisons was organised for the researcher and the clinicians. Resource persons included inter alia prison officials and other experts. In addition, advocacy visits were arranged with stakeholders like Nigerian Bar Association, the Attorney General of Ebonyi State and the Prison Authorities. All activities of the clinicians were under the supervision of qualified clinical lawyers.

## **Part 3**

### **PRESENTATION AND ANALYSIS OF DATA**

#### **3.1 Introduction**

During the field work, 227 questionnaires titled “EPDAFEPQ” were distributed and we successfully retrieved information from 222 respondents, while 4 questionnaires were not recovered generally. Two were lost at Abakaliki prisons. Similarly, 65 questionnaires were given to 65 respondents, 63 were recovered, while two were lost. Hence, 98.5% recovery rate was achieved. We consider the retrieval rate quite impressive. This result in collection of data was made possible by the on-the-

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<sup>26</sup> Similarly see Ogbazi, J.N., & Okpala, J. (1994). Writing research report: Guide for researchers in education, the social sciences and humanities. Enugu: Press Time Ltd.

spot distribution and collection after assisting the respondents in completing the forms.

Tables one to 14 are a presentation of the data from both Abakaliki and Afikpo prisons. While tables 1-7 relate to Abakaliki prisons, tables 8-14 represent findings from Afikpo prisons.

### 3.2 ABAKALIKI PRISON – 159 RESPONDENTS

Table 1: Bio-data of detainees

| Sex |       | Age               |          | Marital status |        |
|-----|-------|-------------------|----------|----------------|--------|
| Men | Women | Children below 18 | Above 18 | Married        | Single |
| 139 | 20    | 4                 | 155      | 33             | 126    |

The above data in Table 1 shows that there are more men than women in Abakaliki prisons. The data in table one reveals as follows: 87.4% of men and 12.6% women; Children 2.5% and adults of 18 years and above 97.5%. It also shows that 20.8% are married while 79.2% are single in Abakaliki prisons.

Table 2: Types of detainees and nature of offences

| Nature of Crime |               |         |          |                    |       |        |            |                     |
|-----------------|---------------|---------|----------|--------------------|-------|--------|------------|---------------------|
| Rape            | Armed robbery | Cultism | Stealing | Breaking and entry | Arson | Murder | Kidnapping | Assault and battery |
| 6               | 23            | 7       | 33       | 43                 | 4     | 10     | 3          | 30                  |

Table 2 reveals the following percentages on the nature of crime: rape 3.8%, armed robbery 14.5%, cultism 4.4%, stealing – 20.8%, breaking and entry – 27%, arson – 2.5%, murder – 6.3%, kidnapping – 1.8% and assault and battery – 18.9%.

Table 3: Nature of detention, legal representation and access to justice

| Nature of detention |           |                  | Number of years detained |                | Number with legal representation |                       | Delay in representation/ |                        | Recidivists |      |
|---------------------|-----------|------------------|--------------------------|----------------|----------------------------------|-----------------------|--------------------------|------------------------|-------------|------|
| ATM                 | Convicted | Undergoing trial | Below one year           | Above one year | I have a lawyer                  | I don't have a lawyer | There is speedy trial    | There is delayed trial | Very few    | Many |
| 132                 | 20        | 7                | 3                        | 156            | 29                               | 130                   | 1                        | 158                    | 39          | 120  |

Table 3 show the following analysis: there are 83% Awaiting Trial Men (ATM), those properly tried and convicted – 12.6%, those undergoing trial but detained without conviction – 4.4%, detainees below 1 year – 1.9%, those detained for over 1 year without due process of trial – 98.1%, those with legal representation 18.2%, those without legal representation – 81.8%, respondents who believe that there is delayed prosecution – 99.4%, those who

responded that there is no speedy prosecution – 0.6%, those who say that there are few recidivists – 24.5% and those who believe that there are many recidivists in detention – 75.5%.

*Table 4: Facilities Available – sanitary, toiletry and environmental*

| Source of water | Toilet facilities |     |              | Cleanliness of toilet |        | Use of toiletry |           | bedding       |                      | Kitchen condition |     |       | Cleanliness of the beddings |             | Cleanliness of the environment |           |      |
|-----------------|-------------------|-----|--------------|-----------------------|--------|-----------------|-----------|---------------|----------------------|-------------------|-----|-------|-----------------------------|-------------|--------------------------------|-----------|------|
|                 | Good              | Bad | Water closet | Pit                   | Bucket | Clean           | Not clean | Not available | Toiletries available | Foam              | mat | Clean | Not clean                   | Do not know | clean                          | Not clean | Tidy |
| 60              | 99                | 159 | Nil          | Nil                   | 20     | 139             | 30        | 129           | 121                  | 38                | 21  | 128   | 10                          | 45          | 114                            | 102       | 57   |

**Table 4** shows the following from those interviewed: good water supply – 37.7%, bad water supply – 62.3%; use of water closet – 100%, use of pit toilet – 0%, use of bucket toilet – 0%; the toilets are clean – 12.6%, toilets are messy – 87.4%; toiletries are always available – 18.9%, toiletries not available – 81.1%; I sleep on foam – 76.1%, I sleep on mat – 23.9%; the beddings are clean – 28.3%, the beddings are not clean – 71.7%; the kitchen is clean – 13.2%, the kitchen is not clean – 80.5%, no idea whether clean or not clean – 6.3%; cleanliness of the prison environment – 64.2%, there is untidy environment – 35.8%.

*Table 5: Facilities Available – power and healthcare facilities*

| Laundry/ uniforms | Power |     |      | Health-care clinic |                    | Adequate doctors and nurses |    | Drugs    |            | Cleanliness of healthcare facility |                      |       |
|-------------------|-------|-----|------|--------------------|--------------------|-----------------------------|----|----------|------------|------------------------------------|----------------------|-------|
|                   | Good  | Bad | PHCN | Standby generator  | Candle and lantern | Yes                         | No | Adequate | Inadequate | Always available                   | Not always available | Clean |
| 77                | 82    | 159 | Nil  | Nil                | 150                | 9                           | 69 | 90       | 40         | 119                                | 125                  | 34    |

**Table 5** shows the following responses: good laundry and uniforms – 48.4%, bad laundry and uniforms – 51.6%; sole dependence on epileptic power supply – 100%, standby generator – 0%; clinic available – 95%, clinic not available – 5%; there are adequate doctors and nurses – 43.4%, there are inadequate doctors and nurses – 56.6%; availability of drugs – 25.2%, dearth of drugs – 74.8%; clinic and health care facility is clean – 78.6%, filthy health care facility – 21.4%.

Table 6: Facilities Available – conscience, sporting and recreation

| Freedom of worship and worship facilities |    | Places of worship |    |     | Availability of schools and educational |     | Availability of recreation facilities |    | Sporting facility available |     |     |
|---|----|-------------------|----|-----|---|-----|---------------------------------------|----|-----------------------------|-----|-----|
|   |    |                   |    |     |   |     |                                       |    |                             |     |     |
| 147                                       | 12 | 136               | 23 | Nil | 159                                     | Nil | 90                                    | 69 | 159                         | 159 | 107 |

On conscience, sports and recreation, **table 6** shows the following line of response: freedom of worship – 92.5%, no freedom of worship – 7.5%; Christians place of worship – 85.5%, availability of Islamic place of worship – 14.5%, traditional place of worship – 0%; availability of school in the prison – 100% and none said that there is no school. There is sufficiency of recreational facilities – 56.6%, insufficiency of recreational facilities – 43.4%; availability of football facility – 100%, availability of weight lifting facility – 100%; Draft, chess, monopoly, scrabble and other indoors facility – 67.3%, no other sporting availability – 32.7%.

Table 7: availability of vocational facilities

| Availability of vocational facilities |              | Carpentry workshop | Tailoring workshop | Welding workshop | Barbing workshop | Electrical workshop | Computing | Shoe making |
|---------------------------------------|--------------|--------------------|--------------------|------------------|------------------|---------------------|-----------|-------------|
| Adequate                              | Not adequate |                    |                    |                  |                  |                     |           |             |
| 54                                    | 105          | 159                | 159                | 159              | 159              | 159                 | 159       | 159         |

**Table 7** shows that 66% of the respondents agree that there are adequate vocational facility while 34% said that there are not enough vocational facility. 100% of the respondents said that the following workshops are available in Abakaliki prisons – carpentry, tailoring, barbing, welding, electrical, computing and shoe making workshops.



### 3.3 AFIKPO PRISONS - 63 RESPONDENTS

*Table 8: Bio-data of detainees*

| Sex |       | Age               |          | Marital status |        |
|-----|-------|-------------------|----------|----------------|--------|
| Men | Women | Children below 18 | Above 18 | Married        | Single |
| 52  | 11    | 4                 | 59       | 18             | 45     |

**Table 8** shows that following in relation to Afikpo prisons: men – 82.5%, women – 17.5%; children – 6.3%, adults above 18 years – 93.7%; married prison inmates – 28.6%, single – 71.4%.

*Table 9: Types of detainees and nature of offences*

| Nature of Crime |               |         |          |                    |       |        |            |                     |
|-----------------|---------------|---------|----------|--------------------|-------|--------|------------|---------------------|
| Rape            | Armed robbery | Cultism | Stealing | Breaking and entry | Arson | Murder | Kidnapping | Assault and battery |
| 2               | 5             | 2       | 21       | 13                 | 4     | 4      | 3          | 9                   |

On nature and character of offences upon which detention is based, **table 9** reveal as follows: rape – 3.2%, armed robbery – 7.9%, cultism – 3.2%, stealing – 33.3%, breaking and entry – 20.6%, arson – 6.3%, murder – 6.3%, kidnapping – 4.8%, assault and battery – 14.3%.

*Table 10: Nature of detention, legal representation and access to justice*

| Nature of detention |           |                  | Number of years detained |                | Number with legal representation |                       | Delay in representation/ |                        | Recidivists |      |
|---------------------|-----------|------------------|--------------------------|----------------|----------------------------------|-----------------------|--------------------------|------------------------|-------------|------|
| ATM                 | Convicted | Undergoing trial | Below one year           | Above one year | I have a lawyer                  | I don't have a lawyer | There is speedy trial    | There is delayed trial | Very few    | Many |
| 48                  | 8         | 7                | 3                        | 60             | 7                                | 56                    | 1                        | 62                     | 30          | 33   |

On access to justice and legal representation **table 10** shows as follows: those awaiting trial and not convicted – 76.2%, the convicted – 12.7% and those undergoing trial –11.1%. Those detained below 1 year – 4.8%. Those above 1 year in detention – 95.2%. Those with legal representation – 11.1% and those without legal representation – 88.9%. Delayed prosecution – 98.4%, speedy prosecution – 1.6%. Few recidivists – 24.5% and 75.5% said there are many recidivists in Afikpo prison.

Table 11: Facilities Available - sanitary, toiletry and environmental

| Source of water | Toilet facilities |     | Cleanliness of toilet |           | Use of toiletry      |               | bedding |     | Kitchen condition |           |             | Cleanliness of the beddings |           | Cleanliness of the environment |        |
|-----------------|-------------------|-----|-----------------------|-----------|----------------------|---------------|---------|-----|-------------------|-----------|-------------|-----------------------------|-----------|--------------------------------|--------|
|                 | Water closet      | Pit | Clean                 | Nor clean | Toiletries available | Not available | Foam    | mat | Clean             | Nor clean | Do not know | clean                       | Nor clean | Tidy                           | Untidy |
| Good            | 59                | 4   | 18                    | 45        | 17                   | 46            | 50      | 13  | 20                | 40        | 3           | 20                          | 43        | 34                             | 29     |
| Bad             | 54                | Nil | Nil                   | Nil       | Nil                  | Nil           | Nil     | Nil | Nil               | Nil       | Nil         | Nil                         | Nil       | Nil                            | Nil    |

Table 11 shows the following in relation to sanitary, toiletry and environmental condition of Afikpo prison. Good water supply – 14.3%. Bad water supply – 85.7%. Use of water closet lavatory – 93.7%. Use of pit toilet – 6.3%. Use of bucket toilet – 0%. The toilets are clean – 28.6%. The toilets are unkempt – 71.4%. Toiletries are always available – 27%. Toiletries not available – 73%. There is foam to sleep on – 79.4%. I sleep on mat or poorly improvised beddings – 20.6%. Cleanliness of the beddings – 31.7%. Beddings not clean – 68.3%. Kitchen is clean – 31.72%. Kitchen is not clean – 63.5%. No idea whether kitchen is clean or not – 4.8%. Cleanliness of environment – 54% and untidy environment – 46%.

Table 12: Facilities Available – power and healthcare facilities

| Laundry/ uniforms | Power |                   |                    | Health-care clinic |     | Adequate doctors and nurses |            | Drugs            |                      | Cleanliness of healthcare facility |           |
|-------------------|-------|-------------------|--------------------|--------------------|-----|-----------------------------|------------|------------------|----------------------|------------------------------------|-----------|
|                   | PHCN  | Standby generator | Candle and lantern | Yes                | No  | Adequate                    | Inadequate | Always available | Not always available | Clean                              | Nor clean |
| Good              | 63    | Nil               | 63                 | 54                 | 9   | 10                          | 53         | 20               | 43                   | 32                                 | 31        |
| Bad               | 31    | Nil               | Nil                | Nil                | Nil | Nil                         | Nil        | Nil              | Nil                  | Nil                                | Nil       |

Table 12 reveals the following in relation to power and healthcare: good laundry and uniforms – 50.8%, bad laundry and uniforms – 49.2%. Sole dependence on public epileptic power supply-100%. Standby generator – 0%. Clinic available – 93% and 7% said no healthcare facility. Adequate doctors and nurses – 15.9%. Inadequate doctors and nurses – 84.1%. Availability of drugs – 31.7%. Dearth of drugs – 68.3%. On whether or not clinic is clean, 50.8% said yes, while 49.2% said no.

Table 13: Facilities Available – conscience, sporting and recreation

| Freedom of worship and worship facilities |    | Places of worship |         |             | Availability of schools and educational |               | Availability of recreation facilities |                | Sporting facility available |               |                  |
|---|----|-------------------|---------|-------------|---|---------------|---------------------------------------|----------------|-----------------------------|---------------|------------------|
| Yes                                       | No | Christians        | Moslems | traditional | Available                               | Not available | Sufficient                            | Not sufficient | Football                    | Weightlifting | Draft and others |
| 57  | 6  | 58                | 3       | 2           | Nil                                     | 63            | 25                                    | 38             | 34                          | 15            | 14               |

**Table 13** discloses as follows: there is freedom of worship – 90.5%. No freedom of worship – 9.5%. Availability of Christian place of worship – 92.1%. Availability of Islamic place of worship – 4.8%. Traditional religion – 3.1%. on availability of schools, 100% said no school, while 0% responded in the positive. Are there sufficiency of recreational facilities – 39.7% said yes, while 60.3% said no. On availability of football facility – 50% said yes, availability of weight lifting facility – 20% said yes, draft and others – 20%, while 10% said there are no other sporting facility.

Table 14: availability of vocational facilities

| Availability of vocational facilities |              | Carpentry workshop | Tailoring workshop | Welding workshop | Barbing workshop | Electrical workshop | Computing | Shoe making |
|---------------------------------------|--------------|--------------------|--------------------|------------------|------------------|---------------------|-----------|-------------|
| Adequate                              | Not adequate | 63                 | 63                 | Nil              | Nil              | Nil                 | Nil       | Nil         |
| 31                                    | 32           |                    |                    |                  |                  |                     |           |             |

**Table 14** shows that in Afikpo prisons 49.2% said that there are adequate vocational facility, while 50.8 responded that the vocational facilities are inadequate. While 100% responded that the prison has carpentry and tailoring workshops, they however wished that they had in addition a barbing, welding, computer and shoemaking workshops, which is presently absent in Afikpo prisons.

### 3.5 SUMMARY OF ANALYSIS OF DATA FROM TABLES 1 TO 14 IN PERCENTAGES

|  | Abakaliki | Afikpo | Average | Remark  |
|--|-----------|--------|---------|---|
| <b>Tables 1 and 8: Biodata of detainees</b>            |           |        |         |   |
| Men  | 87.4      | 82.5   | 84.95   |   |
| Women  | 12.6      | 17.5   | 15.05   |   |
| Children   | 2.5       | 6.3    | 4.4     | Against minimum standards                                       |
| Adult  | 97.5      | 93.7   | 95.6    |   |
| Married  | 20.8      | 28.6   | 24.7    |   |
| Single   | 79.2      | 71.4   | 75.3    | Crime and youthfulness  |
| <b>Tables 2 and 9: Nature of offences of detainees</b> |           |        |         |   |
| Rape   | 3.8       | 3.2%   | 3.5     |   |
| Armed robbery  | 14.5      | 7.9%   | 11.2    |   |
| Cultism  | 4.4       | 3.2%   | 3.8     |   |
| Stealing   | 20.8      | 33.3%  | 27.05   | Highest crime rate  |
| Breaking and entry                                     | 27        | 20.6%  | 23.8    |   |
| Arson  | 2.5       | 6.3%   | 4.4     |   |
| Murder   | 6.3       | 6.3%   | 6.3     |   |
| Kidnapping   | 1.8       | 4.8%   | 3.3     | Emerging crime since 2008 particularly in South Eastern Nigeria |
| Assault and battery                                    | 18.9      | 14.3%  | 16.6    |   |

**Decongesting Prisons in Nigeria: the EBSU Law Clinic model**

|   | Abakaliki | Afikpo | Average | Remark                                     |
|---|-----------|--------|---------|--|
| <b>Tables 3 and 10: Nature of detention, legal representation and access to justice</b> |           |        |         |  |
| ATM (Awaiting Trial Men)  | 83%       | 76.2%  | 79.6%   | Imprisonment without trial is unacceptable |
| Convicted   | 12.6%     | 12.7%  | 12.65%  | Low  |
| Undergoing trial  | 4.4%      | 11.1%  | 7.75%   | Unacceptable: lack of access to justice    |
| Detained below 1 year   | 1.9%      | 4.8%   | 3.35%   | Low  |
| Above 1 year  | 98.1%     | 95.2%  | 96.65%  | High and unacceptable: access to justice   |
| Those with lawyers  | 18.2%     | 11.1%  | 14.65%  | Poor access to justice                     |
| Without legal representation  | 81.8%     | 88.9%  | 85.35%  | Lack of access to justice                  |
| Delayed prosecution   | 99.4%     | 98.4%  | 99%     | Delay in criminal justice delivery         |
| Speedy prosecution  | 0.6%      | 1.6%   | 1.1%    | Poor                                       |
| Few recidivists   | 24.5%     | 24.5%  | 24.5%   |  |
| Many recidivists  | 75.5%     | 75.5%  | 75.5%   | Recidivism: a bad omen                     |
|   |           |        |         |  |
| <b>Tables 4 and 11: Facilities Available – sanitary, toiletry and environmental</b>     |           |        |         |  |
| Good water supply   | 37.7%     | 47.6%  | 42.65%  |  |
| Bad water supply  | 62.3%     | 52.4%  | 57.35%  | A problem                                  |
| Water closet toilet   | 100%      | 93.7%  | 96.85%  | Good                                       |
| Pit toilet  | 0%        | 6.3%   | 3.15%   |  |
| Bucket  | 0%        | 0%     | 0%      |  |
| Clean toilet  | 12.6%     | 28.6%  | 20.6%   |  |
| Not clean   | 87.4%     | 71.4%  | 79.4%   | A problem                                  |
| Toiletries are always available   | 18.9%     | 27%    | 22.95%  |  |
| Toiletries not available  | 81.1%     | 73%    | 77.05%  | A problem                                  |
| I sleep on foam   | 76.1%     | 79.4%  | 77.75%  |  |
| I sleep on mat  | 23.9%     | 20.6%  | 22.25%  | Bad  |
| Cleanliness of the beddings   | 28.3%     | 31.7%  | 30%     |  |
| Beddings not clean  | 71.7%     | 68.3%  | 70%     | A problem                                  |
| Kitchen is clean  | 13.2%     | 31.72% | 22.46%  |  |

|  | Abakaliki | Afikpo | Average | Remark                 |
|--|-----------|--------|---------|------------------------|
| Not clean  | 80.5%     | 63.5%  | 72%     | A problem              |
| I don't know   | 6.3%      | 4.8%   |         |                        |
| Cleanliness of environment   | 64.2%     | 54%    | 59.1%   |                        |
| Untidy environment   | 35.8%     | 46%    | 41%     | Not good enough        |
| <b>Tables 5 and 12: Facilities Available – power and healthcare facilities</b> |           |        |         |                        |
| Good laundry and uniforms  | 48.4%     | 50.8%  | 49.6%   | Just for the convicted |
| Bad laundry and uniforms   | 51.6%     | 49.2%  | 50.4%   |                        |
| Sole dependence on epileptic power supply                                      | 100%      | 100%   | 100%    | A problem              |
| Standby generator  | 0%        | 0%     | 0%      |                        |
| Clinic available   | 93%       | 95%    | 94%     | Good                   |
| Clinic not available   | 7%        | 5%     | 6%      |                        |
| Adequate doctors and nurses  | 43.4%     | 15.9%  | 29.65%  |                        |
| Inadequate doctors and nurses  | 56.6%     | 84.1%  | 70.35%  | A problem              |
| Availability of drugs  | 25.2%     | 31.7%  | 28.45%  |                        |
| Dearth of drugs  | 74.8%     | 68.3%  | 71.55%  | A problem              |
| Clinic is clean  | 78.6%     | 50.8%  | 64.7%   | A problem              |
| Not clean  | 21.4%     | 49.2%  |         |                        |

***Decongesting Prisons in Nigeria: the EBSU Law Clinic model***

|  | Abakaliki | Afikpo | Average | Remark          |
|--|-----------|--------|---------|-----------------|
| <b>Tables 6 and 13: Facilities Available – conscience, sporting and recreation</b> |           |        |         |                 |
| Freedom of worship   | 92.5%     | 90.5%  | 91.5%   | Good            |
| No freedom of worship  | 7.5%      | 9.5%   | 8.5%    |                 |
| Christians   | 85.5%     | 92.1%  | 89%     |                 |
| Moslems  | 14.5%     | 4.8%   | 9.65%   |                 |
| Traditional religion   | 0%        | 3.1%   | 1.55%   |                 |
| School available   | 100%      | 0%     | N/A     | Good            |
| Not available  | 0%        | 100%   | N/A     | A problem       |
| Sufficiency of recreational facilities   | 56.6%     | 39.7%  | 48.15%  | Fair            |
| Not sufficient   | 43.4%     | 60.3%  | 51.85%  |                 |
| Availability of football facility  | 100%      | 50%    | 75%     | Good            |
| Availability of weight lifting facility  | 100%      | 20%    | 60%     | Good            |
| Draft, chess, monopoly, scrabble and others  | 67.3%     | 20%    | 43.65%  | Not good enough |
| No other sporting availability   | 32.7%     | 10%    | 21.35%  |                 |
| <b>Tables 7 and 14: Availability of vocational facilities</b>                      |           |        |         |                 |
| Adequate vocational facility   | 66%       | 49.2%  | 57.6%   | Fair            |
| Not adequate   | 34%       | 50.8%  | 42.4%   |                 |
| Carpentry  | 100%      | 100%   | 100%    | Good            |
| Tailoring  | 100%      | 100%   | 100%    | Good            |
| Barbing  | 100%      | 0      | N/A     | Good/Bad        |
| Welding  | 100%      | 0      | N/A     | Good/Bad        |
| Electrical   | 100%      | 0      | N/A     | Good/Bad        |
| Computing  | 100%      | 0      | N/A     | Good/Bad        |
| Shoemaking   | 100%      | 0      | N/A     | Good/Bad        |

## Part 4

### SUMMARY OF FINDINGS

1. After fact finding visits to the two federal prisons in Ebonyi State of Nigeria, we discovered that we have 914 detainees/convicts in prisons for which capacity is 387.
2. Afikpo prison is operating within the built capacity by having 162 inmates with capacity of 200.
3. In Afikpo 138 are awaiting trial (ATM), while only 24 are serving their terms after proper court conviction.
4. In Abakaliki prison 848 detainees are awaiting trial, while only 66 are serving their terms after proper court conviction.
5. Out of 269 inmates so far interviewed directly or via a questionnaire in both Abakaliki and Afikpo prisons only 65 agreed that they have access to justice, while 204 have no counsel representing them, despite the supposed Federal Government of Nigeria Prison Decongestion Programme.
6. Out of these 269, only 65 are presently going on in court. The rest were merely charged and detained without more.
7. According to our findings, they were remanded because the magistrates courts where they were charged under 'holding charge' had no jurisdiction.
8. There were cases which were sent to the Director of Public Prosecution (DPP) for advice. The advice has either not been given, or the DPP was yet to put their papers together for information or charge to be brought to High Courts of competent jurisdiction.
9. Afikpo prison is generally old, the facility old, obsolete and overdue for repairs or replacement. In both Abakaliki and Afikpo prisons, basic facilities were either inadequate or totally lacking. For example, both Afikpo and Abakaliki prisons have no functional standby generator, and water is a major challenge. Irregular water and power supply in the prisons reflected the general situation in the country. Most prisons had no alternative source of power while water supply was irregular and inadequate.
10. Although recreational facilities, like football and weightlifting are available in Abakaliki, they are grossly inadequate; and completely unavailable in the Afikpo prisons. Both prisons need well established facilities for recreation, like football, basket ball, lane tennis, table tennis and indoor games like monopoly, scrabble, draft, chess etc.
11. There was general unavailability of drugs, medical personnel and equipment in the prisons. Only one doctor serves both Afikpo and Abakaliki, and none has resident doctors. Afikpo prison, for example has only a doctor who visited occasionally from Abakaliki. The prisons did not have the facility to handle psychiatric and ante-natal cases.
12. Transport facilities were grossly inadequate in the two prisons. The prisons need more Green Maria, mini vans, pick-up trucks and ambulances.
13. While Abakaliki prison has a modest computer room for inmates, mini-library and classrooms where inmates receive primary and secondary education and are subsequently



registered for external examinations, however, this facility is lacking at Afikpo prison. There is no school or library facility nor do they have a computer room or any educational facilities at all at Afikpo prison.

14. Abakaliki prison have provision for vocational training in one form or the other. For example, at Abakaliki there are tailoring, electrical, barbing, welding and carpentry workshops, where the trades and vocations are taught in the prison. To the contrary these vocational facilities are absent in Afikpo prison, apart from tailoring and carpentry workshops. Although the inmates at Afikpo are interested in barbing, shoe making and computing, there were no such facilities. Even at Abakaliki where most of the vocational equipment existed, the workshops were ill-equipped with obsolete tools and lacked trained instructors.
15. Like in most prisons in urban areas, there was overcrowding in prisons in Abakaliki prison, with over hundred percent extra detainees; while Afikpo prison operates within built capacity.
16. The state of the cells was poor and hardly fit for human habitation. This was especially so in the awaiting trial cells. Ventilation was poor due to overcrowding. The poor state of the toilets in the cells contributed to the deplorable condition of the cells thereby posing health risks to inmates.
17. Beds and beddings were generally inadequate with many inmates having to sleep on improvised mats and beddings in both prisons.
18. Many inmates had no uniforms. The few uniforms available were old and thread-bare.
19. Feeding in both prisons were thrice in most cases, but not well made and balanced. The prisoners said that the quantity and quality was highly poor and unacceptable. Some of the prisoners, especially at Abakaliki commented that feeding was generally poor even though it was three times a day (but not all days).
20. Residential accommodation for prison officers was virtually non-existent in both Afikpo and Abakaliki prisons. Where they existed, it was grossly inadequate. Office accommodation was also inadequate and more often than not, dilapidated. Office equipment such as file cabinets, computers, photocopiers amongst others, were also not available. Communication and security equipment were also lacking. Chairs and tables were old and needed replacement.
21. It was difficult to obtain records of inmates with legal representation, inmates whose case files were missing, and those whose cases were stalled on account of unavailability of the Investigating Police Officer (IPO) and advice from the DPP. This was because of poor record keeping system in the prisons. Most records in this regard, were obtained through direct interviews with the inmates.
22. Legal representation was generally low in both Afikpo and Abakaliki prisons visited. There were many persons awaiting trial who did not have legal representation. Although some prisons did benefit from the Federal Government's prison decongestion exercise, many prisons did not have records of this exercise to assess its impact. It was also observed that the Federal Government Decongestion exercise, especially assignment of cases to private law firms, concentrated on prisons in urban centres, and in any case was very selective, as over 90% had no access to justice.
23. There were no facilities for the care of pregnant women or nursing mothers in the prisons. Children born in prison were kept with their mothers until they were weaned. No extra

provision was made for the care of such babies.

24. Although very few, children were found in some of the prisons visited. Three children were seen at Abakaliki and one at Afikpo. No special provisions were made for children as this was not a consideration for classification and separation of inmates in the prisons.
25. There were inmates with life threatening ailments in the prisons visited. Such ailments include tuberculosis, HIV/AIDS, cancer, amongst others. 9 of such cases were seen in Abakaliki and 6 in Afikpo prison. Though the clinics were not equipped to handle complex cases like these, there was provision of drugs for some of the ailments like tuberculosis. The anti retroviral drugs for HIV/AIDS were available but were not supplied regularly. Cases involving surgery were referred to the general hospitals. Skin diseases like eczema and ringworm were a common place in both prisons.
26. 12 lunatics were seen at Abakaliki prisons. It should be noted that lunatics require special care and should not to be kept in the prison where there are no facilities for their care and treatment.

### **State of Afikpo Prison**

27. On the state of the prisons, we discovered that Afikpo federal prison is one of the oldest in the country. It was built by colonial masters as far back as 1911.
28. It is one of the first 20 out of the over 227 prisons in Nigeria.
29. Not surprisingly therefore, the environment is very untidy with dilapidated structures mainly made of asbestos
30. It has not had any significant renovation since its inception about 100 years ago.

### **State of Abakaliki Prison**

31. It was built by the colonial administration in 1946.
32. Although the compound outwardly appears neater than the Afikpo prison, the cells are not as neat.
33. The cells may have been left unkempt possibly to deter recidivists from contemplating a comeback.
34. Like the Afikpo prison, no significant renovation has taken place since its construction 63 years ago.
35. Again, open interviews randomly done during the course of our prison outreach programmes revealed as follows:
  - Out of 222 detainees interviewed, only 20 representing about 8% of the population studied agreed that they had access to justice and can afford a lawyer.
  - 93% said that they often concede their legal rights because they can't afford the services of a lawyer.
  - Some said that many times they don't even know when their legal rights are denied them or infringed on.

## Part 5

### 5.0 RECOMMENDATIONS AND CONCLUSION

We recommend that Federal and State Government, the United Nations and its specialised agencies, development partners and well meaning Nigerians should come to the aid of Abakaliki and Afikpo prisons, and indeed Nigerian prisons by building a very good structure to accommodate all the inmates in a humanitarian and reformative environment and that would help to improve their welfare. We further recommend as follows.

#### 5.1 Recommendations

1. To forestall the problem of overcrowding, as revealed especially in Abakaliki prison where we discovered that we have 914 detainees/convicts in a prison whose capacity is not 387; there is need for urgent expansion of the existing prisons and/or construction of new ones to address congestion and to take account of rising crime rate, which in turn inevitably, leads to an increase in prison population.
2. To minimise the burden of ATM, as evident in both prisons. There is need for urgent proactive action. For example, in Afikpo 138 are ATM, while only 24 are serving their terms after proper court conviction. In Abakaliki prison 848 detainees are awaiting trial, while only 66 are serving their terms after proper court conviction. There is need for the establishment of permanent court houses in the larger prisons, to ease access to justice and liberalisation of bail terms.
3. There is need to ensure that Administration of Justice Committees in the States are established and functional. Regular prison visits by the Chief Judges of the States would help a great deal to speed up trial and reduce congestion. In other words, jail delivery should be conducted on a more regular basis. This will go a long way in decongesting our prisons. This is the view of all the interest groups in the business of justice dispensation. According to Chief Bayo Ojo, former Attorney General of the federation and Minister of Justice, those to benefit from this exercise should be the aged, those with terminal illness, and those whose terms would have expired if they were convicted on time. It was through the Jail Delivery Programme that EBSU Law Clinic secured the release of two prisoners within the period under review (2009). During the jail delivery of the Chief Judge, Hon. Justice A.N. Nwankwo the clinic helped in the release of Ngozi Eden of Igbeagu Izzi and Chukwuma Ereke of Ezza Umuhuali.
4. Establishment of Prison Reforms and Decongestion Commission to coordinate all the necessary reforms and promote synergy in the various sectors of the criminal justice administration. Law clinics should be made part of the synergy in the decongestion reform agenda. EBSU Law Clinic based in this jurisdiction will gladly welcome the synergy and partnership in the area of research, fact finding, paralegal advocacy, interview and counselling, among others.
5. There is need to appoint the Legal Aid Council and National Human Rights Commission as prison inspectors to improve implementation of penal policy. Although these federal government agencies operate minimally at Abakaliki, they have no office at Afikpo. More offices should be sent gto Ebonyi State to cover both prisons.

6. Provision of an adequate, well trained corps of professional IPOs and Police prosecutors, who should be well distributed within the state. They should not be too frequently transferred.
7. The location of courts should have consideration for proximity to prisons and there should be in place a regular comprehensive evaluation of the prisons to establish their conditions, to determine the kind and extent of intervention needed. This should be on stated intervals.
8. Constitutional amendment that involves the States in the establishment and running of prisons especially as an overwhelming majority of inmates are sent to confinement by State courts for infractions or alleged infractions of State laws. An assumption of responsibility for prisons by the States would make them amenable to accepting reforms especially where such reforms are cost saving.
9. Radically increasing the funding of legal aid, and recognition of University based law clinics as partners in the prison decongestion business.
10. To minimise the problem of lack of access to justice and legal representation by detainees, there should be mandatory provision of legal aid for accused persons in detention.
11. Reform of the legal aid scheme that enables judges to have at all times, a list of lawyers within their jurisdiction in either Abakaliki or Afikpo, who are registered with the legal aid scheme, so that such lawyers can be appointed by the judges as necessary for persons in detention who do not have legal representation.
12. Provision of adequate and functioning transportation for the conveyance of ATMs to court and hospital, where the need arises.
13. Reform of criminal trial system to ensure speed, for instance:
  - Imposition of time limits for criminal trials where the accused person is denied or unable to satisfy bail terms.
  - Courts within a state, to be given jurisdiction to try detainees regardless of where the offences alleged were committed and, regardless of the detainee's place of detention.
14. Immediate provision of special facilities for the benefit of special categories of prisoners like
  - nursing and expectant mothers
  - infants
  - Prisoners with psychiatric problems
  - Prisoners with special medical conditions like HIV/AIDS, TB, and other transmittable diseases.
15. The prisons are old; therefore, there is need for massive renovation of Afikpo prison which was built in 1911 i.e. about a century (100 years) ago by the colonial masters. It comprises of broken-down structures. Cells are constructed from foundation with asbestos and therefore very hot and not fit for habitation. Abakaliki prison built 35 years after Afikpo prison in (1946) also requires extensive renovation to serve the growing capacity of the prison, as part of the structures are almost collapsing.
16. It need not be emphasised that recreation is vital for the physical and mental well-being of the inmates. There is a dearth of recreational facility at Afikpo prison. The ones at Abakaliki are grossly inadequate; hence efforts should be made to provide spaces within the prison yards

for inmates to have daily exercises Indoor games alone cannot serve as adequate source of recreation for inmates.

17. The vocational facilities aimed at making prisons self sufficient in repairs and minor services should be established. Block moulding industries, electrical and painting workshops should be established. Tailoring workshops should be made more functional to cater for the uniform needs of staff and the inmates at Abakaliki prison. There is near absence of these facilities at Afikpo prison, save tailoring and carpentry. It is recommended that urgent efforts must be made to provide equipment and trainers for shoemaking, barbing, computing, electrical and electronic repairs etc. at Afikpo prison. This will help in eliminating the recidivism in criminal justice system in Nigeria.
18. As is the case with Abakaliki, educational facility should be established in Afikpo prison, as there is none there as at the time of our evaluation. We recommend that, government should establish a standard primary/secondary school and employ qualified teachers to enlighten the inmates. Again, the educational facilities in the prisons should be made functional, as education is a key component of the rehabilitation and reformation process of inmates. There is also need for provision of functional libraries in the prisons. The prisons authority should explore the possibility of liaising with organizations such as Book Aid International (UK), National Commission for Mass Literacy and others, for this purpose, especially Abakaliki prison that already has a school.
19. A functional healthcare facility should be established at Afikpo and resident doctors and nurses deployed. The provision of essential and relevant drugs should be made a priority in the health units of the prisons. In Abakaliki prison, and indeed Afikpo, access to anti-retroviral drugs for HIV positive inmates needs to be scaled up. There is also need to provide adequate medical personnel and equipment in all prisons. In addition, special provisions should be made for nursing and/or pregnant mothers taking into consideration their special needs.
20. There is need to provide transport facilities in both prisons to augment the existing one. This is essential, because the absence of transport facilities delay trials and contribute to prison congestion.
21. Water supply is a big challenge to both Abakaliki and Afikpo prisons. Adequate water supply must be provided in all the prisons. The contracting of water supply to water vendors is not reliable. The fetching of water from streams outside the prisons exposes inmates to unsafe water and carries much health and security risks. This must be stopped as soon as practicable. This is because, inadequate water supply means that toilets which are located within the cells give offensive odour thereby making the cells intolerable and increasing the likelihood of the outbreak of epidemics. This should be addressed in line with national and international standards.
22. Similarly, power supply to the prisons must be improved to aid food and drugs storage as well as make prison environment more habitable. It will enhance the welfare and security of inmates and staff. Hence provision of alternative power supply generator that is well maintained and functional is essential.
23. There is urgent need to reduce prison population especially the ATI. Inclusive within this

broad recommendation is the need to institutionalise prison decongestion schemes and streamline all programmes geared towards decongestion.

24. The environment of Abakaliki prison is a smokescreen from the situation inside. Afikpo prison is deplorable within and outside the cells. It is therefore essential that the conditions of prison cells with particular regard to toilet facilities and ventilation needs immediate improvement for health and security reasons.
25. The increase of the feeding allowance of inmates to N200 per day is a welcome development. This has however not impacted significantly on the quality of food in the prisons. Efforts should be made to ensure efficient application of the improved funding for food in the prisons. In addition, the provision of good food storage facilities in the prisons is recommended as this would improve food handling.
26. Most of the prison staff interviewed, mentioned poor condition of service. The welfare of prison officials needs to be given urgent attention in order to motivate them to provide the services more professionally and appropriately.
27. Similarly, adequate barracks should be built for the officers close to the prisons while the existing barracks which are in a state of disrepair should be renovated. Car loans and housing loans should be organised for prison officials to boost their morale in the job.
28. The prison authority should provide uniforms for the officers at reasonable intervals, considering the need for the officers to be in the uniforms daily and the type of duty some of them are involved in. There is need for them to appear smart at all times so that the inmates can accord them appropriate respect.
29. The prison staff interviewed at both Abakaliki and Afikpo prisons gave inconsistent figures as to the number of inmates in their custody. This is unfortunate. The inability of the prisons to provide accurate necessary data on inmates in their custody should be addressed urgently. Record keeping in prisons should be improved. This should be computerized in line with standards in other establishments and organizations. In this regard, there is need to build the capacity of prison officials in information technology for better record keeping to facilitate study, research and reform efforts in Nigeria prisons.
30. Young and under aged children were sighted in both prisons. There is urgent need to ensure that juveniles are not kept in prisons designated for adults. In this regard, Borstal Institutions should be established in each geo-political zone in the country.
31. To meet international standards, there is urgent need to remove all mentally ill inmates from prisons to psychiatric hospitals or institutions where they can receive appropriate care and treatment for their health conditions. This is particularly vital in Abakaliki prison.
32. The condition of *lifers* and inmates on death row should be improved. The relevant authorities may commute the sentences appropriately, in view of the unofficial moratorium being enjoyed by such inmates. In this regard, there is need to consider the desirability of abolition of death penalty during the on going constitutional reforms.
33. Stoppage of “holding charge”. A situation where people are put in prison custody without charge and pending the completion of investigation makes for over congestion of the prison. This practice would be discouraged in order for the prison to be decongested. According to our findings, most of the inmates are detained on “holding charge”. They were remanded

because the magistrates courts where they were charged under “holding charge” had no jurisdiction. It has been said at the courts and all fora that “holding charge” is not part of Nigerian Law. This should be enforced by a joint effort of the courts, the police and the prison authorities. The policemen always charge respective cases to the appropriate courts. In the same vein, the police should always take or charge the offenders in the court that has the competent jurisdiction to entertain the matter, to avoid declining jurisdiction and dump most innocent people in the prison, in the name of remanding the person.

34. The courts who give remand orders pending advice from the DPP should ensure that return dates are given to ensure expedited compliance, instead of just adjoining the case sine die at the cost of the detained, who may be there *sine die*!
35. Provision of Prison Alternatives. Penal reform should address the need for the introduction of non custodial measures as an alternative to imprisonment. The absence of prison alternatives like probation or suspended sentence, plea-bargaining, community service, parole, etc. which are absent in Nigeria have gone a long way in compounding prison congestion. These prison alternatives should be provided for non-violent offences like misdemeanour.
36. Compulsory provision of *pro-bono* services by lawyers and interest groups. Adequate *pro-bono* services should be provided by lawyers in order to ease-off the over-congestion in Nigerian prison. The resource persons at the Detainees and Indigent Help Centre upheld this point. They maintained that the option of pleading guilty or not guilty does not relieve the prison of heavy traffic since the two still lead suspects to the prison. Therefore, a suspect needs a lawyer to guide and defend him. It noted that the Legal Aid council that would have been doing *pro-bono* services has not been effective because of poor logistics and inadequate human resources. Therefore, very little help or none at all is coming the way of poor accused persons in Nigeria thereby making them to continue to congest the prisons.
37. Use of prerogative of mercy exercised. The use of prerogative of mercy by the country’s president and Governor of a state is one sure way of decongesting the prison. This means the pardoning of a convict on the basis of mercy. This is determined by so many factors among which are: old age, sign of penitence on the part of the convict, long-delay in the dispensation of justice which has led to the accused staying in awaiting trial for a period longer than the time which the accused would have served if convicted on time.
38. Prompt dispensation of justice. There is a saying that justice delayed is justice denied. Quick dispensation of justice is *sine-quo-non* to good justice. This can be achieved by employing more legal officers, creation of more magisterial districts and judicial divisions.

## 5.2 Conclusion

The above findings show that prison outreach programmes cannot be timelier than now. It is clear in the two federal prisons studied that most prisons are carrying more than built capacity, due to the problem of “holding charge”, lack of legal representation and access to justice, recidivism, slow criminal justice system, and poor judiciary and prison infrastructure, inter alia. This reflects the general prison condition in Nigeria. We in EBSU Law Clinic have decided to use bicycle-type access to justice, leaving Pajero -type justice delivery system to lawyers. Student clinicians are a ready paralegal pool to use to enhance access to justice. Our prison project is poised to change the status quo, and drive towards reform, which the prisons are meant to do. While commending the government on steps taken so far, the government is urged to strengthen efforts to improve the appalling state and living conditions in Nigerian prisons as well as overhaul the criminal justice delivery system. Against the background that prison reforms in isolation of overhauling other arms of justice-delivery would not achieve desired results, we also use this medium to reiterate the need for quick passage of the Prison Act (Amendment Bill) as well as strengthen other measures aimed at reforming the Criminal Justice Administration in Nigeria. If the above findings and recommendations are implemented, the problem of prison congestion will be a thing of the past.



## Appendix A

### Questionnaire

#### EBSU LAW CLINIC PRISON DECONGESTION AND FACILITY EVALUATION PROJECT QUESTIONNAIRE (EPDAFEPQ) FOR ABAKALIKI AND AFIKPO FEDERAL PRISONS 2010

Dear respondent,

This project is aimed at accessing the conditions of the inmates of this prison, with a view to seeing how best the clinic can assist in the decongestion of the prison by providing legal and other services to the inmates. We therefore, beseech you to give us accurate information to the best of your knowledge so that we can assist you optimally. We shall assist you in putting down your answers where necessary.

Thank you.

- 1 i. Name of inmate: .....
- ii. Nationality: ..... State of origin .....
- LGA ..... village .....
- 2 i. Age: ..... ii. Sex: .....
3. Marital status: .....
4. Why are you here? (i.e. the offence / accusation what brought you here) .....
5. For how long? .....
6. Are you: (a) Awaiting trial / or (b) convicted / or (c) still undergoing trials? (Please underline the category)
7. If under a or c above, do you have a lawyer representing you? (YES) (NO)
8. If yes, how often do you keep in touch with him/her? .....
9. Do you think that your prosecution is being delayed? Yes or No (underline)
9. Do you know why your prosecution has been or is being delayed? Yes or No. (circle please)  
If yes why .....
10. Would you like to be freed? .....

**PRISON FACILITIES ASSESSMENT**

11. What is the state of infrastructural facilities?

Sources of water

- i. (Eg. Pipe borne water, bore hole water, well (underline), any other souce .....
- ii. Is the water good Yes No (circle please)

12. Toilet and sanitary facilities:

- i. Types of toilet (pit, water closet system, bucket system)
- ii. Is the toilet well kept? Yes No (circle please)
- iii. Do you have toiletry? Yes No (circle please)
- iv. Do you use soap? Yes or No (circle please)

13. Sources of light or power supply

- i. PHCN Or Generator Or Lantern Or Candle (Underline)
- ii. Is the supply regular? Yes No (circle please)

14 What is the state of the following facilities?

- i. Beddings:
  - (a) Foam, Mat, floor (underline)
  - (b) Do you share your space with anyone? Yes or No (circle please)

15. Uniforms:

- (a) Do the prison authority provide you with uniforms? Yes or No (circle please)
- (b) If yes, do you wash it often Yes or No (circle please)

16. What is the state of facilities for worship? .....

17. What is the state of healthcare facilities and personnel?

- i. Healthcare facilities (clinics, Hospital) etc .....
- ii. Healthcare personnel (doctors, nurse etc) .....

18. Are There Adequate Recreational Facilities? Yes or No (circle please)

If yes name those available

- A .....
- B .....
- C .....
- D .....

19. Are There Vocational Skill Facilities? Yes Or No (Circle Please)

If Yes name them. ....

**Thank you for your time**

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# 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

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Paper presented at the 11th International Journal of Clinical Legal Education Conference;  
11 – 13 July 2012, Radisson Blu Hotel, Durham  
*Entering the Mainstream: Clinic for All*

## SHORT BIOGRAPHICAL STATEMENT

I am the Clinic Administrator of the Women's Law Clinic, Faculty of Law, University of Ibadan, Nigeria. I ensure the effective running of the clinic on a daily basis. I supervise law students and ensure that the clinicians and students are working as a team. I have a special interest for women and children issues. I received both my Bachelor of Laws (with honors) and Masters of Laws from the University of Ibadan, Nigeria. I am a member of the Nigerian Bar Association and the International Federation of Women Lawyers (FIDA).

## I INTRODUCTION

There is a vital connection between legal education, public interest and social justice because lawyers use their education for the benefit of the society. They render their services to those who are unable to afford legal services and in addition, challenge injustice under the justice system. Law students are trained by utilizing the techniques of clinical legal education and they are imbued with a social and professional responsibility to pursue social justice in society.

Much of the literature which propounds clinical methodologies in legal education implicitly understands that exposure to a social justice mission within a guided practice setting provides students not only with a key linkage between their legal education and their practice competence, but also with the intellectual foundation for a long-term engagement with the advancement of social justice.<sup>1</sup>

The proponents of a social justice dimension and clinical legal education often refer to the “dual goals of hands-on-training in lawyering skills and provision of access to justice for traditionally unrepresented clients”.<sup>2</sup>

This paper seeks to explore the relationship between clinical legal education and social justice using the Women’s Law Clinic in the University of Ibadan, Nigeria as an illustration.

## II BACKGROUND ON CLINICAL LEGAL EDUCATION IN NIGERIA

The Network of University Legal Aid Institutions (NULAI) is a nonprofit, non-political and nongovernmental organization promoting clinical legal education, reform of legal education, access to justice and legal aid in Nigeria. NULAI Nigeria was established on 16th October 2003. It pioneered the introduction and development of clinical legal education in Nigeria and currently coordinates all existing law clinics.<sup>3</sup>

Clinical legal education is the strategic approach adopted by NULAI through legal empowerment and public legal education to bridge the gap of gross human rights neglect and violations resulting from ineffective legal aid systems and criminal justice administration; lack of pro-bono culture amongst lawyers; exclusion of the rural population from access to justice and social justice; poverty; and challenges of geographical location of communities.<sup>4</sup>

Prior to clinical legal education, law was taught to students via lectures and lecture notes without applying much of practical skills as they lacked the ability to analyse, interpret and apply theoretical knowledge to practical cases. This was reiterated by Justice Warren Burger when he stated that “the shortcomings of today’s law graduate lies not in a decent knowledge of law but that he has

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- 1 Voyvodic, R. and Medcalf, M. “Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor” *Washington University Journal of Law and Policy*. [Vol. 14:101] Retrieved through <http://www.papers.ssrn.com/sol3/Delivery.cfm%3...> on June 2012
  - 2 Barry, M., Dubin, J.C. and Joy, P.A. (2000) *Clinical Education for this Millennium: The Third Wave*, (reprint from) *7 Clinical Law Review*, Volume 1, 69-70. The dual goals of Clinical Legal education are two-fold. Students are taught professional and ethical values while at the same time learn professional responsibilities and the need to pursue justice and fairness in resolving client problems.
  - 3 NULAI Nigeria 2010 Activities Report & Strategy Paper. Retrieved through <http://www.nulai.org/index.php%3Foption%3Dcom...> On May 2012
  - 4 NULAI Nigeria 2010 Activities Report & Strategy Paper. Retrieved through <http://www.nulai.org/index.php%3Foption%3Dcom...> On May 2012
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little, if any, training in dealing with facts or people- the stuff of which cases are really made.<sup>5</sup>

The law faculties had functioned strictly on the traditional way of teaching<sup>6</sup> and they continued to function with a strict and conservative attitude towards the training program<sup>7</sup> and were seen as institutions where theories of Law were taught without imparting practical skills through the five year LL.B program.<sup>8</sup> The absence of these practical skills was reflected in the quality of lawyers produced by law faculties. The only semblance of practical training to which the Nigeria law student was exposed was at the Nigerian Law School. In the Nigerian Law School, a lot of skills subjects were taught in theory only without exposing the students to practical training.

NULAI therefore devised that CLE should not only be taught in the Nigerian Law School but the training should start from the Universities.<sup>9</sup> These Nigerian faculties of law, University based law clinics are non-profit organizations that allow law students under the supervision of qualified lawyers to provide free legal services and access to justice for the under privileged, deprived and neglected members in the different communities.<sup>10</sup> A law clinic can be said to be an educative center where students are exposed to the socio-economic injustices in a society which should be viewed as a learning environment where students identify, research and apply knowledge; where they take on cases and conduct them as they would be conducted by actual lawyers.<sup>11</sup> Law clinics promote social justice and thereby, foster systematic change.<sup>12</sup> It can also be defined as offices staffed by law students under the supervision of qualified lawyers who provide free legal services to indigent members of the community ( that is, they deal with live clients with real life problems).<sup>13</sup> Law clinics in Nigeria serve as a medium for students to appreciate the social perspective of legal practice.

However, with the addition to the establishment of University-based law clinics, the current Nigerian law school curriculum has changed significantly and introduced clinical legal education into its syllabus.<sup>14</sup> Exposure to live cases and practical situations through law clinics and the one year program at the Nigerian Law School give students opportunities to experience the realities

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5 Burger, W. (1973) The Special Skills of Advocacy: Are Specialized Training and Certification of advocates essential to our System of Justice 42 FORD. L. REV. 227, 232 . Law students should be trained while in the University so that they will start acquiring practical skills before they go to Law School.

6 This meant that there was no form of interaction between the teacher and the students. The teacher would come to the class; dictate notes without educating the students on practical skills.

7 Network of University Legal Aid Institutions (NULAI), Training Manual on Clinical Legal Education Teacher Training Workshop for Law Teachers, University of Ibadan. 26th-27th February, 2010. Pg.5

8 Clinical legal education curriculum for Nigerian Universities' Law faculties/Clinics Retrieved through <http://www.nulai.org/index.php%3Foption%3Dcom> on June 2012

9 CLINICAL LEGAL EDUCATION Curriculum for Nigerian Universities. Retrieved through <http://www.nulai.org/index.php%3Foption%3Dcom> on May 2012

10 This will depend on the location of the clinics

11 Richard L., "Clinical Legal Education Revisited" Professor of Law, Cardiff University, Wales, United Kingdom, Pg.5 Available at <http://www.law.cf.ac.uk/research/pubs/repository/21> last visited on May, 2012 A Law clinic best defines this situation where students learn when they come into contact with clients especially indigent people. They will then be able to put into practice what they learn from the classrooms in the clinic.

12 Voyvodic, R. & Medcalf, M. (2004) Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The case of Legal Assistance in Windsor, 14 WASH. U. J.L. & POL'Y 101, 103

13 McQuoid, DJ. (1986) The Organization, Administration and Funding of Legal Aid Clinics in South Africa, 1 NUI 189-193

14 Ibid.

of legal practice and understand the context in which laws develop and how the legal system can improve.

There are presently, fourteen established Law Clinics in Nigeria.<sup>15</sup>

Clinical Legal Education is in the midst of an exciting period of growth and development, prompting clinicians around the world to reflect on what clinical legal education's remarkable successes over the past 40 years mean for the future.<sup>16</sup>

It is an emerging trend in Nigeria which has been embraced by law teachers and students. It has impacted significantly on the knowledge of law and the acquisition of practical skills by law students.<sup>17</sup> The final year students of the Faculty of Law Women's Law Clinic learn most effectively by participating in their own education when they come into contact with clients.<sup>18</sup>

Legal education in Nigeria operates under curriculum and regulations set by the Council of Legal Education and the National Universities Commission. The students admitted after secondary school education go through a five-year program in the University. The candidates with Bachelor's degrees in other disciplines and with G.C.E. Advanced level or equivalent are admitted to a four year degree program in Law.

### III CONCEPTUAL CLARIFICATION

#### CLINICAL LEGAL EDUCATION

Clinical Legal Education can be defined as an educational program grounded in an interactive and reflective teaching methodology with the main aim of providing law students with practical knowledge, skills, and values... Clinical legal education is a dynamic style of learning also described as "experiential learning" or "learning by doing." If done within a law school, a clinical program may be based on real or hypothetical cases. There are also "simulation" clinics – focused on role-playing and simulating real life situations.<sup>19</sup>

CLE is essentially a multi-discipline, multipurpose education which can develop human resources and idealism needed to strengthen the legal system... a lawyer, a product of such education, would be able to contribute to national development and social change in a much more constructive manner.<sup>20</sup>

Clinical legal education can also be the use of any kind of practical or active training for legal

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15 Ibid. For more information, see [www.nulai.org](http://www.nulai.org)

16 Wizner, S. (2002), "The Law School Clinic: Legal Education in the Interests of Justice, Faculty Scholarship Series. Paper 1843. Retrieved through <http://www.digitalcomms.law.yale.edu/cgi/vie> on June 2012

17 Clinical legal education curriculum for Nigerian Universities' Law faculties/Clinics Retrieved through <http://www.nulai.org/index.php%3Foption%3Dcom> on June 2012

18 Quigley, W.P. (1995) Introduction to *Clinical Teaching for the New Clinical Law Professor: A view from the First Floor*, 28 AKRON L. REV. 463, 475

19 Ateneo Human Rights Center And Open Justice Initiative, Training Manual Of First Southeast Asian Clinical Legal Education Teachers' Training January 30 – February 3, 2007 Manila, Philippines, p. 23

20 Kaur, K. "Legal Education and Social Transformation" available at <http://alsonline.amity.edu/Docs/alwjlegkk.pdf> on June 2010

professionals to impart such skills as the ability to solve legal problems through the use of various dispute resolution mechanisms providing legal representation, the recognition and resolution of ethical dilemmas, promoting justice, fairness and morality.<sup>21</sup>

From the above definitions, clinical legal education has essential characteristics which are included in many clinical programs: Firstly, they are linked to a law school; secondly, there are real facts involving real people and thirdly, students are exposed to practical aspects of the legal profession while working in a law clinic under the supervision of clinic supervisors.

## SOCIAL JUSTICE

Social justice as it is would depend on a variety of factors, be it social, economic or political. It can be defined as the fair distribution of health, housing, welfare, education and legal resources on an affirmative action basis to disadvantaged members of the community.<sup>22</sup> It conforms to the natural law that all persons, irrespective of ethnic origin, gender, race or religion are to be treated equally and without prejudice.<sup>23</sup>

Social Justice through access to justice is aimed at educating the neglected members of a community while addressing their legal problems. The social justice dimension is used by clinical law teachers to teach students on how to educate clients on their rights. The focus on social justice is important "not only because of its effect upon clients but also because of its effect upon students."<sup>24</sup> What clinical legal education does is to take students out of their comfort zone and put them in a place where they are not familiar and which inevitably, enables them to interact with indigenous people. It emphasizes that everyone deserves equal opportunities; economically, politically and socially and it works on the universal principles that guide people in knowing what is right and what is wrong.<sup>25</sup>

## IV RELATIONSHIP BETWEEN SOCIAL JUSTICE AND CLINICAL LEGAL EDUCATION

The central goal of clinical legal education has been to provide professional education in the interest of justice. Its 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 instills in students a professional obligation to perform public service; and to challenge tendencies in the students toward opportunism and social irresponsibility.<sup>26</sup> It therefore teaches students how to learn from

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21 Wilson, R.J. (1996) "Clinical Legal education as a means to improve Access to Justice in Developing and Newly Democratic Countries; (A Paper Presented at the Human Rights Seminar of the Human Rights Institute International Bar Association, Berlin)

22 Cf AM Honore "Social Justice" in R Summers(ed) *Essays in Legal Philosophy* (1968) 68; PN Bhagwati "Human Rights as Evolved by the Jurisprudence of the Supreme Court of India" 1987 *Commonwealth Legal Bulletin* 236.

23 What is Social Justice? Retrieved through [www.businessdictionary.com/definition](http://www.businessdictionary.com/definition) on June 2012

24 Guggenheim, M. (1995), *Fee Generating Clinics: Can We Bear the Costs?* 1 *Clin. L. Rev.* 677, 683

25 Social Justice Definition: Retrieved through [www.socialjusticedefinition.com](http://www.socialjusticedefinition.com) on June 2012

26 Duncan, K. (1970) *How the Law School Fails: A Polemic*, 1 *Yale Rev. L & Soc. Action* 71, 80.

experience,<sup>27</sup> enabling them to combine the theoretical and practical aspects of law and expose them to social justice issues.

Social Justice and clinical legal education exposes students not only to lawyering skills but also to the essential values of the legal profession and the provision of competent representation; promotion of justice, fairness, and morality; continuing improvement of the profession; and professional self-development.<sup>28</sup>

Clinical programmes have Social Justice as their objective. Through social justice, students experience first-hand how people outside of their community live. It emphasizes societal concerns, including issues of equity, self determination, interdependence, and social responsibility.<sup>29</sup> Clinical law teachers have a responsibility to teach students about their social and professional responsibilities, the lack of access to justice and the perpetuation of social inequality.<sup>30</sup> Clinicians must therefore maintain their professional responsibility to clients once representation commences.<sup>31</sup> Clinical law teachers have the moral responsibility of making these students commit to social justice. They should engage with students on a deeper level by teaching beyond skills training.<sup>32</sup> Apart from the acquisition of practical skills, law teachers should not only expose students to the inequality of resources in a society, but should also inculcate in them a sense of their own ability and responsibility for using law to challenge injustice by assisting the poor and the powerless.<sup>33</sup>

Clinics are client-centered and are all about building and sustaining relationships within these communities. They foster in students community lawyering. Clinical legal education gives a window of opportunity to students by getting them out of the classroom into the real world of law, from which they return to a deeper understanding of how legal doctrine and legal theory actually works -or does not work<sup>34</sup> and therefore, instilling in them the value and duty of public service.<sup>35</sup>

In other words, it empowers students and thereby empowers clients because the knowledge and experience gained by the students are put into practical use from their undergraduate days through to their years in actual practice after Call to Bar.

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27 Kreiling, K.R. (1981) Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience through Properly Structured Clinical Supervision, 40 Md. L. Rev. 284

28 The American Bar Association Section on Legal Education and Admissions to the Bar, Legal Education and Professional Development-An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 207-21 (1992). This ABA report is known as the MacCrate Report in recognition of Robert MacCrate, Chair of the Task Force that produced the report. See also What is Social Justice? Retrieved through [www.wisegeek.com/what-is-social-justice.html](http://www.wisegeek.com/what-is-social-justice.html) on June 2012

29 Bell, L. A. (1997). Theoretical foundations for social justice education. In M. Adams, L. A. Bell, & P. Griffin (Eds.), *Teaching for diversity and social justice: A sourcebook* (pp. 3-15). New York: Routledge.

30 Wizner, S. (2002), "The Law School Clinic: Legal education in the Interests of Justice". Faculty Scholarship Series Paper 1843. Retrieved through [http://digitalcommons.law.yale.edu/fss\\_papers/1843](http://digitalcommons.law.yale.edu/fss_papers/1843) on April 2012

31 Chavkin D.F. (1998) "Am I My Client's Lawyer?: Role and Definition and the Clinical Supervisor, 51 SMU L. Rev. 1507, 1513

32 Wizner, S. Ibid.

33 Aiken, J.H. (1997), Striving to Teach "Justice, Fairness and Morality", 4 CLIN. L. REV. 1, 6 n. 10

34 Pincus, W. (2001) *Concepts of Justice and of Legal Education Today*, in *Clinical Education for Law Students* 125, 131 (1980).

35 See Wizner, S. (2001) *Beyond Skills Training*, 7 Clinical L. Rev. 327, 329



Stephen Wizner, stated that, "It was not enough to simply provide students the opportunity to experience the real world through the representation of low-income clients but to also sensitize the students as to what they were seeing, to guide them to a deeper understanding of their client's lives..., and to help students develop a critical consciousness imbued with a concern for social justice".<sup>36</sup>

Through clinical legal education programmes, students develop a personal commitment to supporting the rule of law, human rights, and social justice.<sup>37</sup> They realize how important legal representation is to the resolution of the client's problems, thereby making the student conscious of her responsibility not only to the client<sup>38</sup> but also to the surrounding communities. The most important aspect of their exposure is that they learn to develop and apply legal theory through the actual representation of clients.<sup>39</sup>

Clinical programs therefore, offer students "a practical vision of law as an instrument of social justice," and provide students an opportunity "to have social impact and create new and better laws"<sup>40</sup> and enabling students understand how effective the legal system is.<sup>41</sup>

This is achieved by helping students develop the skill of self-reflection. A process described by Donald Schon as 'reflective practice' or 'reflection in action'.<sup>42</sup> These skills allow lawyers and law students to solve problems when faced with real life problems.<sup>43</sup>

According to Buckley,<sup>44</sup> the process of encouraging students to embrace a commitment to social justice in their future professional work is by maintaining that education infused with social justice and humanitarianism should produce a student who is characterized by three qualities. The first quality is an affective dimension of social justice: the student should have sensitivity to injustice and innocent suffering in the world. Typically, an examination of injustice is what yields this sensitivity. This awareness, however, is not sufficient to ensure the transformation process. Many students are aware of injustice and only pity those who suffer as a result. The second quality is an intellectual dimension of justice: the student should know the causes/conditions that cause and perpetuate human suffering by understanding theories of oppression and liberation. This is by having direct contact with live clients. This understanding is critical to motivating the student

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36 Wizner, S. (2001), *Beyond Skills Training*, 7 Clin. L. Rev. 327, 338-39

37 A Handbook of the Open Society Justice Initiative, Legal Clinics: Serving People, Improving Justice

38 Wizner, S. (2002), "The Law School Clinic: Legal education in the Interests of Justice". Faculty Scholarship Series. Paper 1843. Retrieved through [http://digitalcommons.law.yale.edu/fss\\_papers/1843](http://digitalcommons.law.yale.edu/fss_papers/1843)

39 40 Wizner, S. (2002), "The Law School Clinic: Legal education in the Interests of Justice". Faculty Scholarship Series. Paper 1843. Retrieved through [http://digitalcommons.law.yale.edu/fss\\_papers/1843](http://digitalcommons.law.yale.edu/fss_papers/1843)

40 Askin, F.(1999) A Law School Where Students Don't Just Learn the Law: They Help Make the Law, 51 RUTGERS L. REV. 855

41 The Law Clinics help the students to gain a good knowledge of Law. Clinical legal education enables the students on how the Law works in action. See Clinical Legal Education- An Overview, available at [www.lawyersclubindia.com](http://www.lawyersclubindia.com) on 05/06/2012

42 Schon, D.A. (1987) Educating the Reflective Practitioner 31-36

43 For more, See Menkel-Meadow, C. (1994). Narrowing the Gap by Narrowing the Field: What's Missing From the MacCrate Report-Of Skills, Legal Science and Being a Human Being, 69 Wash. L. Rev. 593, 600

44 Buckley, M. J. (1998). *The Catholic University as promise and project: Reflections in a Jesuit idiom*. Washington, DC: Georgetown University Press.

to engage in work that tries to change these conditions.<sup>45</sup> The third quality is the pragmatic or volitional dimension of justice: the student must learn tools and skills that will allow him or her to effectively intervene and, in doing so, contribute to a vision of social justice.

## V BENEFITS OF CLINICAL LEGAL EDUCATION

The benefits of clinical legal education are numerous. Students learn by doing or experiential learning<sup>46</sup> it gives students the opportunity to explain why they are taking certain steps, this enables them to discuss and reconsider their actions.<sup>47</sup> Clinical programs are meant to teach lawyering skills, ethical and professional values, and to introduce students to the legal profession under the guidance and supervision of clinical law teachers.<sup>48</sup>

It can promote involvement with the indigenous community: the greatest contribution of clinical legal education is to ensuring access to justice for those who would otherwise have none.<sup>49</sup> This the students achieve by their exposure to and interaction with the indigenous people in that particular community.

The clinical method enables students to confront challenges, solve legal problems of clients and change their perspective or outlook on the rule of law. Involving law students in legal services projects would give the students a deep appreciation of the importance of law clinics.

Clinics provide students with the opportunity to integrate, in an actual practice setting, all of the fundamental lawyering skills. Students sharpen their understanding of professional responsibility and deepen their appreciation for their own values as well as those of the profession as a whole.<sup>50</sup>

Whether actual or suppositional, real life or by simulations or/and by placement, the features of clinical legal education have been summarized by various researchers<sup>51</sup> to include: a transition from theoretical teaching to practice; changing students' mode of thinking; interactive teaching method that allow students and teachers to discuss freely; diversity of teaching places; unique evaluation method based on teaching objectives<sup>52</sup>; opportunity to apply knowledge; calls for reflection and self examination; embracing a skill based approach, allowing more issues to be

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45 For more information, see Goodman, D. (2001). *Promoting diversity and social justice: Educating people from privileged groups*. Thousand Oaks, CA: Sage.

46 Madhava Menon, N.R. (1998), "Clinical Legal Education", Chapter 2, Pg.25, Eastern Book Company Lucknow

47 See Richard L., "Clinical Legal Education Revisited" Professor of Law, Cardiff University, Wales, United Kingdom, Pg.5 Available at <http://www.law.cf.ac.uk/research/pubs/repository/21> last visited on May 2012

48 See Richard A. P., (1995) Overcoming Law 82 not sure what this number refers to? Retrieved from <http://scholarship.law.marquette.edu/cgi/v...> on February 2012

49 See Charn, J. (2003) *Service and Learning: Reflections on Three Decades of the Lawyering Process at Harvard Law School*, 10 Clinical L. Rev. 75, 77-78 (2003); Howard, J. (1995) *Learning to "Think Like a Lawyer" Through Experience*, 2 Clinical L. Rev. 167, 176

50 A.B.A. TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, *supra* note 33, at 238.

51 See Richard L., footnote 11 above and Shuyun S., "On the Teaching Objectives and Special Features of Clinical Legal Education" in *Advanced Educational Technologies*; p.167-169. Retrieved through <http://www.wseas.us/./EDUTE-30.pdf>

52 Shuyun S., "On the Teaching Objectives and Special Features of Clinical Legal Education" in *Advanced Educational Technologies*; p.167-169. Retrieved through <http://www.wseas.us/./EDUTE-30.pdf>

debated openly; promoting students' motivation and experience; actual practice of lawyering skills such as interviewing, negotiating, and analyzing, drafting, listening advising and confronting ethical issues that arise in real cases.<sup>53</sup>

Clinical legal education is not only beneficial to students but also to clinical law teachers. It therefore encourages: strong interaction between teachers and students; development of theoretical knowledge in practice; significant amounts of feedback by both students and teachers which shows the level of knowledge gained by students from teachers.<sup>54</sup>

## VI LAW CLINICS IN NIGERIAN UNIVERSITIES

One of the failings in contemporary legal education is that all too many students graduate with a vast doctrinal base of knowledge sealed within a context that cannot be translated into practice.<sup>55</sup>

The driving force behind the establishment of law clinics in Nigeria was as a result of the Review Committee set up by the Council of Legal Education<sup>56</sup> which recommended that: "*the adoption of knowledge and skills based curricula and teaching process that enhanced the competence of lawyers in practice irrespective of area or place of practice...there were recommendations on the teaching methods advising the adoption of active, student centered techniques as against the traditional lecture type which is most inappropriate for a vocational school.*"<sup>57</sup> It stated that more interactive methods in teaching should be incorporated into the curricula of students.<sup>58</sup>

## VII THE WOMEN'S LAW CLINIC, UNIVERSITY OF IBADAN

The Women's Law Clinic was established on the 18th July, 2007. It is a specialized clinic for women and women-related issues. The establishment of the Women's Law Clinic (WLC) at the University of Ibadan was aimed at serving poor women with a focus on access to justice in Ibadan community and its environs. It provides (free legal aid) pro bono services for the community; its main focus being less advantaged women (who are financially indigent) and in addition, sees to the protection of women's rights. It encourages alternative dispute resolution mechanisms (besides litigation), that remedy wrongs and at the same time maintain the integrity and harmony of the community. This creates a win-win situation as students obtain practical legal skills and legal services are provided for the poor clients.

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53 Moscato, S. (2007) "Teaching Foundational Clinical Lawyering Skills To First-Year Students" *The Journal of the Legal Writing Institute*, Vol. 13, 11/26/2007

54 A Handbook on the Practical Forms of Education at the Faculty of Law of the Palacky University, Olomouc. A project financially supported by the European Social Fund and the state budget of the Czech Republic.

55 Mitchell, J.B.; Hollingsworth, Betsy R, Clark, P & Lidman, R. (1995) "And Then Suddenly Seattle University Was on its Way to a Parallel, Integrative Curriculum, 2 CLIN. L. Rev. 1,21

56 The Council of Legal Education is the body that governs legal education in Nigeria

57 Maman, T. (2009) Globalization of Legal Practice: The Challenges for Legal Education in Nigeria, Paper delivered at The 2nd Annual Business Luncheon of S.P.A. Ajibade and Co- Legal Practitioners, 19th November, 2009 pg.15. Retrieved from <http://www.spaajibade.com/admintoolnew/upl...> on June 2012

58 The Nigerian Law School has done this by changing the one year curricula

The clinic provides a legal platform for women, especially the poor, who have little or no access to justice as a result of social and cultural factors.

The objectives of the WLC are: to provide free legal services to less privileged (indigent) women in Ibadan and its environs; to train law students using the WLC in the practice of law by utilizing techniques of clinical legal education; to research and document the basic problems on women's access to justice; and to carry out intervention programmes in order to facilitate women's access to justice.

Clinical Legal Education in the Faculty of Law, University of Ibadan, Nigeria, is not taught as an independent course but it is integrated in Criminology, Public & International Law at the undergraduate level; and Comparative Family Law at the Postgraduate level. Students who work in the clinic are given a window into the real world of practice.<sup>59</sup> This is achieved by the students' involvement and interaction with clients on a daily basis.

The WLC teaches and guides students, helping them look at issues from diverse points of view by ensuring that they understand the legal process in the context of social policies and processes. Students are given a deeper and more meaningful understanding of the law, the legal profession and the process of becoming a lawyer.

The students' participation in the Clinic is a graded component for which they earn credit points under the supervision of staff clinicians/supervisors. They are involved in clinical activities from Monday to Friday. They work on rotational shifts from 10am till 12.30 pm. The second shift starts from 12.30 pm to 3pm. As part of their active involvement in the clinic, students are divided into groups comprising of four to five students in a group and each group comes up with a typed proposal to visit any community within Ibadan metropolis which they may want to visit. They go to these communities wearing their native attire so as to identify with the community members and they represent the WLC through short drama presentations, role-plays and jingles in market places or other places that has vast majority of indigent women. In their presentation, the students communicate by speaking in three different languages so that the women will understand the message they are trying to pass across.<sup>60</sup>

The aim of these outreaches is to create awareness about the clinic and state ways in which clinic activities can be tailored to meet the needs of these communities in Ibadan and to make legal rights available to all members of the community, both men and women, even as it focuses on educating women in particular.<sup>61</sup>

The skills acquired in the clinic by the students include client counseling, interviewing skills, drafting of legal letters, etc. The Postgraduate students are also graded for their involvement in the clinic. In their training, the WLC prompts students to recognize the role they must play in combatting the perpetuation of injustice. This is done when they come into contact with clients

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59 McQuoid Mason, DJ (1985) "Legal Aid Clinics in Social Service" in D.J. McQuoid Mason (Ed) *Legal Aid and Law Clinics in South Africa* 64

60 The languages are English, the native Yoruba language and Pidgin English. The reasons for the different languages are as a result of diverse cultural background of individuals. The WLC therefore, tries to identify with the women they come in contact with.

61 Each group educate the womenfolk on different areas of law pertaining to women. These issues are domestic violence, violations of human rights, widow hood relating to inheritance, tenancy/landlord issues, marital challenges.

who cannot get access to justice or do not know where to go to access justice.

Other Clinic activities include Community, Market, Hospital, Church and Secondary school based outreaches in which students visit on a regular basis.

In their interaction with clients, difficulties can arise when students are faced with complicated issues. In such a case, the staff clinician on duty is called in. For example, each student is assigned case files they work with in a semester and they interact with the clients on a time agreed by both the client and the student. However, there are instances when the client gets too hot to handle for the student or the student might need an input from the staff supervisor; in such cases, there is an urgent call for the staff supervisor.<sup>62</sup>

As part of the educational training processes of students, seminars and workshops are organized in the first or second semesters. The training is led by staff clinicians in the WLC. The WLC, in training students also seeks to inculcate in students ethical lawyering. There is strong emphasis on the ethics of the legal profession and the Clinic. As an illustration, when students come in contact with live clients, they are in the position where they take accountability for another fellow citizen.

The Clinic focuses on the use of interactive teaching methodology whilst at the same time, developing practice and practical skills such as interviewing, counseling and oral advocacy and placing emphasis on the ethical dimensions of legal practice.<sup>63</sup>

In settling disputes in the WLC, mediation and reconciliation techniques are used. The students are taught to use non-legal traditional methods to solve legal problems in the communities.

The past sets of Law Students, 2010/2011 Session, who took part in clinical work at the WLC and have attended Law School have reflected the advantageous effect of clinical legal education.<sup>64</sup> It changed their perceptions, attitudes, skills and sense of responsibilities that lawyers are expected to assume when they complete their professional education.<sup>65</sup>

As a result of the WLC sensitization drives, many cases have been referred to the clinic for legal counseling. For instance, the Juvenile Court<sup>66</sup> in Oyo State referred many rape cases involving minors to the WLC. The Clinic was able to assist through counseling and legal assistance.<sup>67</sup>

The women who come to the clinic are from different ethnic and socio-economic backgrounds. Cases that have come to the clinic include: rape, marital issues, sexual assault, domestic violence, trespass of land, etc. The WLC deals with cases such as: Family Law, Land Law, Landlord/Tenancy, or any other matter that relates to women. The majority of the issues that come for

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62 Such cases include marital issues or spousal differences that needs the intervention of an adult

63 At the beginning of each session, each student is given a case file. The counseling sessions in the clinic are very interactive. The students are very free in answering questions; the clients are interviewed by the students under the supervision of the staff supervisors.

64 The class representative for the above mentioned session was interviewed whilst in Law School. She was called on the phone and she stated that she benefitted immensely from the clinic especially in the area of client counseling. In addition, other students stated that they were able to come into contact with clients which they tremendously benefitted from.

65 Clinical Legal Education: Retrieved through [www.vmslaw.edu/UploadPages/Clinical](http://www.vmslaw.edu/UploadPages/Clinical) last visited on June 2012

66 The Juvenile Court is a Magistrate that deals with young offenders in Oyo State.

67 The clinic is a walk-in basis for clients. There are over one hundred cases in the clinic. From 2011 to 2012, several cases involving minors were referred to the clinic. The Clinic through its expertise was able to resolve these matters amicably.

determination in the WLC are marital cases.

The following are selected cases handled by the Women's Law Clinic.

## **Review of Selected Cases handled by the WLC**

### **WLC/CAS/145**

This case is about a woman who breeds pigs in her house. She requested legal assistance with regard to disturbance from her community members who had given her a notice to quit her private quarters due to the rearing of the pigs. The Clinic intervened and invited the community members and they all came. The community members were very particular about the pigs because it was polluting their environment. The community members requested a visit from the Clinic to the pig farm. The Clinic acquiesced, an undergraduate student and post graduate student visited the location in question but did not perceive the pollution complained about. A report was given to the Clinic by the students on their visit to the pig farm. The Clinic referred the case to FIDA (International Federation of Women Lawyers). The community members and our client were able to come to an agreement on the breeding of pigs.

### **WLC/CAS/041**

This was a case of domestic violence. The client came to the Clinic and informed the Clinic that she had been cohabiting with her partner. The client received a court summons and she was accompanied by a Postgraduate student. The presence of the student gave the client emotional support. The client and her partner have two children. The Clinic intervened and settled the matter amicably between the parties. The Postgraduate student was actively involved in this case.

### **WLC/CAS/167**

The client B requested the assistance of the Clinic with regard to her husband who had deserted her after the birth of their child. She came to the Clinic for legal assistance in securing her child's maintenance. The student clinician wrote a letter inviting the client's husband to the Clinic. He honored the invitation and he was interviewed and he stated his own side of the story. The student involved, upon her investigation, was able to get a real picture of the case. She was able to interpret and analyze the parties' relationship. The matter is still on-going.

### **WLC/CAS/154**

The client lodged a complaint against her husband's brother who came to her house and assaulted her in the presence of her husband. Her husband's brother had threatened her on several occasions to leave his brother's house. The Clinic sent letters of invitation to the client's husband and her brother-in-law. The parties were counseled by staff clinicians, undergraduate and postgraduate students. The Clinic was able to resolve the matter amicably between the two parties.

#### **WLC/CAS/110**

The client, B came to the clinic to report a case of trespass on her land. B is an old woman. Some people had buried three corpses on her land without her consent. The trespassers had humiliated B in various ways and threatened to take over the property. B wanted the corpses evacuated from the land. The clinic intervened by sending letters of invitation to the trespassers. They honored the invitation. The trespassers agreed to the request. A letter of agreement was drafted for all the parties concerned and was signed. The matter was settled amicably between the parties.

#### **WLC/CAS/144**

Q gave her car to a car dealer to sell for her. The car dealer had paid her the first half of the total sum but did not remit the balance to her. The third party, the person who bought the car, took the car but did remit the balance to the car dealer. Letters of Invitation were given to the car dealer and the third party. They all honored the letters of invitation. The matter was settled amicably between the parties. The third party agreed to pay the remaining balance to the car dealer, who would then pay the client. After the meeting in the clinic, a student called Q and asked whether the money had been paid. Q stated that the money had been fully paid by the third party.

#### **WLC/CAS/106**

The client had been married to her husband for six years. Her husband abandoned her and moved out of the house. He left her alone with the children. The client came to implore the clinic to assist by getting maintenance for the upkeep and general welfare of the children. A letter of invitation was given to the client's husband. He was counseled by the staff clinician, students and the clinic administrator. There was an agreement drafted where the husband to our client promised that he would pay the money monthly. He has since been paying for the monthly upkeep of the children to the clinic.

#### **WLC/CAS/118**

The client came to the clinic to lodge complaints of constant beating by her husband and the refusal of her husband to allow her to engage herself in any work. She sought the assistance of the clinic to enable her to have access to the children of the marriage who are with the husband. The clinic intervened by sending letters of invitation. Her husband came to the clinic and stated his own side of the story. The clinic was able to settle the matter amicably between the parties.

#### **WLC/CAS/126**

The client, D is the landlady of her house. She rented the apartment to a tenant on a yearly basis. The client was to pay at the beginning of every year. The tenant had been living in the house for a year and five months. The tenant however, did not pay the remaining balance for the previous year. She came to the clinic for legal assistance in evicting the tenants from her house. A letter of Invitation was sent to the tenant which was honored. The tenants were counseled by the staff clinicians and the students. The students led the interview session. The tenant agreed to pay up the balance of the previous year's rent and to also, pay for the New Year. The matter was settled amicably between the parties.

### WLC/CAS/033

The client came to the clinic for legal assistance for the maintenance of three children born during her marriage with her husband. The client's husband was invited. He was counseled by staff clinicians and students. The matter was settled amicably by the clinic. Every month, the husband of the client pays for the upkeep of the children through the clinic.

## VII CONCLUSION

This paper has examined the relationship between social justice and clinical legal education and how law students acquire practical training in their involvement in Law Clinic with the illustration of the WLC. It should be emphasized here that in trying to access justice through law clinics, the social justice dimension should be brought to light and should not be relegated to the background. Clinical legal education through the WLC trains law students dedicated to upholding the rule of law and it inculcates in society the idea that disputes can be resolved peacefully by using the rule of law without resort to a Court of Law. The law students get a firsthand look at how the rule of law functions. Law students are trained in the University Law Clinics and acquire practical skills before they go to the Nigerian Law Schools. They are comfortable with the benefits of Clinical legal education and how it has helped to shape their way of thinking. Clinical legal education programmes focus on legal education and effective legal aid services and access to justice in developing countries.

As mentioned in this paper, clinical law teachers have a role to play in molding their students into what they want them to become. There is the satisfaction law teachers experience when they have done their part in training students on the different techniques of clinical legal education. Clinical legal education inculcates in students a sense of professionalism, a spirit of community lawyering and social justice. Lawyers should see themselves as trustees of justice. On them lies the fiduciary responsibility to see to it that the legal system provides, as far as practically possible, justice for all citizens, not only for the rich and powerful.<sup>68</sup> On the other hand, law teachers should realize that the students they teach will be advocates, judges, political persons and so they have a responsibility through their teaching to ensure their students commit to social justice.

There are thirty-six states including the FCT<sup>69</sup> in Nigeria and thirty five Universities. There are only fourteen law clinics in Nigeria. There is therefore a disparity in the number of students who benefit from clinical legal education. What about the other percentage of students who do not benefit at all from clinical legal education? It should be reiterated that the purpose of legal education is to prepare students for the practice of law. This process should therefore shape the legal profession in Nigeria. There should be establishment of more law clinics in Nigeria.

Education is a requirement for every aspect of human development without which human beings cannot appreciate the value of life's entitlements. There is therefore the need for the existing law clinics under the umbrella of NULAI to create forums for other Universities in Nigeria to inculcate clinical legal education in to their curriculum. Clinical legal education should be seen as a social good in Nigeria which has numerous benefits. The quality and introduction of practical teaching has deepened the perspective of the students. They are more confident in their interaction

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68 Winzer, S. *Op.Cit.*

69 FCT is the Federal Capital Territory which is Abuja. Abuja is the capital of Nigeria.



with community members. This confidence they acquire will inevitably help when they enter into the world of practice and prepare them for the intricacies for the practical use of law.

The clinic enables students to acquire lawyering skills before leaving the walls of the University. The skills they acquire are part and parcel of them for life. Clinical law teachers therefore after all that has been said have the responsibility of creating opportunities for law students to recognize the injustices in society and in the legal system, to appreciate the role they play in challenging social injustice and in reforming the legal system.<sup>70</sup>

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70 Aiken, J.H. & Wizner, S. (2004), Teaching and Doing: "The Role of Law School Clinics in Enhancing Access to Justice" 73 Fordham L. Rev. 997-1011 Georgetown University Law Center Retrieved through <http://scholarship.law.georgetown.edu/facpub/303> on April 2012



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# Clinical Legal Education and Cultural Relativism

– The Realities in the 21st Century

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## ABSTRACT

'Ubi jus ibi remedium' is a Latin maxim that means 'where there is a wrong, there is a remedy'. Human rights are expected to be universal and applicable to every human being. In reality not all rights guaranteed in the International Instruments are applicable in some African societies with different culture, religion and norms. Culture shapes the identity of people generally in Africa and elsewhere thus the issue of Cultural Relativism is germane to the very existence of people of African descent.

International Convention and Instruments provide for Women' Rights generally and particularly the Right to life.

The experience in the Women's Law Clinic (the clinic) of the University of Ibaden has shown the imbalance between Clinical Legal Education (CLE) and the realities in practice.

This paper considers the cultural practices in some societies in Nigeria, the techniques of CLE adopted in the clinic and the challenges of the 21st Century.

Key Words – Clinical Legal Education, Cultural Relativism, 21st Century.

Suggested Theme: -What clinical legal education can and cannot achieve

## Introduction

In the case of *Owonyin v. Omotosho*, (1961, SCNLR) Bairamian, FJ, described customary law as “a mirror of accepted usage.” This definition was adopted by the Supreme Court in the case of *Kindey & 11 Ors. v. Military Governor of Gongola State*, (1988) 2 NWLR (Pt.77) 445. The definition in *Owonyin V Omotosho*, (1961, SCNLR) was applied and explained further in the case of *Odoemena Nwaigwe & 2 Ors. V Nze Edwin Okere*, (2008 SC) where it was stated per Niki Tobi JSC that:

*“Customary law emerges from the traditional usage and practice of a people in a given community, which, by common adoption and acquiescence on their part, and by long and unvarying habit, has acquired, to some extent, element of compulsion, and force of law with reference to the community. And because of the element of compulsion which it has acquired over the years by constant, consistent and community usage, it attracts sanctions of different kinds and is enforceable”*

Culture is usually believed to guide the values of the society. What is considered moral in one society may be considered immoral in another, and since no universal standard of morality exists, no one has the right to judge another society’s customs. The ideology that all beliefs, customs, and ethics are relative to the individual within his own social context is known as Cultural Relativism.

According to Falola (2008), culture shapes the perception of people in Africa and some other places; it also affects the interaction between people and their environment. He reiterated further that culture defines or explains the habits of the people such as respect for old age, giving birth to many children, taking care of the children, hard work, practise of polygyny and the support of patriarchy otherwise known as male dominance. Furthermore, culture is referred to as the way of life of a group of people (Olaoba, 2002). Olaoba defines culture to include the existence of a legal system which is fundamental to the maintenance of peace and harmony so that life will be meaningful and worth living. In essence, law in traditional African society is never defined in a vacuum, it is as matter of necessity clothed with the gown of culture in order to justify its applicability and ensure observance by the people. Thus, in the application of law in the traditional African setting there must always be a recourse to the culture of the people. This is stemmed from the fact that the fundamental feature of African legal culture is the notion of collective responsibility for offences committed by an individual in the society. In addition, African legal culture is embedded in traditional religion because Africans believe in the influence of ancestors on virtually all human activities.

The goals of the Women’s Law Clinic are to train law students in the practice of law, utilizing techniques of clinical legal education; and to provide legal services to the less advantaged women in society. It is a specialized clinic in the sense that it is for women and it started off in the areas of human rights and family law, which are in fact very wide areas and has since expanded to accommodate other areas of law.

For clinical legal education and the practice in the University of Ibadan Women’s Law Clinic; the traditional approach of settling disputes without litigation is adopted. There have been many achievements. However a lot of challenges are still being faced when dealing with certain issues especially those relating to marriage, child custody and inheritance. The major hurdle in the achievement of the objective of the Women’s Law Clinic is the dictates of culture and traditions.

## Cultural Relativism

From an anthropological perspective, cultural relativism is the position that all cultures are of equal value and need to be studied from a neutral point of view (Glazer, 1996). Thus this type of study views any culture with a cold and neutral eye and understands the particular culture on its own merits and not another culture's.

The first use of the term as recorded in the Oxford English Dictionary was by the popular philosopher and social theorist Alain Locke in 1924. He adopted the term to describe Robert Lowie's 'Extreme Cultural Relativism' (<http://dictionary.oed.com>, 2009).

Cultural relativism is a system of social beliefs in the modern world.

Whether a culture is good or bad is specific and this cannot be imposed in cultural analysis. Thus what is good in one culture may be categorized as bad in another. This implies that every culture determines its own ethical judgments to regulate the proper behavior of its members.

Cultural relativism maintains that there are differences in ideas, views, values and perception among people of diverse cultures. It is contended that rights and rules about morality depend on cultural context. Culture as employed here goes beyond indigenous and customary practices to include political and religious ideologies and institutional structures. Thus notions of right and wrong necessarily differ throughout the world because the cultures in which they take root themselves differ ([www.oppapers.com](http://www.oppapers.com) last accessed on 20/06/11).

It should be noted that the issue of cultural relativism seems to be a well-won debate as the court has laid credence for the issue. In **Igra V Igra (1950)**, the court was conscious of Cultural Relativism in its final decision to recognize a German divorce which was obtained during the war at the instance of the Gestapo on what was suspected to be racial grounds. In that case, Pearce J. held that:

*“the interests of comity are not served if one country is too eager to criticize the standards of another country or too reluctant to recognize decrees that are valid by the law of domicile”*

Furthermore, in the case of **Syndicat North Crest V Amselem (2004)** the Supreme Court of Canada in its critique of freedom of religion and culture made it clear that even where a practice is found to have a religious or cultural essence, courts must still consider how that conduct affects the rights and interests of others.

The acceptance of cultural relativism as an ideology believes that nothing is inherently wrong or right with any cultural expression. However, cultural expression is limited when rights and interests of other people are involved.

According to James Rachels, (<http://www.squidoo.com/culturalrelativism>) cultural relativism while being useful in helping people to keep an open mind to other cultural practices, it should not be held true in its entirety. Thus the practice of cremating the dead as juxtaposed with eating the recently deceased are both correct according to the community involved and each view the other as appalling.

## **Legal Education in Nigeria**

According to Elias (1962) formal legal education was not established in Nigeria until after the country attained independence in 1960. Until 1962, Nigeria had no legal education curriculum of its own as it is known today. Prior to this time, Nigerians received legal training at British institutions having passed through an academic curriculum based largely on English values (Bamgbose, 2010). The effect was that they had no instructions on Nigerian law with its traditional socio-legal milieu and Nigerian customary law. It was then realized that there was the need to indigenize training of legal practitioners in Nigeria, the need to correct defects and lacuna in legal education of British trained lawyers. The Federal government, then set up a committee, called the Unsworth committee (named after the chairman) with the mandate to consider and make recommendations on the future of legal education in Nigeria (Fawehinmi, 1988). The report of the Committee may be said to be the genesis of legal education in Nigeria. The committee recommended in its report that Nigeria should establish its own system of legal education and also recommended the establishment of Faculties of Law in Universities in Nigeria (Elias, 1962).

Legal education is a tiered structure. The academic discipline is conducted by accredited law faculties under the control of the National Universities Commission (NUC), while the professional training is carried out by the Council of Legal Education. The NUC conceives legal education as being purposive, therefore it is expected that the product of the program must be able to use law as a tool for resolution of societal problems and the resolution of various social and legal conflicts.

For many decades, Law Faculties and the Nigerian Law School teaching relied on an education model that focused on theory, providing minimal opportunity for students to learn and apply the practical problem-solving skills critical to becoming a competent lawyer in real world settings. Clinical legal education with its modern approach to learning has provided direction, and the tools for improving the legal education system and students are more prepared for the practice of law.

## **Clinical Legal Education in Nigeria**

There is no doubt that education and educational policies are decisive in the long term development of any society (Bamgbose, 2010). A crucial challenge to successful education is to create interest in new and emerging areas and to tackle new issues. This brings about an improvement of people and their attitude to life (Bamgbose, 2010). It is therefore important that for law to perform its role in the society, legal education must be enriched with emerging concepts to improve the information and knowledge base of law students

Clinical legal education provides and significantly contributes to the continuum of legal education (MacCrate Report, 1992). The importance of clinical legal education in the acquisition of skills and values needed to make a competent and conscientious lawyer from a societal and cultural perspective cannot be overemphasized. Clinical legal education through legal clinics exposes law students to professional and societal responsibilities and the need to meet the legal needs of the poor and underrepresented in the society.

In Nigerian legal education, a new curriculum of clinical legal education was introduced as part of the undergraduate LL.B programme in the 2008/2009 session. The clinical legal education curriculum was developed for Nigerian Universities' Law Faculties/ Clinics by the Network of University Legal Aid Institutions (NULAI). Prior to the introduction of clinical legal education into

the law curriculum in Nigeria, the law faculties continued to function with strict and conservative attitudes towards the training programme (NULAI, 2010). Then, the law faculties taught only the theories of law without imparting practical or applicable skills and the only semblance of practical training to which the Nigeria law student was exposed was at the Nigeria Law School. The position at the law school was very similar to the instruction at the faculties but they did manage to give some practical training through the attachments to courts and chambers; this also was inadequate.

A lot of skill subjects were taught in theory only without exposing the students to practical training. The current law school curriculum has changed significantly with the introduction of the clinical legal education system in the current syllabus. In times past, the faculties and the Law School curriculum did not expose the students to practice skills such as interviewing and counseling. Also the exposure to litigation and oral advocacy skills in moot and mock trials was also limited.

Therefore the foundation of the need for the introduction of clinical legal education stemmed from the realization that there must be a holistic approach to the training process of law students in order to produce a well- rounded professional lawyer. Furthermore, exposure to live cases and practical situations during the five year LL.B programme and the one year programme at the Nigerian Law School will afford the students opportunity to experience the realities of legal practice and understand the context in which laws develop and towards what role and end.

Presently clinical legal education is a priority area for tertiary institutions in Nigeria.

Now there is a general drive to implement clinical legal education and changes in teaching methods in the various law faculties and the Nigerian Law School.

## **The Women's Law Clinic University of Ibadan**

The Women Law Clinic of the University of Ibadan hereinafter referred to as the Clinic, is a law school based in –house clinic located in the law school, University of Ibadan. The Clinic was formally inaugurated on the 18th of July, 2007.

The goals of the Clinic are to train law students in the practice of law, utilizing techniques of clinical legal education; and to provide legal services to the less advantaged women in society. It is a specialized clinic in the sense that it is for women and it started off in the areas of human rights and family law, which are in fact very wide areas and has since expanded to accommodate other areas of law.

The Clinic focuses on the use of interactive teaching methodology, development of practice and practical skills such as interviewing, counseling, negotiating and oral advocacy, while also placing emphasis on the ethical dimensions of legal practice.

With the introduction of clinical legal education, the clinic has been able to demystify law for students. The Clinic embraces training in lawyering skills for the students and provision of access to justice for indigent clients within the community. In addition, the Clinic uses law as an instrument for social change.

Through clinical legal education, student and staff clinicians in the Clinic have been able to educate and promote the ideals of good and well-rounded counseling in rural communities in Ibadan, Oyo State, Nigeria.



The Vision Statement of the Faculty of Law, University of Ibadan is to be a World Class Faculty of Law, dedicated to excellent legal training, research and development aimed at meeting the needs of the society; and the Mission Statements of the Faculty are:-

1. To expand the frontiers of legal knowledge through learning and research.
2. To produce law graduates who are worthy in character, learning and sound judgment.
3. To contribute to the transformation of society through legal creativity, research and clinical legal education.
4. To serve as a dynamic custodian of society's legal rights and values and thus sustain its integrity.
5. To be a center of excellence in research for legal models of cutting edge global issues.
6. To be a focal point and voice for law faculties and legal education in sub Saharan Africa.

In furtherance of the above stated Vision and Mission of the Faculty of Law, the Women's clinic has been involved with several outreaches with focus on access to justice for indigent women.

To achieve its aims and objectives, the Clinic embarks on an ambitious sensitization drive among the women in the various communities. However in doing this, great care has to be taken because the cultures of the various communities have to be taken into consideration. This fact is not only applicable during the outreaches to the communities, but in relating and trying to resolve conflicts during clinic visits. This has posed a lot of problems to clinicians especially where there are conflicts in the carrying on of the function of the Clinic and the cultural values of the people.

Individualistic outreaches have been an uphill task. This is a cultural problem. This is because generally, the culture of the people is such that does not allow for an individualistic campaign aimed directly aimed at women. The campaign or outreach must pass through the community protocol in terms of their leaders and representatives. Community leaders, market leaders, trade groups through the leaders, and religious leaders have played major roles in the successes and failures of works embarked on by the Clinic.

These outreaches are held on a regular basis in various communities, markets, churches, hospitals and schools. Indigent women are the target group of the Clinic and these places have a higher population of this target group. Since its inception, the Clinic has organized clinical legal education workshops for staff and student clinicians. The academic staff have developed the Clinical method of teaching and classes are now more interactive and very lively.

The Clinic makes information about legal rights widely available to all members of the community, male and female, even as it focuses on educating women in particular. Often there are fears expressed when efforts are made to disseminate knowledge to all persons within a community because those with greater advantages might feel threatened. However it is believed that such fears are unfounded. A knowledgeable society with knowledgeable women is an upwardly mobile society.

As women remain the primary caregivers in the society, their greater awareness will be clearly seen and felt in the younger generation. The huge response from the local communities shows that the Clinic is a welcome and positive addition to the communities of Ibadan and ultimately Nigeria.

The students are fully involved in the Clinic's outreach programmes and the client counseling.

In addition, with the introduction of clinical legal education students are exposed to professional values which include provision of competent representation, promotion of justice and fairness and professional self-development. Students are therefore taught how to learn from experience.

A few cases from the clinic are discussed below.

## **Case Studies**

The majority of the issues that come for determination in the Women's Law Clinic of the University of Ibadan relate to marriage and other familial disputes. These include wife battering, child abuse, wife maltreatment, child custody and inheritance. Ordinarily, when one is faced with such problems as these, there is the temptation to have recourse to the law, often seeking formal legal sanctions and/or remedies, in order to deal with the culprit involved. However in most cases, culture dictates how to deal with such circumstances. Clinicians are sometimes in a dilemma when the client reporting the case is reluctant to pursue the case adopting the legal process, because of certain cultural practices known to her or common to her ethnic group. The issue is more complicated when the client in the Clinic wants to proceed with an action in line with her culture, but which the clinician is not familiar with.

### **Cases on Marriage, Child Abuse and Inheritance**

As a social institution, marriage is founded on, and governed by the social and religious norms of any given society. There is no doubt that the sanctity of marriage is a well-accepted principle in the world community. (Nwogugu, 1990).

In Nigeria, there were basically two systems of marriage; Islamic marriage – which is now recognized – is now a third. In times past, Islamic Marriage was categorized as part of Customary Marriage, however looking at the incidences of Islamic marriage; it is now considered as a category that can stand on its own.

#### *Case 1*

A case was reported in the Clinic by a woman who was separated from her husband. The children were living with the husband because he was the only person who was economically empowered. A twenty (N20.00) Naira bill (about 1/8 of an American dollar bill) went missing and the man thought it was the daughter that stole it because he saw she had another twenty Naira bill. With this belief, he beat the girl to a stupor. It was the erstwhile wife who reported the matter to the Clinic after rushing the girl to the hospital. In dealing with this issue, it was glaringly obvious that the embittered wife did not want the husband to go to prison for battering the child or even her. According to her, the cordial relationship that existed with her in-laws would be jeopardized. She pleaded that the Clinic should protect her daughter and not report her husband to the police. The Clinic had to counsel the woman, call her husband, educate him on the implication of what he had done, counsel him and also the child. The Clinic had to follow up the case to ensure that there was no repeat of the child abuse. This is just one of the ways in which the culture of the people changes the nature of the solutions offered in the clinic and impacts upon the legal education of the students. Traditionally it is an abomination for a wife to report the husband to the police and it is assumed that only dissident women will go all the way to deal with erring husband.

Case 2

Another case is the one involving a woman who was hitherto happily married to her husband until the husband impregnated another woman and decided to marry her. The first wife was not pleased with this decision. The husband gave her an ultimatum of either accepting the second wife and remaining in the matrimonial home, or rejecting her with the consequence of her husband evicting her from the house she built with him. After educating her on her rights concerning the property, and when asked by the clinicians what she wanted, she stated that she would want to stay in the house with her husband even if it meant staying with the second wife who was the same age as her first daughter, but her interest in the property is protected.

Case 3

This is the case of a young lady who was denied her share of her father's inheritance because she is female and married. The father died intestate and therefore subject to customary law. The Clinic took the case up. The client was advised and educated about the legal position. She was told about the former position in the law as stated in *Nwanya v Nwanya* (1987) where it was held that a female cannot inherit the property of her father under the Ibo customary law. She was also informed about the Court of Appeal decision in *Mojekwu v. Mojekwu* (1997) which marked a turning point in the law and happily held that females can inherit the property of the father. Our client informed us that she wanted what was hers without offending the family and disrupting the custom. It took the intervention of the Clinic, a lot of persuasion and mediation before she was given only a small portion of her entitlement to her father's estate. To our amazement, our client was content with this small portion because according to her, the family "consented" to this small portion for her as against the whole entitlement which the family would not agree to give her. In addition she informed the clinicians that she would not be able to enjoy the whole property even if the court made an order that it should be given to her.

While the law of inheritance and succession under English law is reasonably settled, especially where a will is written, the aspect dealing with customary law is not. It causes a lot of disaffection amongst family members. Certain family members have rights of inheritance and others do not. This causes a lot of discrimination.

Case 4

Similar to this case is the case of a young woman who was driven away from her matrimonial home after the death of her husband. This was based on the cultural argument that she had only female children and also that she could not inherit her late husband's property because she is not related to them by blood. This is the position under customary law as stated in *Shogunro Davis v. Shogunro* (1929) and *Nezianya v. Okagbue & Ors* (1963). In both cases, it was held that the widow could not inherit the property of the husband under customary law. In this case the late husband of our client made a will. During the visit to the Clinic, the woman was educated and counseled that she was entitled to the property given to her by her husband in his will. The brother-in-law who had taken over some properties of the deceased was shocked and furious at the action of the widow. He then decided, with the deceased's family in full support, to send the woman and the children from the matrimonial home. With the intervention of the Clinic, the woman was given the property by the law. Our client however expressed her fears as to whether she may be able to take full possession or enjoy that property taking into consideration the cultural milieu and the

location of the property.

The above cases are just few of the cases dealt with on an everyday basis and the conclusion is always tilting towards culture and traditions. There is definitely a conflict between culture and clinical legal education.

In developing practical skills and training for students, student clinicians are confronted with actual problems, the real people involved in it and cultural realities. During sensitization outreaches, such realities are brought to light. Two of such outreaches were held at Shasha Community, in Ibadan, Oyo State, Nigeria and Oje Market, also in Ibadan, Oyo State, Nigeria. The two communities are local suburbs in Ibadan metropolis with very large numbers of indigent populace. The Clinic could not invite the women together as a group to sensitize and educate them because of the nature of their businesses which is predominantly petty trading and selling of perishable food items. The Clinic had to take this into consideration in its access to justice program for the communities. The clinicians organized themselves into groups, designed the methodology of effectively communicating to them while at the same time not disrupting their daily routine. This was done by staging short play-lets in the market place while the women were attending to their wares but at the same time listening. This was very effective. Without leaving their business location, the clinic was able to effectively communicate to the women. This is in conformity with Street Law initiatives around the globe and a direct example is the model in Georgetown Law Center where the first Street Law programme started in 1972. (*D.C. Street Law Program* in <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/DC-Street-Law-Program/index.cfm> retrieved on 1 July 2013).

During outreaches in rural communities, where the Clinic is able to obtain the permission of community leaders and relevant leaders, and the women are gathered together in one place, it is not uncommon to give some incentives during the meeting. This depends on the type of group being addressed and it ranges from light refreshment to small household utensils. All these have cultural relevance as it has been observed that the outreaches have more participants in attendance when such incentives are sighted.

Having looked at the process of legal education in Nigeria and the functioning of the Clinic, it is important to consider the realities of the 21st Century.

### **The Realities of the 21st Century**

The education of the lawyer never ends because they must constantly be abreast of information which may be of use to the client.

Our world in the 21st century is changing rapidly. Populations are more mobile. Economic markets are becoming global. Transactions demand cultural understanding. The internet and other communication technologies bridge time zones and distances to form new communities not bound by territory. The law, too, is changing to reflect and adapt to these new conditions and circumstances.

In the light of advances in technology and globalization, the 21st century lawyer is one who ethically delivers legal services more efficiently, effectively, and in a manner that helps ensure the continued success of the legal profession.

It has been easy to measure success as a lawyer. This may include attending a law school, obtaining

a good grade, getting employment at any of the popular firms, and becoming a partner. A lawyer uses legal skills to get work from (and develop relationships with) the firm's longstanding institutional clients. In the corporate world, the guarantee of uninterrupted employment with a stable and growing company fostered avenues of career diversification.

With the onset of economic growth, this has changed. The shift is now towards individual professional reputations rather than law firm affiliations. Specialized expertise is now in demand, and the 21st century lawyer must now identify and market to clients the transferability and relevance of his/her experience rather than rest on the accomplishments of his/her firm. This means that he needs to approach his career development as a special enterprise, an effort nurtured by him, but created and directed by him individually.

The 21st century lawyer is more self-reliant as he seeks new skill-building assignments and client interactions. This requires active initiative in mastering necessary skills and taking control of one's own professional development. The 21st century lawyer must proactively identify and offer a skill set tailored to fit each client's individual needs. Personal and professional accountability to clients and one's professional growth is a feature of the 21st century legal practice (Sisson and McCormack, 2010).

Law faculties and law schools, lawyers, firms, and corporate counsel who demonstrate flexibility and innovation will be the ones considered "successful" in the 21st century (Manman, 2010).

Lawyers serve the people and organizations they represent through a blend of practical and intellectual activities, with their mind and heart. Effective lawyers need to understand people and organizations to handle the human aspects of resolving legal problems. Lawyers who excel at problem solving become fulfilled leaders – serving their clients and communities by promoting fair processes and just outcomes.

The last century of the last millennium was characterized by improvement and development in the field of science and technology including communication and information technology and law. In that century we witnessed the emergence of new technologies and globalization which have simultaneously on the one hand generated opportunities for expanded world commerce, communication, and cultural interchange. On the other hand, they have also generated world-wide concern over environmental, financial, commercial, and human rights issues accompanied by the creation of regional and global political and economic organizations, and a plethora of public and private transnational legal issues, treaties, legal guidelines, standard form contracts, alternative dispute mechanisms and domestic legislation attempting to respond to new problems and new opportunities for their creative resolution.

Globalization has changed the dynamism of the entire polity and society ([www.legalservice.india.com](http://www.legalservice.india.com) on 10th May, 2010). In this changing scene of the world order, the law and legal practice play an important facilitative role. The law provides a framework which guides the global system. This necessarily means the availability of legal services to provide for the legal needs of these entities and activities - requiring significant adjustment in the nature of legal practice and legal education and training that feeds it (Manman, 2009).

The realities with the introduction of clinical legal education in tertiary institutions in Nigeria in the 21st century are that law students learn by experience; there is proactive participation of students in the learning process; students are motivated; the students are more involved with the local community and more relevant to the community and the students acquire the necessary skills

to be better practitioners.

The importance of clinical legal education in the acquisition of skills and values needed to make a competent and conscientious lawyer from a societal perspective cannot be overemphasized. Clinical legal education through legal clinics – Street Law – also exposes law students to professional and societal responsibilities such as community or public interest lawyering to meet the legal needs of the poor and underrepresented in the society, particularly in communities with indigent persons where the standard of living is generally low. Through the Street Law programme, law students are trained to be relevant in the society. The lawyering strategy of Street Law helps to meet the legal needs of the poor and illiterate in the society, particularly in communities with low literacy level and where the standard of living is generally low. Legal education in Nigeria is not exempted from the influence of cultural relativism because; any law that affects the traditional moral order would be ineffective. With the advent of Street Law, the society is beginning to understand the implication of the formal Legal system. The original and traditional mode of instruction in the Faculties of law was not effective because it did not take into consideration the legal needs on the street.

## Conclusion

The realities of clinical legal education and culture in practice are multifaceted. This is in view of the techniques adopted to settle disputes in the clinic. The techniques are mainly mediation and reconciliation and the clinic strives to settle disputes without necessarily offending the norms and culture of the people except when it is extremely important to do so. The practice in the Clinic is to avoid litigation as much as possible because of the cultural belief that once people go to court they can never be reconciled again. There is a Yoruba adage that says that “*A kiiti kootu de ka sore*” which means *you do not come back from the court after a dispute and remain friends*.

Thus Cultural Relativism appears to serve as an impediment in realizing the goals of clinical legal education.

It is worthy of note that in as much as every individual has the right to choose their own culture, which includes the right to enjoy and develop cultural life and identity, this right should not be used as a weapon of oppression and punishment against other people. In other words, using Cultural Relativism as a defense in violating human rights is an abuse of the right to culture itself.

In many parts of Africa, Nigeria included, a clear distinction is not made between the past and the present whilst recent changes are taking place (Cobbah, 1987). Patriarchy (a social system where male dominance is established and practiced) is an accepted practice which has long been established in Nigeria. The manifestations of this practice are clearly shown in various aspects of gender relations (Falola, 2008). It is important to mention that even when the male leaders of communities and groups are invited, their first reaction when they see a female clinician is to disregard her. This is mainly because in patriarchy, a woman is supposed to be quiet and remain in the background always. It takes a lot to win the confidence of the men in such matters. In essence the challenges being faced by the Clinic are two-fold; firstly the issue of culture and the personality of the clinician, secondly, the issue of culture and the subject matter of the case.

It has been argued that in calling for total abolition of an entrenched cultural practice it may be desirable to find acceptable substitutes (Falola, 2008). In other words some compromises may be accepted with a future hope of total abolition of oppressive customs.

Conclusively, as the United Nations Human Rights Committee observed:

*“Inequality in the enjoyment of rights of women throughout the world is deeply embedded in tradition, history, culture, including religious attitudes...States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all covenant (ICCPR) rights (Human Rights Committee (HRC) General Comment 28).*

From the discussions above, it is glaringly obvious that Cultural Relativism is one major clog in the wheel of protecting women’s rights generally; however with effective clinical legal education techniques this obstacle is surmountable. In conclusion, techniques of clinical legal education are good and laudable however its practice must take into cognizance the culture of the environment so that its purpose can be achievable.

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# Legal Education And Challenges Of Contemporary Developments In Nigeria

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## **ABSTRACT**

The development of any society is anchored on the existence of enabling environment for imparting legal education. Technological breakthrough and globalization among other things has made the provision of sound legal education to would-be lawyers and continuing legal education for lawyers, judges and academics *sine qua non* at national and international levels. Hitherto, legal education was and unfortunately is still to a large extent restricted to the domain of domestic law sufficient enough to give a student broad general knowledge and exposure to other disciplines in the process of acquiring legal education. Such system of legal education which exists to date hardly if at all expose the student or the lawyer to challenges and the developments in other jurisdictions or in the emerging fields of law. A lawyer or a judge is a mirror of the system of legal education that produced him. Sadly, the laws regulating legal education, apart from being obsolete are in some cases conflicting due to the roles assigned to different and disparate organs.

## I. INTRODUCTION

The history of the western form of legal education in Nigeria started with the report of the Unsworth Committee on Higher Education which recommended inter alia the following:

1. Nigeria should establish its own system of legal education
2. A law school, to be known as the Nigerian Law School, be established in Lagos to provide vocational training to legal practitioners as barristers and solicitors;
3. The qualification for admission to legal practice in Nigeria should be a degree in law of any University whose course is recognised by the Council of Legal Education (CLE), and the vocational course as prescribed by the Council;
4. A Council of Legal Education should be established<sup>1</sup>.

These and other recommendations of the Committee culminated in the establishment of Council of Legal Education and the Nigerian Law School for the purposes of providing vocational training of legal practitioners as barristers and solicitors.<sup>2</sup>

The academic component of legal education is undertaken by accredited faculties of law whose course of legal studies is approved by the Council as sufficient qualification for admission into the Nigerian Law School.

The National Universities Commission (NUC) on the other hand is charged with the responsibility of advising the Federal and State Governments on all aspects of university education, in particular, it sets the minimum academic standards for all degree and postgraduate programmes including those of Law<sup>3</sup>, while the general control of the conduct of matriculation examinations and determining the matriculation requirements for entry into degree programmes in law and other disciplines is undertaken by the Joint Admissions and Matriculation Board<sup>4</sup> (JAMB).

Over the years, the Council of Legal Education Act and National Universities Commission Act had respectively undergone amendments;<sup>5</sup> unfortunately, these amendments have done very little in the area of teaching pedagogy and course contents both at the academic and vocational levels. For instance, not much was done towards the introduction of courses in emerging fields of law and adoption of new teaching methods especially those engendered by Information and Communications Technologies (ICT). It is therefore not surprising to find the same course content

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1 See the Report of the Committee on the Future of the Nigerian Legal Profession. (Lagos, Federal Government Press, 1959) cited from Problem of Legal Education by Ho. Justice M. O. Onalaja <http://www.alimiandco.com/publications>.

2 See section 1(2) of the Legal Education Act 1962 now repealed by the Legal Education (Consolidation, etc.) Act, Cap. L10 Laws of the Federation of Nigeria, (LFN)

3 Section 4 National Universities Commission Act, Cap. N81 (LFN) 2004

4 See section 5(1)(a) of the Joint Admissions and Matriculation Board Act, Cap. J1 (LFN). Note: Only universities offer Law degrees. Other degree awarding institutions other than universities cannot run degree programmes in law.

5 See the Legal Education Act No. 12 of 1962; the Legal Education (Pensions) Act No. 34 of 1965; the Legal Education (Amendment) Act, No. 62 of 1970; the Legal Education (Amendment) Act, No. 37 of 1973; the Legal Education (Amendment) No. 37 of 1970 (all repealed). Note that the amendments were not substantial enough to radically change the course of legal education; also see the National Universities Commission (Amendment) Act, No. 10 of 1993; Cap. C 23 Laws of the Federation of Nigeria, 2004

being taught for decades without being revised and law teachers adopting the ‘nail and hammer’ approach to the teaching of law. However, with the introduction of clinical legal education in some universities, the foundation for purposeful and practically oriented system of legal education hitherto not contemplated by the National Universities Commission and perhaps the Council of Legal Education may well be underway.

The aim of this article is to examine the respective roles of these various organs vested with the responsibilities of shaping the course of academic and vocational legal education in Nigeria.

## **II. THE ROLE OF THE NATIONAL UNIVERSITIES COMMISSION IN LEGAL EDUCATION**

The National Universities Commission is saddled with the responsibilities of among other things setting benchmark minimum academic standards and accrediting degree and other academic programmes in Nigerian universities. In pursuance of its mandate under sections 4 and 18 of National Universities Commission Act and Education (National Minimum Standards and Establishment of Institutions) Act<sup>6</sup> and in consultation with universities, the National Universities Commission revised the Minimum Academic Standards (MAS) 1989 by updating and replacing it with the Benchmark Minimum Academic Standards (BMAS) for all courses including law.<sup>7</sup> One of the reasons for the review of the Minimum Academic Standards in the words of the Commission is to meet up with “The impact of Information and Communications Technologies on teaching and learning and the competitiveness engendered by globalization...”<sup>8</sup>

One of the functions of the Academic Standards Department of the National Universities Commission is to among other things periodically review courses and curriculum of approved programmes in Nigerian Universities. A cursory look at the courses in the Commission’s BMAS and its predecessor, the Minimum Academic Standard (MAS) 1989, reveals that the course content for both optional and compulsory law courses to a great extent remain the same. Apart from the traditional or core subjects which are compulsory for all undergraduates under the Minimum Academic and Benchmark Minimum Academic Standards, namely constitutional law, law of contract, criminal law, company law, commercial law, law of equity and trust, law of evidence, jurisprudence, land law, Nigerian legal system, law of torts and a compulsory final year project, it does appear that no effort is being made by the National Universities Commission and universities to revise the law curriculum to meet the current needs of the student in a rapidly changing society. If the aim of the periodic curriculum review as stated in the Bench Mark Academic Standards document is to bring the law programme in line with the changing society<sup>9</sup>, then this is perhaps the most appropriate time to make subjects such as international human rights law, international environmental law, cyber and internet law, law on internal displacement, genocide and war crimes, e-commerce and a host of others compulsory. If the student is not exposed to these areas of law

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6 Cap. N81 and E3 Laws of the Federation of Nigeria, (LFN),2004

7 See National Universities Commission, Benchmark Minimum Academic Standards(NUC BMAS) for Undergraduate Programmes(Law) in Nigerian Universities, April, 2007, p.1 <http://www.nuc.edu.ng/nucsite/file/DASS/BMAS%20Law.pdf> visited 13/05/13.

8 Ibid.

9 See NUC BMAS op.cit para.1.5.5.2 at p.9 which requires curriculum review after every five years. This therefore means the BMAS 2007 is due for review.

at the undergraduate level, then it may be too late in the day to educate him on same through continuing legal education or through other ad hoc means. Consequently, the student may be handicapped in diagnosing legal issues or in rendering informed legal opinion or even to take appropriate legal action when confronted with challenges in those areas. He therefore becomes dependent on international organizations, such as Amnesty International, Human Rights Watch, Earth's Rights International and foreign governments for reports of violations taking place in his backyard. If the Commission cannot add new courses in emerging fields of law to meet up with the global trends, then the course content should at least be reviewed to include for example some aspects in e-commerce which can conveniently be subsumed under commercial law, contract and company law, while genocide and war crimes can be taught as part of international criminal law. In addition, a fair knowledge of basic aspects of other legal systems of the world and jurisprudence of some commonwealth countries should be introduced in order to assist in the development of intellectual capacities of students and to further make them understand and better appreciate their immediate legal environments as well as those of others. This could be one of the reasons why the BMAS document requires library holdings of faculties of law of Nigerian universities to include standard precedent books, such as Encyclopedia of Forms and Precedents, Black's Law Dictionary and law reports from English, American, Australian, Indian, Kenyan and Canadian jurisdictions. Such law reports include Australian Commonwealth Law Reports, Canadian Dominion Law Report, Indian Law Reports and the East African Law Reports. The inclusion of these law reports and standard works in the field of law from these countries is to enable the student have some idea of the working of the law in other jurisdictions with whom we share some similarities and/or differences. In this age where action of nations is increasingly judged by international legal standards, there is no reason for limiting the law student's horizon to domestic law alone, hence, the need to update and expand the law curriculum to include jurisprudence of other nations and international law.

The faculties of law in conjunction with their respective universities must take the lead in reshaping legal education curricula by putting forward proposals to the appropriate organs for reform.

### III. COUNCIL OF LEGAL EDUCATION

The mandate of the National Universities Commission include among others giving approval for the establishment of faculties, academic units etc.<sup>10</sup> in Nigerian universities. The Council of Legal Education on the other hand has the responsibility for the legal education of persons seeking to become members of the legal profession.<sup>11</sup> To this end, the Council is empowered to issue a qualifying certificate to a person which when issued, signifies the successful completion of a course of practical training in the Nigerian Law School and is eligible for call to the Nigerian Bar. Such persons seeking to become members of the legal profession must however, among other requirements, possess a university law degree whose course for the degree is recognized by the Council. It should be noted that the accreditation of a law degree programme by the NUC does not automatically translate into its accreditation or recognition by the Council of Legal

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<sup>10</sup> see s4(1)(b)(iii) Cap.N81 op.cit

<sup>11</sup> Section 1 (2) of the Legal Education Consolidation etc.) Act. Op.cit

Education.<sup>12</sup> This probably explains why there is a clamour for the amendment of the Council of Legal Education Act, so as to give the Council of Legal Education some measure of control over academic programmes (Law) in Nigerian universities. As it is, there is no legal obligation on the part of the Commission to consult the Council in approving the establishment of any faculty of law. Although such a faculty when established must also satisfy the Council's minimum requirement in terms of curriculum and facilities before it is accredited.

Thus, while the Commission has the power to approve establishment of new faculties and accreditation of existence ones based on its parameters, the Council equally has the power to deny accreditation of the same programme approved by the Commission based on its own parameters too.

It may be observed that the National Universities Commission has on its board a person representing law as a discipline,<sup>13</sup> there is however no corresponding provision for representation of the National Universities Commission on the Council of Legal Education.<sup>14</sup> Consequently, there is bound to be conflict in the approach of these two organs to matters relating approval of programmes. The absence of representation of the National Universities Commission on the Council is indeed a serious flaw. The National Universities Commission being a major stakeholder in legal education is robbed of the advantage of contributing to matters that may have bearing to its area of competence at the Council's regular meetings. There is the need for the Council of Legal Education to involve the National Universities Commission in for instance, its accreditation visits in the same way the Commission does when constituting accreditation exercises for law programmes in Nigerian universities.<sup>15</sup>

The roles of the Commission and Council in Legal education is not mutually exclusive, though they are separate and independent bodies; yet, both are dependent on each other. Therefore, these two bodies and indeed the Nigerian Bar Association have the responsibility of co-operating with one another so as to meet up with the challenges facing legal education. The Council of Legal Education, the National Universities Commission and indeed all other stakeholders in the business of legal education must therefore be on the same page for this purpose.

#### **IV. THE ROLE OF THE NIGERIAN BAR ASSOCIATION IN LEGAL EDUCATION**

The Nigerian Bar Association (NBA) is the umbrella body for all lawyers in Nigeria. Unlike the American Bar Association, the Nigerian Bar Association has no direct statutory role in the scheme of legal education. However, all members of the Council of Legal Education are legal practitioners who invariably are members of the NBA. Sixteen members of the Council including the President

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12 The Council for Legal Education has refused to accredit the Law degree programme of the National Open University of Nigeria(NOUN) for failing to meet up with its benchmark requirements for law degree, see, Thisday newspaper, 10<sup>th</sup> April, 2013,<http://www.thisdaylive.com>

13 See section 2 (d)(viii) Cap.N 81 op.cit. for the composition of the National Universities Commission.

14 Section 2(1), *ibid*

15 External and Internal Quality Assurance: Imperatives for the development of Nigerian University System: A paper presented at the Workshop on Quality Assurance and Service Delivery in Nigerian Universities, held at the University of Maiduguri from 4<sup>th</sup> - 6<sup>th</sup> June, 2013 by Dr N.B Saliu, Deputy Director (Undergraduate/ Institutional Accreditation) National Universities Commission) Abuja,

of the NBA are selected or elected to represent the NBA, the President being a member by virtue of his office<sup>16</sup>. Considering the rich and varied composition of the Council – (lawyers in practice, members of the NBA, Attorney-General of states and all Deans of the Faculties of Law) among others, one may be tempted to conclude that the Council is in a better position than the National Universities Commission to bring about the desired change in legal education. Unfortunately, the Legal Education (Consolidation Act) is neither flexible enough nor gives room for change in legal education as is desired unless the same is amended or repealed and replaced with an all encompassing one. For now, the NBA is trying to face the challenges of legal education through its programme of Continuing Professional Development (CPD).<sup>17</sup> The Continuing Professional Development programme which is an aspect of legal education include:

- a) the attendance and participation in accredited courses
- b) lectures, seminars, workshops and conferences on law approved by the NBA.
- c) writing on the law and its practice in books, journals or newspapers approved by the NBA
- d) Study towards professional qualification approved by the NBA.
- e) other approved means of acquiring legal professional knowledge and experience.

The aim of the CPD is to continuously improve the quality of legal education by keeping the lawyer abreast of developments professionally and in academic terms.

As observed earlier, a lawyer is a reflection, a mirror of the system of legal education that produced him – a good system of legal education produces better equipped lawyers. Likewise, a system of legal education can make its product better through continuing legal education as is the case with the CPD of the NBA. The judicial arm is similarly facing the challenges of legal education through its programme of Continuing Judicial Education, a programme carried out by the National Judicial Institute (NJI). The NJI performs tasks similar to that of CPD by conducting trainings, courses, organising seminars, conferences and workshops for judicial officers often based on need assessment. These forms of continuing legal education will no doubt enhance the quality of the recipients in particular and the system in general.<sup>18</sup>

## V. CHALLENGES OF LEGAL EDUCATION

The philosophy and objective behind the Law degree programme (LL.B) as enunciated by the NUC is:-

*“... to ensure that the graduate of Law will have good general knowledge of Law, including a clear understanding of the place and importance of Law in society...It is therefore necessary that the student of Law should also have a broad general knowledge and exposure to other disciplines in the process of acquiring legal education. The programme should introduce students to the general knowledge in Law, acquaint them with principles of judicial process and legal development, and equip them with the basic tools of legal*

<sup>16</sup> Section 2 NUC Act, op.cit for composition of the Council

<sup>17</sup> Section 11(1) 2007, made pursuant to the Legal Practitioners Act, Cap. L11, laws of the Federation of Nigeria, 2004

<sup>18</sup> Hon. Justice Dahiru Mustapha (former Chief Justice of Nigeria), Contemporary Problems Plaguing Judicial Educators: Experience and Way Forward for National Judicial Institute, Nigeria, NJI Law Journal (2012) Vol.7 pp1-14.

*analysis and methods. Legal education should act first, as a stimulus to stir the student into critical analysis and examination of the prevailing social, economic and political systems of his community and, secondly, as an intellectual exercise aimed at studying and assessing the operation, efficacy and relevance of various rules of Law in the society. The curriculum must also ensure that Law is taught as it exists at any given moment, and that every Law student will be comparative in his approach to legal studies bearing in mind that there are many systems of Law (Statutory Law, Common law, Customary Law and Islamic Law) currently in operation.”*

This philosophy underpinning the LL.B law programme may satisfy the academic requirements of a law student who desires to be content with being acquainted with general principles of law and legal conditions of his immediate environment. However, in vocational terms, a law student needs to go much further in order to actualize his dream of becoming a 21st century lawyer. It is partly in realization of this fact that the idea of clinical legal education was conceived.

The aims of clinical legal education include among other things the provision of necessary skills to would-be lawyers by exposing them to practical aspects of law at an ‘impressionable stage’. The question is has the introduction of clinical legal education achieved its purpose. While we do not have any statistics to justify any stand we may take on this poser, one fact however stands out, most of those who teach courses on clinical legal education do not have the necessary skills in the areas being taught. If we agree that the aim of clinical legal education is designed to equip the student with tools and skills necessary for a would-be lawyer to acquire practical skills, then, the teacher must himself be acquainted with the nifty side of practice both as a solicitor and advocate. This means that the teacher must as a matter of necessity be well grounded in the general practice of the law. Regrettably, there are not enough practically oriented law teachers to take the students through the most critical aspects of legal education. In order to succeed in meeting the challenges of clinical legal education, the teacher must as a matter of necessity have the necessary skills and experience in advocacy and solicitors work before imparting it to others. As rightly observed by the then Chief Justice of the United States, Justice Burger <sup>19</sup>:

*“...The medical profession does not try to teach surgery simply with the books; more than 80 percent of all medical teaching is done by practicing physicians and surgeons. Similarly, trial advocacy must be learned from trial advocates”.*

The above statement is apt when it comes to clinical legal education and the vocational training at the Nigerian Law School. It will therefore be foolhardy to expect law students to learn the necessary advocacy and other skills from those who do not have them. Clinical education must go beyond teaching with the books. The amendment to the Legal Aid Council Act<sup>20</sup> which recognizes University Law Clinics as centers for provision of legal aid, presuppose the existence of trial advocates who can represent those eligible to legal aid in accordance with the Legal Aid (amendment) Act. Otherwise how else can the lecturer/ clinician render legal assistance to the indigent or those on remand without bail for minor offences? This then brings us to experiential legal education which is what the law clinic and the law school should be involved in for the most part of the students’ training.

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19 Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to our System of Justice?* 42 FORDHARM L. REV. 227 (1973) at 232

20 See Legal Aid (Amendment) Act, 2011

The Nigerian Law School as a vocational and skill acquisition center has sadly abdicated its responsibilities of giving practical approach to legal training in favour of a three-month period of court and law office attachment. This may perhaps be the reason for the call for restructuring and reorganization of the Council of Legal Education and the Nigerian Law School and by implication a call for the review of the Legal Education (Consolidation etc) Act as well as other laws on legal education. Among those making such calls is the Chairman of the Council of Legal Education who is reported to have remarked as follows:

*“It must be noted that the proposals, for restructuring and re-organisation of the Council of Legal Education and the Nigerian Law School, are geared towards improving the content and quality of the Legal Education in Nigeria, and ensure that the legal practitioners produced by the Nigerian Law School are duly equipped with requisite character and learning, so that they may be better enabled to discharge their duties and responsibilities in that regard, not just in Nigeria, but throughout the world.”<sup>21</sup>*

Any proposal for restructuring or review of legal education must entail substantial amendment or even the outright repeal of the Legal Education Act. Lack of review of laws governing legal education is one of the major challenges confronting legal education in Nigeria. Other challenges which also need to be addressed include the dearth of legal materials and the limited exposure of law teachers to workshops and conference.

## **VI. OVERCOMING THE CHALLENGES**

In order to overcome the challenges of legal education, the academic and vocational curriculum has to be redesigned to make it more relevant to the contemporary needs of the student and the society. Times are changing; therefore, the teaching of Law must change with the tide otherwise the profession will soon be inundated with impostors who cannot easily be distinguished from the lawyer due to poor academic and vocational training. Vocational training should in particular be made more practical by attaching law students to law firms and courts for at least seven of the nine month period of the academic session. My experience over the years as a law teacher and practitioner is that law office attachments afford the average student the opportunity of acquiring necessary skills faster than he does with the theoretical aspect. Unfortunately, the period allocated for the law office and court attachment is not enough for any meaningful acquisition of vocational education.

At the academic level, law libraries should be better equipped with enough up to date legal materials with access to legal resources and all the information communication technology (ICT). The teaching of clinical legal education courses should be expanded, streamlined and made compulsory for all law students. In addition, law clinics should establish linkages with law firms so as to enable the student to have early exposure to experiential legal education by following lawyers to court and getting involved in the management of the law office among others. This way, the student will start learning the ‘tricks’ of the trade. Most importantly, if vocational education is to remain wholly a government enterprise, then there is the need to harmonise the roles of the Council of Legal Education and the National Universities Commission under a single legislation on legal education. This is to avoid duplication and conflict in the roles of National Universities

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<sup>21</sup> Thisday Newspaper, April,10,2013,



Commission and the Council over accreditation, curriculum development etc.

On the other hand, if the law school is to be run by the faculties of law of the various universities as is being advocated recently, a view which I also subscribe to, then activities of law clinics should be streamlined and the same should be made the nucleus of university law schools. Allowing some selected universities to begin the law school programme will assist in reducing the heavy backload of applicants who for one reason or the other could not be admitted to the Nigerian Law School.

It may well be remembered that the *raison d'être* for increasing the number of Law school campuses from four to six in the last two years is to allow the ever growing population of law graduates fulfill their dreams of becoming lawyers. The same argument can be extended in allowing some universities to run the law school programme with the ultimate aim of divesting the Nigerian Law School of functions of providing legal education to persons seeking to become members of the legal profession in the long run since it has become obvious that the Nigerian Law School cannot cope with the ever increasing number of applicants. When this happens, the Council of Legal Education will remain the central examination body for all the law schools while at the same time retaining its power of issuing qualifying certificates to those entitle to be called to Bar.

## VII CONCLUSION

Legal education is at a cross road, it is currently facing challenges which I believe are not insurmountable. As it is, the Legal Education (Consolidation etc.) Act allows only the federal government to establish and run law school. While the establishment and running of universities including faculties of law in those universities is open to all and sundry. Out of the 128 universities in Nigeria, 40 are owned by the federal government, 38 by state governments and 50 are privately owned. And of this number, thirty six run degree programmes in law with prospect for more. There is however only one Nigerian Law School with six campuses owned and funded by the federal government that admits candidates for practical training from all the thirty six faculties of law and law graduates of foreign universities. The Nigerian Law School cannot cope with the increasing number of applicants. Hence, the need for universities to run their own law schools. If practical training at the Nigerian Law School is the three-month court and law office attachment, then law clinics can equally organize and better supervise the students in that respect.

Finally, whether the Nigerian Law School remains as it is or the faculties of law of Nigerian universities are allowed to run law school programmes as is being advocated, the curriculum of legal education must be restructured. Commerce is not only about trade in goods but it is also about trade in services, in order for the Nigerian trained lawyer to be able to compete globally, the education curriculum must be made competitive, purposeful and result oriented.



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# Meeting the Required Reforms in Legal Education in Nigeria:

## Clinical Legal Education – Ten Years After

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## A. INTRODUCTION

In many parts of the world, including Nigeria, legal education systems have been severely criticized both by stakeholders and consumers for being deficient in many respects in preparing “future lawyers, with many failing to provide the core competence necessary to practice law after a university education.”<sup>1</sup> A global review has indicated that legal education systems are generally inadequate and needs to be improved upon.<sup>2</sup> Also, a series of discussions at both international and regional levels have emphasized the need for transition in legal training in order to enhance its effectiveness.<sup>3</sup> Legal education systems around the world have been under surveillance for failing to produce students who possess problem solving abilities, and the skills and values required for the profession.<sup>4</sup> In Nigeria, as it is in other jurisdictions, criticisms against legal education by stakeholders and consumers are severe, focusing on the quality of training, which is regarded as inadequate.<sup>5</sup>

For these and other reasons, critics have called for reforms in legal education in Nigeria.<sup>6</sup>

Based on the above, this paper attempts to examine the legal education deficits in Nigeria requiring reforms, and how clinical legal education (hereinafter called “CLE”) introduced in Nigeria in 2003, ten years ago, best meets the required reforms, the challenges confronting the practice and institutionalization of clinical education, towards the objective of having a legal education which inculcates knowledge, skills and values, and is more practice oriented. This paper is divided into

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1 See Hovhannisian, Lusine, *Clinical Legal Education and the Bologna Process*, PILI Papers Number 2, December, (Hungary: Public Interest Law Initiative, 2006) p. 3.

2 *Ibid* at p. 4.

3 *Ibid* at p. 6.

4 See Nisreen Mahasneh and Kimberly Thomas, “Learning from the Unique and Common Challenges: Clinical Legal Education in Jordan”, Vol. X:N (2012) *Berkeley J. of Middle Eastern & Islamic Law*, p. 101.

5 These, basically are: 1. A majority of Nigerian law graduates are not able to practice immediately upon graduation, See Stuckey, Roy and others, *Best Practices for Legal Education* (First Edition, Clinical Legal Education Association, 2007 available at <[http://cleaweb.org/Resources/Documents/best\\_practices-full.pdf](http://cleaweb.org/Resources/Documents/best_practices-full.pdf)> last accessed 26 June, 2013 p. 14.; 2. The main emphasis of legal education is too narrowly focused on substantive knowledge and skills, while it is deemed that graduates will learn other things in practice. See Feldman, Marc, “On the Margins of Legal Education”, 13 N.Y.U. Rev. L. & Soc. Change 607 (1985) p. 618.; 3. There is disconnect in the legal training provided in the law faculties and the Law School, the law faculties teaches substantive law while law schools teaches procedural law. See Sam Erugo, C.K. Nwankwo, Nath Ikeocha and Emeka Okoroafor, “Legal Education and Social Change in Nigeria”, paper delivered at the 2012 Nigerian Association of Law Teachers Conference, held at University of Lagos, Akoka on 20 June 2012 p. 7.; 4. The teaching methodology in most law faculties and the Law School (until recently) is purely traditional and attitudes of law teachers towards legal training is conservative. See Ojukwu, E, “Introduction”, In *Clinical Legal Education Curriculum for Nigerian Universities’ Law Faculties/Clinics* (Network of University Legal Aid Institutions, 2006) p. 3.; 5. Examination at both faculties of law and the Law School, mostly require students to demonstrate substantive legal knowledge than they require for successful practice, and passing examination is often determined by ability of students to memorize notes and reproduce them, which are quickly forgotten after examinations. See Stuckey, Roy and others, *op. cit.* at p. 9, and Ojukwu, E, *op. cit.* at p. 5.

6 See Onalaja, M.O., “Problems of Legal Education in Nigeria”, pp. 1, 10 and 11. Available at: <http://www.alimiandco.com/publications/ACCREDITATION%20AND%20LEGAL%20EDUCATION%20IN%20NIGERIA.pdf> last accessed 22 August 2013; Sam Erugo, C.K. Nwankwo, Nath Ikeocha and Emeka Okoroafor, *op. cit.* at p. 7.; See Ojukwu, E, “Introduction”, In *Clinical Legal Education Curriculum for Nigerian Universities’ Law Faculties/Clinics* (Network of University Legal Aid Institutions, 2006) p. 3.; Ernest Ojukwu, “Moving From Red to Green: Sharing the Nigerian Experience of Transforming Legal Education”, being a Keynote address presented at the 11th International Journal of Clinical Legal Education Conference, held at Griffith University, Brisbane, Australia on 16-18 July, 2013.

five parts, Part II examines the introduction in Nigeria; Part III discusses the capability of CLE to meet the required reforms in legal education in Nigeria; Part IV examines the achievements, and challenges confronting the practice, mainstreaming and institutionalization of CLE in law faculties and the law school, and an evaluation of CLE; while Part V captures the conclusion and recommendations.

## **B. INTRODUCTION OF CLINICAL LEGAL EDUCATION IN NIGERIA**

The introduction of CLE in Nigeria was the brainchild of the Network of University Legal Aid Institutions (NULAI Nigeria, hereinafter called “NULAI”),<sup>7</sup> as part of its efforts to reform legal education and expand access to justice for the poor. NULAI was established in 2003 and some of its most significant efforts with respect to clinical education were the setting up of four (4) pilot clinics in 2004<sup>8</sup> and producing a model CLE curriculum for Nigerian Universities in 2006 which was reviewed in 2012.<sup>9</sup> From the introduction of CLE in 2003 to 2013, that makes it a decade that clinical education has been introduced in Nigeria. From four clinics in 2004, a total of sixteen (16) law clinics have so far been established at law faculties and the Law School, through NULAI efforts, while plans are in place to influence the setting up of additional ones.<sup>10</sup>

With the deficits in Nigerian legal education and clamour for reforms, the introduction of clinical education by NULAI was timely and could not have come at a better time when desired reforms in legal education by concerned authorities/stakeholders were coming too slowly.<sup>11</sup> CLE has as its core content, the establishment of live clinics. Some law faculties have established law clinics only, while some have in addition to that incorporated clinical education into their curricula. In addition, CLE brought a new teaching pedagogy which is clinical, thus changing the face of legal education in Nigeria.<sup>12</sup>

The CLE curriculum has resulted in new curriculum and teaching methodology that matches modern legal training with social needs,<sup>13</sup> and through an array of novel subjects,<sup>13</sup> some of which

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7 NULAI is a non-profit, non-political and non-governmental organization established in 2003 and dedicated to promoting clinical legal education, reform of legal education, legal aid and access to justice. Its membership is open to law clinics/legal aid institutions in Nigeria’s universities/law schools. See <http://www.nulai.org/> last accessed 22 August 2013.

8 At Abia State University, University of Maiduguri, University of Uyo, and Adekunle Ajasin University, Akungba, Ondo State. See Network of University Legal Aid Institutions (NULAI Nigeria), 2004 – 2006 Activities Report (Abuja: NULAI Nigeria, 2007) p. 9.

9 See NULAI, Nigeria Annual Report, 2012 p. 2.

10 See NULAI Nigeria Annual Report, 2012 p. 11.

11 There was effort to reform legal education in 2006 with the Federal Government setting up a National Committee on the Reform of Legal Education in Nigeria. The Council of Legal Education on its part set up a Committee to review the Nigerian Law School curriculum but before the Committee concludes its task, there has been a shift in the teaching methodology at the Law School from the traditional towards a more interactive one. See Ojukwu, E, *op. cit.* at p. 5.

12 For some law faculties, they incorporated CLE into their curriculum in 2006 while for the Law School, it was in 2008. See Sam Erugo, C.K. Nwankwo, Nath Ikeocha and Emeka Okoroafor, *op. cit.* at p. 13.

13 Such as, Street Law Advocacy, Access to Justice, Legal Research and Case Analysis, Interviewing and Counseling, and Public Interest Lawyering, etc.

are entirely new in law faculties' curricula, and law students are required to undergo experiential learning, geared towards legal service delivery.<sup>14</sup>

In the last ten years, NULAI has done a yeoman service in promoting CLE, fund raising and sustenance of law clinics,<sup>15</sup> capacity building for law teachers/students,<sup>16</sup> organising and funding of workshops<sup>17</sup>/conferences<sup>18</sup> for law teachers/students, organising competitions,<sup>19</sup> promotion of human rights and expanding access to justice, promoting a culture of community service among future lawyers, conducting impact assessment of law clinics in Nigeria, and expanding the frontiers of clinical education movement.<sup>20</sup>

NULAI has produced resources on CLE, such as, the Handbook on Prison Pre-trial Detainee Law Clinic, the Manual on Prison Pre-trial Detainee Law Clinic and it publishes a peer-reviewed journal, the African Journal of Clinical Legal Education and Access to Justice, among others. These resources have assisted in galvanising research and scholarship on clinics, clinical teaching and learning, thus inciting research in this fledgling area of law in Nigeria.

### C. CAPABILITY OF CLINICAL EDUCATION TO MEET THE REQUIRED REFORMS IN LEGAL EDUCATION

In the last ten years, CLE has positively impacted upon legal training and holds promises as an educational method that will remedy and compensate<sup>21</sup> for the many myriad of deficits in the current patterns of legal education in Nigeria, on the following basis:

#### 1. Clinical Education Infuses Theory and Practice Together

Clinical education integrates the teaching of theory and practice<sup>22</sup> as a form of instructional pedagogy, by combining substantive law with skills, and also values, while the law clinic serves as the laboratory for practice, on the basis that the primary aim of legal training is to prepare students for practice.<sup>23</sup> Clinical education exposes students to law practice during legal training, unlike the traditional method, and does not teach theory alone in the belief that students will learn everything else in practice.

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14 *Ibid* at p. 23.

15 NULAI conducted report writing and fund raising workshops for law clinics and law faculties. See Ernest Ojukwu, *op. cit.* Slide 6.

16 See NULAI, Nigeria Annual Report, 2012 pp. 6, 7, 9 and 20.

17 NULAI performs evaluation visits to law clinics and conducted in-house teacher training workshops for 14 Law Faculties. See Ernest Ojukwu, *op. cit.* at Slide 6.

18 For instance, NULAI hosted the 1st Nigerian Clinical Legal Education Colloquium and 2nd All Africa Clinical Legal Education Colloquium in Nigeria. See Ernest Ojukwu, *op. cit.* at Slides 5 and 6.

19 NULAI currently organises Law Clinics Essay Writing and the National Client Interviewing and Counseling skills Competitions.

20 For example, NULAI extended its advocacy for the adoption of Clinical Legal Education within the African sub-region by providing technical and capacity support to Law Faculties in Ghana, the Gambia and Kenya to establish and effectively manage law clinics. See NULAI, Nigeria Annual Report, 2012 p. 2.

21 See *Feldman, Marc, op. cit.* at p. 617.

22 See *Stuckey, Roy and others, op. cit.* at p. 72.

23 *Ibid* at p. iv.

At Nigerian law faculties and the Law School, it is amazing to see students at the clinics handling live cases and meeting real clients. They perform the functions of a lawyer, short of appearing in court, ranging from client interviews, counseling, writing letters, resolution of disputes, negotiations, etc. In their role, students investigate clients' cases, carry out legal analysis, write legal briefs and evaluate possible solutions, collaborate with colleagues, relate with clients, plan and take action, and accept responsibilities for their action.<sup>24</sup> During the process, students interface with so many dynamics thereby acquiring varying lawyering skills such as problem-solving, collaborative skills, drafting and letter writing skills, required for law practice. For law students to undertake the above activities while in training, is unprecedented in Nigerian legal education history.

Students' role performance is the core of clinical education's experiential learning methodology, which is "learning by doing". Students are able to put into practice what they learn in the classroom by rendering services to clients in law clinics.<sup>25</sup> This greatly promotes active learning, and enhances the rate of assimilation and memory of students about what is learnt practically.<sup>26</sup> Functioning as lawyers in the clinics gives students a sense of responsibility in ensuring that they render services in the best interest of clients; thereby instilling in them the spirit of professional responsibility.

In clinical education, students are able to perform in unfamiliar situations by relying on previous experience<sup>27</sup> and use them to find solutions to many legal problems.<sup>28</sup> CLE builds the skills and strength of students, and also boosts their confidence since they perform in a safe clinical environment, thereby equipping them for the rigours of law practice.<sup>29</sup> All these are absent in the traditional method, where case analysis provides the sole raw material for learning.<sup>30</sup>

## **2. Clinical Pedagogy is Collaborative and Student-Centered**

Clinical pedagogy emphasizes the use of carefully designed curriculum which is outcome-based, states the expected outcomes (i.e. what learners would be able to know or do at the end of the lesson) and content (i.e. the areas that will be covered with the purpose of teaching knowledge, skills and values) for the course, and methodology to be used. Teaching delivery is by the use of lesson plans, which set out the topic, outcomes, content, activities (this set out the interactive teaching methods that will be used to deliver the lesson) and the resources required for executing the lesson plan.<sup>31</sup> These are new and unique features of CLE in legal education in Nigeria.

The array of activities contained in the lesson plan together with the use of different instructional materials now effectively engage the students and promote active learning. Dictation of notes and distraction of students through such activity in class, as it is with the traditional method has greatly reduced. Nigerian law students are now exposed to clinical pedagogy, through interactive and student-centered learning. Students now actively participate in the learning process and are not

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<sup>24</sup> See *Feldman, Marc., op. cit.* at p. 614.

<sup>25</sup> *Ibid.* at p. 625.

<sup>26</sup> *Ibid.* at p. 615.

<sup>27</sup> *Ibid.* at p. 614.

<sup>28</sup> See Matthew I. Fraidin, Ibidun Roberts, Jeannine Winch and Larissa Chernock, *op. cit.*

<sup>29</sup> *Ibid.*

<sup>30</sup> See *Feldman, Marc., op. cit.* at p. 617.

<sup>31</sup> E.g. case study, handouts, pictures, flip chart, laptop, PowerPoint projector, DVD player, etc

mere observers as in the traditional method. Law teachers now merely play the role of a facilitator, facilitating the ideas of students, unlike in the traditional method where the teacher gives a lecture and the students listen without their experience/knowledge being used.<sup>32</sup> It is amazing to see students display such high analytical skills during presentations.

With the active learning which CLE pedagogy stimulates, law students do not need to force-feed their brains with notes dictated in class or textbooks in order to pass tests/exams because they learn by doing, and remembering comes naturally to them and their success is influenced by their own efforts not by how good the teacher was.<sup>33</sup> Through clinical teaching, law students now place emphasis on the acquisition of knowledge, skills and values, and not on passing an examination, as it is in the traditional method. With this, clinical law graduates are able to apply their knowledge and skills after the examination.

Drawing a causal link between teaching methodology and students' learning ability and performance, the Committee of Provosts and Deans of a public university in Nigeria, while discussing the students' failure rate at examinations in their university stated "the need for lecturers to improve on their teaching methodology for the failure rate is an indication that there is a fundamental problem with the teaching methodology".<sup>34</sup> The Committee therefore called on colleges/Faculties to organize a retreat to educate lecturers on the student-centered learning approach", which is a feature of CLE.

Although, the Committee did not state the failure rate in the University as a whole or on a College/Faculty basis, their statement is however illuminating enough to suggest that the traditional teaching methodology, which is prevalent in Nigerian universities, is dysfunctional and harmful to students learning and performance.

From the above, clinical method impacts knowledge, skills and values in law students. If both law faculties and the Law School adopt clinical education, there will be congruence in legal training in Nigeria, and law graduates will be well-equipped for practice.

### **3. Service Component of Clinical Education**

The clinic serves as the service and laboratory components of CLE. In the faculties/Law School clinics, students render diverse services to the poor in their host communities, free of charge.<sup>35</sup> In clinics, students deal with human beings and not with cases or some abstract situations as in the traditional method; and in the process they acquire critical lawyering skills needed for practice, in addition to an appreciation of the value of professional responsibility.<sup>36</sup> Nigerian law students now learn and become sensitive to the importance of poverty and access to justice, social justice, rule of law/human rights protection, and other social problems, in the lives of the people and the

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32 See Christopher White and Lynn Manfred, Guidebook for Clerkship Directors, 3rd Edition Alliance for Clinical Education, 2005 available at [familymed.uthscsa.edu/ACE/chapter5.htm](http://familymed.uthscsa.edu/ACE/chapter5.htm) last accessed 20 August 2013 p. 6.

33 Lewis, Richard, "Clinical Legal Education Revisited", Cardiff Law School, Cardiff University, Wales, UK. <http://www.law.cf.ac.uk/research/pubs/repository/212> last accessed 22 August 2013 p. 7.

34 See the decision extracts of Special Meeting of Committee of Provosts and Deans of Olabisi Onabanjo University, Ago-Iwoye, Nigeria, in Internal Memorandum Ref. OOU/ACA/31b dated 8th March, 2013.

35 See sub-paragraph 3.1 above for the various activities of students in clinics.

36 See Hovhannisian, Lusine, op. cit. at p. 10.



important role they can play in all of these.<sup>37</sup> This process inculcates public interest lawyering in them and propels them to defend human rights and social justice in practice.<sup>38</sup>

Through various clinical activities, law students widen access to justice for the poor in Nigeria, and 13 law faculties now have law clinics.<sup>39</sup> In addition to carrying out enlightenment programmes on human rights and democracy, etc, some of the clinics have special projects/community outreach programmes, targeted at specific communities, especially at the grassroots. Clinical experience is so unique, outstanding and incomparable, such that students feel highly motivated and inspired when they solve problems of the poor, and for this reason, the clinic stands out as the highlight in the legal training and personal lives of some students.<sup>40</sup>

#### **4. Benefits to Faculty**

Clinical education offer benefits not only to the law students but to teachers as well, as it helps to develop the faculty, both in terms of scholarship and teaching methods. Through clinical methodology, teachers are exposed to new teaching skills and thereby improve their competence.<sup>41</sup> New practice based courses could also be stimulated by engaging in clinical methodology.<sup>42</sup> Scholarship is promoted by presenting opportunities for Nigerian law teachers to write scholarly articles on CLE, which have been published both locally and internationally. Clinical education also offers opportunities for law teachers in Nigeria to have a rethink about the traditional teaching method and the need to shift from this.

### **D. ACHIEVEMENTS, CHALLENGES AND EVALUATION OF CLINICAL EDUCATION**

#### **1. Achievements of Clinical Education**

In the last decade, clinical education has gained much awareness among stakeholders of legal education, especially law teachers, coupled with the advocacy efforts of NULAI, some measure of successes have been recorded. Amongst these are:

- i. The Council of Legal Education – which is one of the bodies regulating legal education in Nigeria, in its revised accreditation guidelines, now requires the introduction of clinical education and the setting up of law clinics in law faculties as one of the best paths to the development of the faculties of law in Nigeria.<sup>43</sup>
- ii. The Legal Aid Act 2011 (as Amended) now recognizes law clinics as providers of legal aid, under Part IV Section 17.

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<sup>37</sup> *Ibid* at p. 14

<sup>38</sup> Law Commission, Review of Legal Education in Bangladesh, Final Report , *op. cit.*

<sup>39</sup> This was stated by Ernest Ojukwu, in his Keynote address “Moving From Red to Green: Sharing the Nigerian Experience of Transforming Legal Education”, *op. cit.*

<sup>40</sup> See the clinical experience of Nigerian law graduates in Ernest Ojukwu, *op. cit.* at Slides 15, 16 and 17.

<sup>41</sup> See *Feldman, Marc, op. cit.* at p. 636.

<sup>42</sup> *Ibid.*

<sup>43</sup> See NULAI, Nigeria Annual Report, 2012 p. 21.

- iii. The National Universities Commission Benchmark Minimum Academic Standards for Undergraduate Programmes in Nigerian Universities, Law,<sup>44</sup> now recognise clinical work, amongst other means of determining students' academic competence for the award of bachelor's degree, apart from script/examination assessment.
- iv. The National Universities Commission (NUC), has now introduced in its minimum benchmarks, community service, as a compulsory course, an ideal already encapsulated by clinical education.<sup>45</sup>
- v. The capacity of legal aid in Nigeria has been expanded by an additional 2,000 law students working in the clinics offering pro bono services throughout the country.<sup>46</sup>
- vi. Law graduates with clinical experience are more skilled in problem solving in law practice than their non-clinical colleagues.<sup>47</sup> At the 2013 Freedom of Information Teacher Training Workshop for Clinical Law Teachers,<sup>48</sup> staff clinicians attest to the quality of clinical law graduates, in terms of their communication, critical thinking and problem solving skills, etc.
- vii. Establishment of law clinics improves the ratings of faculties during accreditation exercises by NUC and Council of Legal Education.

## 2. Challenges of Clinical Education

In spite of the laudable achievements of clinical education within a decade, it is nevertheless being confronted by some challenges inimical to its mainstreaming and institutionalization in Nigerian legal education. Some of these are:

- i. *Apathy to CLE*: Twenty law faculties have neither established law clinics nor introduced clinical education.<sup>49</sup> The issue with this is that, those who resist the introduction or mainstreaming of clinical education are from within the law faculties, especially senior faculty members, who are unfamiliar or unclear with the concept.<sup>50</sup>
- ii. *Lip service to CLE*: Some of the law teachers pay lip service to the adoption of clinical methodology, while in actual fact, they still continue with traditional habits and practices,<sup>51</sup> making legal education, business as usual.
- iii. *Inimical actions by some Deans/Provosts*: The actions/inactions of some Deans/Provosts of Faculties/Colleges of Law are inimical to clinical education where it has been introduced with the component of law clinics,<sup>52</sup> e.g. by not allowing clinics to be integrated into the curriculum

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44 Published in April, 2007 p. 24.

45 This was stated by Ernest Ojukwu, in his Keynote address "Moving From Red to Green: Sharing the Nigerian Experience of Transforming Legal Education", *op. cit.*

46 See NULAI, Nigeria Annual Report, 2012 p. 3.

47 See Krieger, H. Stefan, "The Effect of Clinical Legal Education on Law Student Reasoning: An Empirical Study", Vol. 35:1 (2008) *William Mitchell Law Review* p. 396.

48 Organized by Network of University Legal Aid Institution (NULAI) Nigeria held at Best Western Ajuji Hotel, Gudu, Abuja 23rd – 24th May, 2013.

49 See Ernest Ojukwu, *op. cit.* at Slide 13.

50 See Nisreen Mahasneh and Kimberly Thomas, *op. cit.* at pp. 112 and 130.

51 See Ernest Ojukwu, *op. cit.* at Slide 14.

52 See Ernest Ojukwu, *op. cit.* at Slide 14.

or by not allowing clinical work to be graded. This has the effect of relegating clinics to a second-class status in the minds of both the faculty and students.<sup>53</sup>

- iv. *Lack of proficiency in curriculum and lesson plans' development:* Most teachers in law faculties with clinical curriculum still struggle with developing proper and effective lesson plans, as a vehicle for teaching delivery. The inability to successfully develop lesson plans make teachers easily revert to the traditional method.
- v. *Clinics operation violate best practices:* The way some clinics are run and the services rendered violates best practices and professional ethics.<sup>54</sup> The result is that, clients' interests may be compromised, in addition to rendering clients with "second-hand" or "substandard services".
- vi. *Low staff-students ratio in some clinical programmes:*<sup>55</sup> In some clinical programmes, there are a few staff clinicians supervising many student clinicians. The immediate consequence of this is the overburden of the staff clinicians and in addition, there may be ineffective supervision of clinical work, resulting in shoddy services.
- vii. *Disruption of clinical service:* Most law clinics in Nigeria are situated within faculty premises and operate from campuses. When there is a strike action, especially by the Academic Staff Union of Universities (ASUU) whether at national or local level, to press governments/university authorities for various demands, clinical services/projects in public universities are disrupted. Some of the strike actions can last for several months.<sup>56</sup>

### 3. An Evaluation of Clinical Education

From the consideration of capability of CLE to meet the required reforms in legal education in Nigeria, and the achievements of CLE, it can be opined that clinical education, has the potential to meet the needed reforms in legal education in Nigeria. The timeless MacCrate Report, 1992<sup>57</sup> gave the recipe of what should be the content of modern legal education and the core competences it must instil in students, comprising of basic skills<sup>58</sup> and values.<sup>59</sup> CLE encapsulates all of these, as can be gleaned from the examinations above.

"A lawyer can only be as good as the system of legal education that produced him."<sup>60</sup> For this

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53 See Feldman, Marc., *op. cit.* at p. 621.

54 See Ernest Ojukwu, *op. cit.* at Slide 14.

55 *Ibid* at Slide 14.

56 The nationwide one declared on 2nd of June, 2013 by ASUU, for instance, to compel the Federal Government to honour an agreement reached with the Union in 2009 on adequate funding of universities and provision of infrastructure, is running to four months now at the time of writing this article.

57 A report of the American Bar Association's Task Force on Law Schools and the Profession: Narrowing the Gap.

58 These include: 1. Problems identification and solving; 2. Legal analysis and reasoning; 3. Legal research skills; 4. Factual investigation; 5. Communication; 6. Counseling; 7. Negotiation skills; 8. Trial and ADR procedure; 9. Practice management; and 10. Recognition and resolution of ethical dilemmas. See LawLearn, "Equipping Our Lawyers 2: Integrate attorney standards into law student education". Available at: <<http://lawlearn.wordpress.com/tag/maccrate-report/>> last accessed 24 August 2013.

59 These include: 1. Competence; 2. Promoting justice and fairness; 3. Improving the profession; and 4. Professional development. See LawLearn, *op. cit.*

60 See Onalaja, M.O., *op. cit.* at pp. 1, 10 and 11.

reason, clinical education, which has been adjudged as successful in filling some of the gaps that exist in traditional legal education,<sup>61</sup> should be seriously considered in Nigeria if we want our legal education to be richer in educational opportunity and professional promise,<sup>62</sup> by ensuring that all law faculties embrace CLE both as part of curriculum and as teaching methodology.

In spite of the capability of CLE to meet the desired reforms in legal education in Nigeria, there is the human element necessary to drive the change. Therefore, there must be willingness and more commitment on the part of law teachers, to change from current traditional practices and attitudes<sup>63</sup> to clinical method, in order to offer excellent teaching and learning environments.

On the evaluation of the introduction of CLE, it can be said that clinical education has been very beneficial to legal education in Nigeria and its performance with the last decade a huge success, judging from the examination made above, despite some of the challenges identified. For these efforts to be improved upon and the challenges to be surmounted, it will take sustained efforts on the part of NULAI and faculties/Law School, to build capacity of law teachers and for clinical education to be firmly entrenched in the breath and ethos of legal training in Nigeria.

One issue that must not be glossed over in legal education is funding because preparing students for legal practice is a big and important task. The MacCrate report was criticized for glossing over the issue of funding.<sup>64</sup> Clinical programmes must therefore be well funded by the university, in terms of provision of adequate physical space, equipment, staffing and funding of projects, etc.<sup>65</sup>

The best way to fund clinical programmes is for it to be incorporated into the faculty budget, since the clinic is the laboratory and a content of legal education.<sup>66</sup> This is necessary for clinical programmes to be taken seriously and be seen as part of the educational programme of the faculty.<sup>67</sup> Before this is attained, law clinics in the interim, can partner with Bar Associations, NGOs and individuals for technical, service and financial support.<sup>68</sup>

The status of law clinics in law faculties that have not integrated clinics into the curriculum is murky, in the sense that, clinical work will not be graded and will merely be taken as an extra-curricular activity. This has the tendency for clinics not to be seen as part of the faculty programme and thus not to be taken seriously by students, with the consequence that students will not like to devote their time to clinical work that would not earn them any credit and might ultimately affect clinical services or its survival.<sup>69</sup>

It is vital that national best practices and benchmarks for legal education be articulated by NULAI and stakeholders of legal education in Nigeria, as it exists in other jurisdictions, such as United States, U.K. and Australia, in order to create an atmosphere for academic excellence.

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61 *Ibid* at p. 3.

62 See Feldman, Marc., *op. cit.* at p. 621.

63 See Stuckey, Roy and others, *op. cit.* at p. 3.

64 See Rose, Jonathan, "The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense", 44 *J. Legal Educ.* 458 (1994).

65 See Nisreen Mahasneh and Kimberly Thomas, *op. cit.* at p. 115.

66 *Ibid* at p. 131.

67 See Nisreen Mahasneh and Kimberly Thomas, *op. cit.* at p. 131.

68 *Ibid* at p. 132.

69 See Feldman, Marc., *op. cit.* at p. 621.

## **E. CONCLUSION AND RECOMMENDATIONS**

The examination of clinical education above has revealed that it is practice-oriented and offers an excellent teaching and learning environment, if best practices are followed and this paper therefore concludes that CLE has the capacity to address the deficiencies in legal education in Nigeria and meet the desired reforms which have been sidestepped for a long time, towards a legal training that builds competence, value and more practice oriented. CLE is therefore recommended as a template for legal education reform in Nigeria, and other countries in a similar situation to Nigeria.

This paper recommends that legal education should urgently be reformed and clinical education be adopted as a template for this reform. It equally recommends that the regulatory authorities for legal education in Nigeria should make the adoption of clinical education in law faculties curricula part of the accreditation requirements, and that clinical courses be offered as compulsory courses, including taking part in clinical work. This will go a long way towards improving legal education and make it more practice oriented, before any major reform is carried out.



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# Assessing Law clinic – the use of digital patch text assessment as an alternative to traditional portfolios

*Karen Clubb*

## Introduction

The paper presents the use of 'patch text assessment' as an innovative assessment method being 'a series of integrated patch text assessments which are 'stitched' together with a final 'patch' to form a complete coherent piece of work. Each patch adds to the overall assessment.'<sup>1</sup> The use of patch text assessment is presented within the context of a year long research project which aimed to assess the use of digital media to enhance the use of patch text assessment within a law clinic module in UK Law School. This paper presents a brief outline of the context of clinical legal education in relation to its application within the Derby law clinic module, outlining the current influences within the field of higher education that guide the assessment process and context. The paper then briefly defines 'traditional' portfolios and the concept of patch text assessment before considering these each in turn more fully in relation to their advantages and disadvantages in terms of assessment strategy. The paper then progresses to outline the objectives of the research project and the methodology applied to achieve these. This is followed by an analysis of the project findings to conclude as to the effectiveness of digital media to enhance the use of patch text assessment and any benefits derived from this approach in comparison with 'traditional' portfolios for assessment.

## The Derby Clinic experience

The value of Clinical Legal Education (CLE) is evident in the number of law schools that now seek to make provision for student engagement in law clinics, and the research published to date as to the benefits of CLE as a pedagogic approach. The type and form of CLE varies, some institutions offer this purely as a non-credit bearing learning opportunity. Other law schools, such as Derby integrate this into a credit bearing module as an assessed component of the undergraduate law curriculum.

Derby has for many years worked in partnership with local community legal service providers following a 'placement style' clinic model. Students are required to commit to a minimum number of hours, working within these community services alongside qualified solicitors and advice workers. The experiential model of learning offers a common rationale to all clinic provision, whatever the form. It offers students an insight into the law in practice and the ethical and professional context in which this is situated through their own participation in the provision of legal services. CLE affords students the opportunity to develop specific legal skills in a more meaningful way, learning from the context in which the practice of the skill is situated, enhancing their overall student learning experience and their employability.

Academic discourse and research have to date focused on the value of CLE as a pedagogic methodology and its capacity to allow students to 'experience and observe' from 'exposure to law in practice'<sup>2</sup> Some institutions have phased this experiential dimension of clinical legal education to align with the stages of undergraduate academic progression.<sup>3</sup> Others have captured the benefits

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1 Clubb K., 'The use of Patch Text Assessment in the Derby Law Clinic' 2011. Poster presentation University of Derby Learning Teaching and Assessment Conference July 2011

2 Stuckey, Roy, Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses (2006-7) 13 *Clinical L. Rev.* 807-838

3 Hall J., Kerrigan K., 'Clinic and the wider law curriculum' Learning in Law 2010 Available at <http://www.ukcle.ac.uk>



of experiential learning within developmental models of practice to further the attainment of professional competencies<sup>4</sup>. There has however been less consideration devoted to the design of assessment of this experience and the challenges this presents for both staff and students.

The benefits acquired from CLE enhance student development and require careful assessment to capture the depth of the student experience and their skills development, mapped to curriculum benchmarks.<sup>5</sup> Assessment strategies within undergraduate programmes in the UK have to align with quality standards set by the UK Quality Assurance Agency in the form of subject descriptors. The European Commission have sponsored a similar initiative to identify generic subject specific competencies within the European Higher Education Area, to support the Bologna process of mutual recognition of higher education and professional qualifications within the European area. Learning outcomes need to be carefully crafted to capture the richness of all that CLE can offer, reflected in an assessment method designed to match this. Not all undergraduate degree programmes, for example in the UK, require assessment of professional skills or practice per se, so there is no mandatory competency based assessment required. This is the case for most undergraduate law degrees in the UK which tend to be academic in focus. The current higher education context in the UK does however, require a consideration of how the degree programmes address the employability agenda. Whilst this is not a pressing issue in all jurisdictions, a consideration of the employability context has merit, if only to ensure that the clinic experience offered continues to reflect professional practice, and in light of clarifying student career aspirations.

In the UK the Higher Education Academy (HEA), an independent champion of standards of excellence in teaching and learning, provides subject guidance to assist in addressing the employability context in law recognising that 'law is taught both as an academic subject and as a precursor to gaining a professional qualification'.<sup>6</sup> This is common to many jurisdictions. It is also recognised that only 'approximately 50 percent of law graduates go on to train, but not necessarily to qualify, as solicitors or barristers.'<sup>7</sup> The use of CLE is therefore valuable as an effective teaching methodology given its potential to enhance academic attainment in a relevant professional context. CLE offers a 'real world' experience that is particularly relevant in addressing the employability agenda in providing a realistic insight into professional practice, enabling students to apply and develop their knowledge to seek solutions to 'real' legal problems, often in relation to areas of law not previously studied.<sup>8</sup>

In the UK the Quality Assurance Agency that sets the quality standards for undergraduate education in the UK, in the form of subject benchmarks which indicate the minimum requirement in terms of substantive areas and levels of assessment and performance required for the award of a law degree. Higher education institutions offering undergraduate law degrees retain freedom

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4 Brooks S., 'Meeting the Professional Identity in Legal Through a Relationship Centred Experiential Curriculum' *Education Challenge* 41 U. Balt. L. Rev. 395 2011-2012, 396

5 Law Subject Benchmarks QAA 2007 <<http://www.qaa.ac.uk/Publications/InformationAndGuidance/Documents/Law07.pdf>> Accessed 2/05/2012

6 Rees C., Forbes P., Kubler B., 'Student Employability Profiles: a guise For Higher Education Practitioners' HEA, CHIE September 2006, 97,98

7 Rees C., Forbes P., Kubler B., 'Student Employability Profiles: a guise For Higher Education Practitioners' HEA, CHIE September 2006, 97,98

8 Rees C., Forbes P., Kubler B., 'Student Employability Profiles: a guise For Higher Education Practitioners' HEA, CHIE September 2006, 97,98

to 'integrate assessment of key skills into performance on particular modules' which may be 'demonstrated by extra-curricular activities' or by engagement in law clinics.<sup>9</sup> The law subject bench marks allow the flexible integration of CLE as a teaching methodology. In reality the model of CLE adopted is more likely to be constrained by the staff skills mix and capacity for student supervision as well as the student demand, affecting the higher education institution's ability to resource this.

The potential benefit of participation in a law clinic, regardless of the model adopted would seem to afford the opportunity to assess most if not all of the subject benchmarks as well generic and transferable skills. The skills selected for assessment by a law clinic module are likely to be dependent upon the model adopted for the CLE experience and the form of legal service within in which CLE is situated, alongside the expected student role within this and degree of supervision afforded. Learning outcomes will no doubt reflect the skill areas that the academic team assess as being capable of being developed by the engagement in the law clinic experience, matched by assessment methods which are capable of evidencing their attainment. There is no set formula for this and learning outcomes will be institutionally specific and sufficiently broad to capture evidence of attainment of as full a range of skills as possible.

### **Assessment methods – defining key terms**

Law Clinic offers the potential to assess a range of skills and knowledge, some generic and some legal, through assessed portfolios. Portfolios are 'simply a collection of self-selected student work. Its primary purpose is to provide a vehicle for students to reflect'.<sup>10</sup> Portfolios have been described as:

'a purposeful collection of student work that exhibits the student's efforts, progress and achievements. The collection must include student participation in selecting contents, the criteria for selection, the criteria for judging merit, and evidence of student self-reflection'<sup>11</sup>

The work students select for inclusion in the portfolio must be of sufficient quality to satisfy the relevant learning outcomes and include 'those pieces that best reflect their learning.'<sup>12</sup> Portfolios are 'a useful way of getting students used to writing reflectively, introducing them to the idea of providing evidence for their reflection.'<sup>13</sup>

Portfolios have been described as having two dimensions, a positivist one where the 'purpose of the portfolio is to assess learning outcomes and those outcomes are, generally, defined.' Here the portfolio acts as 'a receptacle for examples of student work which are used to infer what and how

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9 QAA Law Subject Benchmarks 2007, 4.7 Available at <http://www.qaa.ac.uk/Publications/InformationAndGuidance/Documents/Law07.pdf>

10 Johansen S 'What Were You Thinking?': Using Annotated Portfolios to Improve Student Assessment' (1998) 4 Legal Writing J. Legal Writing Inst. 123, 135

11 Pauleson F., Pauleson P. Meyer C 'What makes a portfolio a portfolio?' *New Directions for Teaching and Learning*, 2008(74) 79-87

12 Johansen S 'What Were You Thinking?': Using Annotated Portfolios to Improve Student Assessment' (1998) 4 Legal Writing J. Legal Writing Inst. 123, 136

13 Hinett K 'Developing Reflective Practice in Legal Education' UKCLE 2002.

much learning has occurred.’<sup>14</sup> Additionally the constructivist dimension assists in going beyond merely recording learning but assisting the learning process. Here portfolios capture and enhance ‘the learning environment in which the learner constructs meaning’ and facilitate the presentation of a record of the processes associated with learning itself. Reflective portfolios have the advantage of potentially capturing both these dimensions.

## **A different approach – Innovative assessment and Patch Text Assessment**

Patch text assessment (PTA) has been used in a number of different contexts but is common in the context of the education and training of teachers and the medical professions. It was developed as a tool to facilitate the development of the reflective process to assist reflective writing as a tool to further professional development and competence in professional practice. The capacity for reflection on professional practice is highly relevant to the vocational training of these professions, which necessitates a critical reflection on the professional role within the context of service delivery. PTA has most commonly involved learners sharing and commenting upon each other’s work, incorporating both peer review and tutor review and feedback within the PTA process. These rich sources of feedback offer the potential for students to improve their capacity for critical and in depth reflection by promoting critical enquiry and the defence of their reflections amongst their peers.

The concept of PTA employs an assessment comprised of a series of single ‘patch texts assessments’, patches of reflective critique, that when finally ‘stitched’ together demonstrate the attainment of specific learning outcomes.<sup>15</sup> The final work is not a collection as with the portfolio but a complete and coherent whole,<sup>16</sup> one piece of work. The relationship between the different patches as a product of learning and an assessment method contributes to the structuring of the learning process. Ovens describes PTA as the

Integration of written pieces across the module, which demand critical and personal engagement, and have been the subject of peer and formative feedback, to produce a structurally unified reflective synthesis.<sup>17</sup>

The final piece is a synthesis of learning derived from the previous patches. Winter has described PTA as representing an ‘attempt to combine the coherent structure of the essay with the open-ness of the portfolio.’<sup>18</sup>

The benefit of PTA lies in the perspective and understanding at the outset of the relationship of each individual assessment task and the skills that this draws upon and the relationship between these elements and the final piece of work and end learning outcomes. This requires the synthesis

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14 Paulson, F.L. & Paulson, P. (1994) “Assessing Portfolios Using the Constructivist Paradigm” in Fogarty, R. (ed.) (1996) *Student Portfolios*. Palatine: IRI Skylight Training & Publishing, 36

15 Winter R. (2003) ‘Contextualising Patchwork Text: Addressing Problems of Coursework Assessment in Higher Education, *Innovations in Education and Teaching International*, 40(2)112-122

16 Brunsdon V., Goatcher, J., 2008. Enquiry based learning . In: *The Higher Education Academy Psychology Network New Lecturers Forum*, Aston University, Birmingham, January 2008 .

17 Ovens P. (2003). Using the Patchwork Text to develop a critical understanding of science. *Innovations in Education & Teaching International*, 40(2), 133-143

18 Winter R 2006 A Patchwork Text online Periodical Service Company ([www.periodicals.com](http://www.periodicals.com))

and coherence between the learning outcomes and the PTA design at the outset. The advantage of PTA potentially over a portfolio is that the former focuses on the learning process, as well as the learning product/ outcome, providing a clear and purposeful structure to the assessment process. Indeed PTA readily requires students to make full use of formative feedback and the assessment process can drive the learning process. PTA is therefore relevant to CLE and an experiential law clinic module providing a structure to support the learning experience to enable students to extract the meaning from their reflection on their learning in context. Experiential learning whilst rewarding and motivating for students requires a greater degree of student autonomy and responsibility for their learning, through active participation rather than a passive consumption type approach. It potentially yields richer deeper learning by structuring the assessment process and using the process of reflection to both evidence and enhance learning, raising the student's awareness of further learning opportunities. PTA potentially captures the transformative and developmental learning associated with the law clinic experiential learning and uses these to drive the learning experience and student performance.

## **Traditional portfolios**

Portfolios<sup>19</sup> are a common form of assessment in undergraduate education and the range of learning technologies allows for the use of e-portfolios. The traditional paper based portfolio is regarded as a collection of student work on their experiences in the law clinic experience over the period of the module. The expectation is that students reflect on the development of their skills and also their personal development during the clinic experience, reflecting on the impact of this on their learning, particularly in relation to the role of the lawyer, their future career and professional practice. Portfolios can readily be tailored to assess a diverse range of learning experiences, to evidence the attainment of a breadth of skills and the extent of learning according to the specific module learning outcomes, offering the possibility of multidimensional assessment tool.<sup>20</sup>

The reflective element of writing in the reflective diary or journal, is a critical element that draws together the student's observations, perceptions and critique of their experience. This element of the portfolio demands more than demonstrating knowledge and new insights through a mere descriptive articulation of learning. It further requires a demonstration of critical analysis and synthesis of learning, drawing on the relevant features of the context of the experience and their impact on the student's learning and their understanding of the context of legal practice. The reflective element of the portfolio is the mechanism by which the students evidence their understanding of theory and practice<sup>21</sup> and its integration and relevance to the specific context of learning and the wider context of delivery of legal services and professional practice. Reflections are the 'student voice' demonstrating the student's knowledge and the application of this within the given legal context. That which the tutor is unable to observe or know in relation to the student performance and knowledge acquired in the clinical legal practice/education setting, the student can convey in their reflections.

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19 Portfolios are defined as "A collection of work that relates to a given topic or theme, which has been produced over a period of time" QAA Explaining contact hours Guidance for institutions providing public information about higher education in the UK, August 2011.

20 Venn, J. J. *Assessing students with special needs* (2002 2nd ed NJ: Merrill)

21 Santos M , 'Portfolio Assessment: And the Role of Learner Reflection' *English Teaching Forum* 35 (2): 10-14

The process of reflection, whilst sufficient to demonstrate the required learning outcomes, is by its nature, the student's perspective of their learning and/ or performance. This requires further validation by reference to external evidence to support the student reflections. This is especially the case where students are expected to demonstrate application and development of specific legal skills. There is however the danger that the portfolio may become a 'tale of two halves' in relation to the student experience, comprised of two separate elements and processes. The separation of the evidence / record of practical skills development and learning from the parallel reflective process on learning can result in the portfolio becoming a collection of individual episodes or moments of learning rather than a seamless representation of the whole clinic learning experience as one 'joined up' piece of work. Consequently portfolios are not always perceived as leading to 'integrative' assessment of /or learning.<sup>22</sup> In part this may arise from the quality of the reflective critique and/ or selection of episodes of learning for reflection and inclusion in the portfolio. The problem in relation to portfolios, is that students may focus on one time frame of the clinic learning experience, rather than to reflect more widely back and forward in time to link their learning from these experiences. The reflective process is critical to learning, to enable students to make sense of their clinic experience and to synthesise new knowledge, understanding and insights into their portfolio through their reflections which evidence the learning outcomes.

Portfolios do however have obvious advantages in terms of student ownership of their work, and in terms of their ability to record the learning acquired over a period of time where this may vary in pace and depth. Reflective portfolios offer the capacity to be assessed both formatively and summatively. Portfolios allow students to draw on a wide range of different types of academic work and readily accommodate different styles of writing to evidence learning. They do however pose a challenge for students in terms of their ability to manage their workload and learning over time and to sustain their capacity for reflection over the life of the whole module which is usually the selected assessment period. It is not uncommon for law students engaging in the clinic setting who are required to complete a reflective portfolio /log/ to develop 'reflective fatigue', feeling obliged to write and add 'content' to their portfolio but having no new insights to offer. The danger then becomes one where 'reflective journals tend all too frequently to remain as fragments held together merely by a chronological sequence.'<sup>23</sup> The learning process can become fragmented so that students see their reflective portfolio as a product and outcome of their learning rather than part of the learning process itself.

The main criticism of portfolios is the tension between capturing a range of learning outcomes, given that students have to design and deliver the structure to support the attainment of these. Portfolios are most effective when conceived as fusion of process and product<sup>24</sup> not solely a product of the learning process, achieved by the process of reflection which contextualises the evidence in the portfolio.<sup>25</sup> Moreover students can all too easily reflect continuously but without synthesising the totality of learning from their experiences, focusing on reflections as single

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22 Maisch M. M(2003) 'Restructuring a Master's degree dissertation as a Patchwork Text', *Innovations in Education and Teaching International*, 40: 2, 194-201

23 Scoggins J Winter R, 'The Patchwork Text: a coursework format for education as critical understanding' *Teaching in Higher Education*, (1999) 4 (4) 485 – 499

24 Winsor, P. & Ellefson, B. 'Professional Portfolios in Teacher Education: An Exploration of Their Value and Potential' *The Teacher Educator*, 31(1) (1995) 68-91.

25 Baume D. (2001) 'A Briefing on Assessment of Portfolios' *Assessment Series 6* (York :LTSN Generic centre)

events over the direction of the module. Portfolios then become a mere collection of individual elements selected to evidence learning<sup>26</sup> each connected to the same theme but not synthesised to each other and related to the overall learning experience. To use the analogy of a jigsaw in a box, the same elements are present unassembled, but the view is entirely different once the jigsaw is assembled and complete. The difficulty for students in compiling portfolios, relates to the often wide assessment parameters that assessment of law clinics require. Requiring students to demonstrate practical skills development and their understanding of their relevance, value and application in practice through reflection, is a challenge. In addition students also have to select the most appropriate learning events on which to reflect to meet the diverse range of parameters often assessed by law clinic modules.

Where portfolios are summative, if students fail to integrate and synthesise their work beyond a collection of individual pieces, they risk not meeting the assessment parameters and 'missing the mark'. A selection of pieces alone without drawing these together in a synthesised coherent way denies the student the opportunity to fully review and reflect on the totality of their learning, and diminishing the capacity to demonstrate the quality of their learning. This is crucial where clinic modules are assessed, as is often in the final year of study and where the period of time over which the clinic module offered is linked to the provision of credit in a single or even a double credit module.

## **Outline of research aims and methodology**

This paper aims to outline the participation of the Derby law School in a year long project funded by JISC (Joint Information Systems Committee). JISC is a UK national charity that works to support educational institutions, including those in higher education, to support new developments in information and digital technologies and their application in the higher education sector. The DePTA project – Digitally Enhanced Patch Text Assessment was funded by a learning teaching and innovation grant from JISC. This project aimed to investigate the use of digital technologies to enhance the use of PTA in a variety of higher education environments. The project was a collaborative project involving the participation of five higher education institutions offering a range of different traditional and non-traditional subjects at degree level. The evaluation of the project was undertaken by the Centre for Recording Achievement.

The project aims were defined as follows:

- To assess the extent, if any, to which digital media could enhance the use of PTA
- To extend and assess the relevance and utility of PTA to the more traditional undergraduate subject areas ( such as Law) in different higher education institutions

For the purpose of this paper reference is made to the application of the methodology and the findings in relation to the law subject area only and its application within a law Clinic module.

## **Project methodology**

In total there were five participating institutions, selected on the basis that there 'is a notable absence of evidence that innovative forms of assessment are being used in the more traditional

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<sup>26</sup> Baume D. (2001) 'A Briefing on Assessment of Portfolios' Assessment Series 6 (York :LTSN Generic centre

academic disciplines and institutions'.<sup>27</sup> Participating institutions were required to allocate a project partners/ contact person from the academic team who was engaged in teaching /supporting the module and would support the project throughout. The PTA was to be applied to a final year module on an undergraduate degree. The selection of the digital technology was made by the participating institution according to the technology available and that most appropriate to align with the assessment strategy. The design and configuration of the PTA including the number of patches was also determined by the partner institution, the only requirement that all institutions provided assessment criteria for each assessed 'patch.'

In implementing the project methodology the participating institutions needed to attend to the project objectives. These included:

- To extend the use of e-assessment into undeveloped areas i.e. traditional subject areas such as law
- To evaluate the extent to which the scope of PTA assessment can be extended to embrace subject benchmarks and graduate skills, in particular difficult-to demonstrate attributes where evidence needs to be captured from learning processes as well as products
- To consider the capacity to enhance and evidence student learning at a high-stakes level, and the sustainability in relation to staff workload.

The project was evaluated using two approaches, one designed to capture student feedback on the use of PTA within the specific the module to which this applied, using a student questionnaire. This has a number of questions to which the student has to give a rated response (score of between 1 and 5) giving a crude indicator of the depth of agreement with the statement. This was completed at the end of the project and after students had submitted their coursework. This was additionally supplemented within the Law School by a semi-structured interview with student participants, to gain a more in depth student perspective of the value of the module and their participation in the project overall. The second component of feedback was that obtained from the partner institutions, through semi-structured interviews with the project coordinator, to gain their perspective of the project. This was supplemented by a case study video presentation by the project partner, which described in more detail how the project was implemented in that partner institution and briefly outlined some of the findings relevant to the subject area.

### **The project as applied at the partner institution.**

The project involved the use of PTA in the context of a final year module on an undergraduate degree in subject discipline. The law subject implemented the PTA into the Clinic module, a year long optional module on the final year of a UK qualifying law degree. The Law clinic module is delivered several times a year, cohort sizes being small, given the module was a double credit module and seven students from the cohort of twelve, selected participated in the project. As a final year module, it contributed to 25% of the marks for the final year, with the final year marks comprising 80% of the final degree classification. This made the module 'high stakes' for those taking part in the project.

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<sup>27</sup> Marcangelo C., 'Jisc Final Report' 02/08/2011 para 3.2 Available at <http://dpta.wordpress.com/an-overview/>

The Law clinic module is assessed by reflective portfolios, student reflections additionally supported by evidence demonstrating the student engagement with the learning setting and their participation in and observation of a variety of legal tasks.

The evidence may include records of meetings attended, interview observations, client case studies, minutes of team meetings, feedback from placement supervisor / mentor. Additionally anonymised samples of practical tasks such as client letters, statements of claims, undertaken by the student may also be included.<sup>28</sup> A detailed activity attendance log was also required as part of the assessed portfolio, requiring students to account for their time, as required of practitioners and is also relevant to voluntary sector accountability for funding. This enables students to be commercially aware and promotes good time management skills. Student portfolios may also include reflections on outcomes of assessment of their competence in key tasks such as drafting.

Due to the DePTA project lead time, there was insufficient time to change/ modify the existing module learning outcomes under the University quality assurance processes. One of the challenges was the use of the existing learning outcomes and assessment methodology and the incorporation of PTA within this. It is worth mentioning here that ideally the use of PTA should be undertaken alongside specifically configured learning outcomes rather than using PTA as a 'bolt on' to existing learning outcomes.

The PTA consisted of 4 patches

1. Critical reflection on:
  - a) an aspect of professional practice
  - b) an aspect of legal process and service from a client's perspective.
2. Submission of client case studies.
3. Critical reflection of the service area and the role of legal advisors, as to their value to community they serve.
4. Final reflection – this brought together previous PTA tasks and supporting evidence, which was presented as a single piece for assessment.

Patches one and three were submissions where the students could view the work of the other students and offer feedback on 'patches' submitted by the other students, as well as being able to read the tutor (member of the academic team) comments on the patches submitted. The feedback process for the shared submissions was therefore reciprocal, with the opportunity to both give and receive feedback from their peer group and the module tutor. The shared submissions aimed to enhance the student's capacity for critical reflection and develop their individual style of reflective writing through encouraging critique of the reflections and writing styles of other students. The requirement to provide peer feedback was not part of the assessment requirements and was entirely voluntary in the sense that the provision of feedback by the tutor was not conditional upon student having provided peer feedback.

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28 Ledvinka G. 'Reflection and assessment in clinical legal education: Do you see what I see?' (2006) 9 Int'l J. Clinical Legal Educ. 29 ,46



The aim of the project was to evaluate the relationship between the use of PTA and digital media and to establish what factors would support, facilitate or enhance any student engagement with PTA and the assessment outcomes. The aim was not to review the digital media as an assessment tool.

The digital media selected was the ‘pebble pad’ on-line e portfolio system and virtual learning environment. E-portfolio systems are generally recognised to be ‘an archive of material, relating to an individual, held in a digital format’.<sup>29</sup> Pebble pad is similar in structure and presentation to paper portfolios, but potentially offers a broader representation of student work and learning due to the expansive nature and ability to capture, store and present work in different digital forms. The selection of pebble pad was not aimed to reproduce the paper based portfolio in a digital form, but to enable students to share patches electronically at pre-determined dates. Students and tutors create an institutional account within the module. The tutor creates common access areas to enable student submission of PTA and submission and viewing of feedback. The tutors can view all material within the online student portfolio. Pebble pad enables the student to create reflections and daily diaries in a variety of pre-set formats. Students can also upload word documents, scanned images, video footage, audio files, and add weblinks, termed ‘assets’ The student can create a portfolio within the pebblepad platform which allows the tutor to view selected work and assets. The tutor receives an email of the title of all assets uploaded to the student portfolios and any amendment to the portfolio, so can view the pace and extent of student progress and track changes made to the PTA in light of the feedback given.

The selection of this digital media was carefully made in consideration of its ease of use and the implications for any student training, for those unfamiliar with this.<sup>30</sup> Pebble pad was selected for its ease of use and accessibility and its capacity to enable students to integrate evidence to support their reflections and their learning.<sup>31</sup> It also enabled students to submit their PTA online and to make shared submissions and to engage in and view peer feedback. Additionally, one advantage of the pebble pad portfolio system was that students would continue to have access to the pebble pad platform after completion of their degree, which they could use to potentially develop their own CV,<sup>32</sup> customising their presentations and access,<sup>33</sup> for self-marketing to enhance employability.<sup>34</sup> The inclusion of work from the clinic module was only possible due to the constraints of submission which ensured that no material referred to in the ‘patches’ would compromise client confidentiality, being purely generic and reflective in nature.

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29 Madden. T., ‘Supporting Student e-portfolios: A Physical Sciences Practice Guide’ September 2007 , 4.

30 Hudson L ‘Techniques’, 79 (5) (2004) 19.

31 Chappell D S and Schermerhorn J R ‘Journal of management education’, 23 (6) (1999) 651

32 Madden. T., ‘Supporting Student e-portfolios: A Physical Sciences Practice Guide’ September 2007,9.

33 Joyes, G., Gray, L. & Hartnell-Young, E. (2009). Effective practice with e-portfolios: How can the UK experience inform practice? In *Same places, different spaces. Proceedings ascilite Auckland 2009*. <http://www.ascilite.org.au/conferences/auckland09/procs/joyes.pdf> ‘Learners may create multiple e-portfolio presentations, for a range of purposes, for different audiences, at different times. For example, for presenting evidence of skills and achievements to an employer, or presenting reflections on a work placement as part of a course of learning.’

34 Merrit DJ., ‘Pedagogy, Progress, and Portfolios (2010)25 Ohio St. J. on Disp. Resol. 7, 14

## Project Outcomes

The overall project findings are limited as student numbers here were small, only seven students out of the twelve participated. Other institutions and subject areas had larger student cohorts. The overall project aimed to investigate the use of digital technology to enhance the use of PTA in more 'traditional' undergraduate subjects, but absent any control group using PTA without drawing on the use of digital technology, it has been difficult to isolate the benefits of the digital technology alone other from the participant feedback questionnaires.

It was noticeable that students were influenced in their engagement and their willingness to participate in the project, by their response to the use of the digital media. In some instances the digital media was the reason for some students declining to take part in the project. Here the perception being that the time taken to construct the online portfolio within which the PTA sat, would take longer than construction of a paper version. This response may indeed have been different if the PTA had stood alone and not been integrated into the original assessment by portfolio, for this module. The fact that a number of students were adverse to taking part in the project seemed to be related to the selected digital media or the use of PTA as part of an assessment strategy, both of which could be considered to be innovative assessment methods for this student group and outside their experience of more 'traditional' assessment methods. The views of students who declined to participate was captured by the student questionnaire. One student commented that they did not like engaging with technology and were put off by the 'technical stuff.' Another student commented that they were put off by their previous use of pebblepad describing this as 'inefficient and slow.' Two students who did not participate advanced the timing of the project as the reason for this, wishing to focus on their final classification and the pressure of participation generally. For those students who did take part, five when asked stated that they agreed that the use of the pebblepad had had a positive impact on their work, but there were no further comments to illuminate as to the nature of this impact.

Students were provided with a two hour demonstration and use of pebblepad. Whilst some responded very positively to the use of the pebble pad, all acknowledged that uploading of anonymised evidence as assets to support their reflective PTA was difficult requiring the scanning of these which was time consuming. The scanning of assets also countered the benefit of accessing their pebblepad electronically at distance from the University, since scanners were only available on campus. The academic environment draws on a variety of learning technologies which students make full use of through the University platform. In contrast there is a more limited use of digital technologies in legal practice, particularly by the small scale legal service providers in which students were situated for their clinic placement. The law profession has a very traditional approach to record keeping, and it remains the case that client files and documents are typically in paper form. The cultural and professional context of the law in practice is still very much geared to paper evidence, claims submitted and case file correspondence being in paper form. This factor was an additional encumbrance and separated the assessment media from the reality of the context of practice. This is however subject specific relating to the context of the practice of law and the module selected for the DePTA project at this institution. One of the other participating institutions selected a photographic design module for which the production of a digital online portfolio was highly relevant to the subject discipline.

Whilst the use of digital media is subject specific it remains relevant for promoting engagement

with PTA in some subjects. For law however, student feedback confirmed that the digital media facilitated the 'ease' of submission and the opportunity to provide and access feedback whilst off campus. The digital media did not however increase student motivation to provide peer feedback. Crucially for this project the digital media did not have a significant impact on the engagement of law clinic students with the PTA.

Students stated that they did however gain from reading the PTA submissions of other students, but their engagement with providing peer feedback on this was poor. Further investigation into the poor response to peer feedback, indicated that this was due to not feeling 'skilled' in providing feedback, wary about how useful this would be to recipient students and not wanting to appear negative. They also perceived the tutor as adopting the role of 'expert' in this regard. The reluctance of students to engage in providing peer review is no doubt borne of their heightened sensitivity to the personal nature of reflections and their content, one of the few occasions where students can legitimately write in the first person in offering personal insights and their 'feelings' regarding their learning experiences. Here the use of digital media to provide feedback may make the availability of feedback easier, but may make students uncomfortable with the level of formality. Feedback given in tutorial groups by comparison may feel a more familiar process, can be provided verbally and more informally. This author considers that had the feedback to the patches, in relation to the shared submissions been given in face to face in groups sessions, students' participation in the project would have been greater in relation to offering peer feedback. There was however a reliance on tutor feedback which was perceived as valuable, focused and aligned to both the individual PTA assessment criteria and the overall module learning outcomes so was more useful to students. Again the perception of the value of the tutor feedback was relevant to the value of the PTA as a process but the use of the digital media to enhance this is unclear. Students in the final questionnaire were only asked if the use of technology had a positive impact on their work, arguably too broad a question to isolate the role of the digital in enhancing the use of PTA. Five of the seven agreed; stated that it did, but did not illuminate as to what the precise benefits of the digital technology were, and the semi structured interviews did not illuminate further.

Students obviously have their own individual perceptions of the value and limitations of the selected digital media in relation to the assessment task and further research needs to be done to investigate this relationship in more depth absent a specific connection to PTA. However balanced against this two students created their own e-portfolios on line which they planned to use in relation to supporting their future job applications and career progression. The appreciation of this potential was a motivating factor in the use of the digital media.<sup>35</sup>

In the main the feedback from students was that PTA in this instance did not significantly reduce the workload associated with the module assessment from the student or tutor perspective, but neither did it increase workload. What tended to emerge, was students focused more on the assessment brief of each patch and reworking this in light of feedback, rather than on the volume of writing usually associated with portfolios. This was not aim of the project, but the use of PTA did however help students write more concisely, critically and with purpose, so enabling them to work smart. This emerged from the tutors' previous experience in teaching on the module and marking portfolios, as well as from informal feedback to the tutor during the project and from the student semi-structured interviews at the end of the project. The improvement in quality and

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35 Welzer K and Strudler N ., *Journal of Research on Technology in Education*, 38 (2) (2005)231

penetration of critical reflection is important to secure the required level of analysis<sup>36</sup> associated with final year study. The use of PTA also enabled students to be more clear and confident in their progress, in light of the feedback received on each patch, and to identify early on gaps in their learning and synthesis of this. This was evident to the tutor from their observation of the changes in the quality of student writing with the completion of each patch in response to feedback provided. The author believes this 'work smart' effect could be better achieved by the use of word limits for each PTA, which was not a parameter in this project. In this project the PTA was integrated into the existing module assessment and learning outcomes. A more effective and flexible approach would be design the module learning outcomes and the PTA at the same time.

From a tutor perspective one concern about the sharing of PTA for the future in its application to other modules is the need to counter any possibility of plagiarism or collusion. This in fact was not an issue here, as the students on the Clinic module all have very different learning experiences deriving from being placed with different placement providers and the uniqueness of their learning experience and environment. This would however be a concern for application to other law subjects where substantive knowledge is the central focus of module assessment.

Students did however state that they derived considerable benefit and assistance from the structure that the PTA provided in relation to the assessment strategy and clearly felt more confidence in knowing they were on track in attaining the learning outcomes. PTA process based on a formative assessment model enabled students to make full use of feedback to identify any gaps in their learning, facilitating the structuring of their learning alongside and integral to the reflective process. In particular the submission guidelines which were available to all students on the module, including those not participating in the project, were also valued for their contribution in deconstructing the overall learning outcomes into small assessed 'pieces'. The guidance illuminated as to the assessment parameters and the relationship between the individual patches, their relationship to each other and the overall learning outcomes.

The PTA does appear to encourage active and dynamic use of tutor feedback on patches assessed, which was shown in the number of changes students made to their patches after having received feedback on these. This would not usually occur within the concept of traditional portfolios which were previously summatively assessed. Students in the feedback at the end of the project and their informal interviews, stated that the individual nature and specificity of the feedback motivated them to make use of this in revisiting their current patches and their work on future patches, individualising the learning process.<sup>37</sup> All but one of the student participants stated that the feedback they received helped them improve their final submitted work. Students also stated that the feedback was helpful in synthesising theory and practice more effectively, this was also evident in the qualitative changes in their work across the patch text assessment process. The PTA structure and process helped students to link the PTA guidance to the overall learning outcomes to more clearly outline their progress to date. The feedback acted to feed forward to inform future reflective writing. It also focused student attention to improvements needed and how this could be achieved. The underpinning structure of PTA enhanced student autonomy, and as feedback was directed to the reflective process not the context or content. The feedback offered no right or

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36 Ledvinka G. 'Reflection and assessment in clinical legal education: Do you see what I see?' (2006) 9 *Int'l J. Clinical Legal Educ.* 29, 39

37 Wayne V, Faulkner M, 'Embedding E-portfolios in a Law Program: Lessons from an Australian Law School' 61 *J. Legal Educ.* 560 2011-2012, 564

wrong but was geared to promoting more critical enquiry into the student experience, attitudes and observations and knowledge. Students did however identify that it enhanced their ability to reflect in depth and holistically.

The PTA potentially enables students to more effectively synthesise their learning experience and integrate theory and practice promoting what Winter has described as a

‘gradual’ model of learning as ‘making sense over time’ lies at the heart of the PTA.. the sequence of tasks within ..is intended to build into the assessment process a recognition of learning as a gradual ‘coming to know’<sup>38</sup>

This resulted in what this author regards as an active and upward spiral/ cycle of learning along the life of the module with students motivated by the feedback they received and keen to apply this to future work. The motivational aspect of PTA and its alignment with the learning process in maximising the use of formative feedback has an obvious advantage over the traditional portfolio type of assessment. Unfortunately the findings do not indicate a relationship between the digital media used and the benefits arising from the use of PTA, other than student agreeing that the digital media had a general ‘positive impact’ on their work.

## **Conclusions – Future use of PTA**

The use of PTA in assessing CLE offers a number of benefits also recognised in other learning contexts.<sup>39</sup> It provides a framework for the provision of feedback to students against clear assessment guidelines. This enables student to maximise the potential use of feedback for the future since this is linked to the process of learning and critical thinking and the process of reflection. This reduces concerns in providing feedback related to ‘content’ where tutors may have concerns about the their feedback, and the balance between assisting the learning process and feedback filling the gaps in student knowledge directing students to the ‘answers.’ Assessment guidelines when provided offer the means for students to link the requirements of each ‘patch’ to each other and the overall assessment goal, reconstructing the broad learning outcomes and the process of assessing these, to enable students to more effectively meet these. It also assists the learning process since PTA is crucial to enable students to maximise learning opportunities directed by the PTA assessment process.<sup>40</sup> This helps students keep on track and avoid ‘portfolio drift’ whereby student continue to add pieces to their portfolio without consideration of their value or contribution. However it remains the case for this project that the disadvantage of portfolios could also have been overcome by the provision of clearer guidance in their structure. The real gain in PTA is the structuring of the assessment process and its capacity to drive the learning process through the use of feedback to develop the skill of reflection, targeted to more narrow assessment parameters, one patch contributing to the larger whole. All the work the students do is perceived as relevant in contributing to the final product, important given that

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38 (n25)

39 Rees , B. and Preston, J (2003) The International Patch work: Introducing Reflexivity into the Business Curriculum *Innovations in Education and Teaching International* Vol. 40 (2) 123-132.

40 Khan, P (2006). Supporting reflective processes with students: insights from a review of research, available at: [http://www.heacademy.ac.uk/assets/York/documents/ourwork/research/literature\\_reviews/reflective\\_practice\\_with\\_students.pdf](http://www.heacademy.ac.uk/assets/York/documents/ourwork/research/literature_reviews/reflective_practice_with_students.pdf)

students are increasingly focused on assessment tasks. In addition if each PTA is supported with assessment guidance as well as formative feedback on completion then the PTA process ‘feeds’ forward to assist future learning and development closing the ‘feedback loop’<sup>41</sup> through the resulting action. This maximises the opportunities for future learning through reflection since each PTA can be amended up and until the final submission with all patches being incorporated into the final ‘patch.’ These qualities are often not incorporated into traditional portfolios which focus on the form of content, including reflections, sample case study, case conference meetings, rather than the process of reflection linked to these.<sup>42</sup> Previous studies have shown that the use of portfolios, in particular eportfolios such as pebblepad, without the embedding of the PTA within them, as was the case in this project, focus students attention to the construction of the portfolio as to content, without being accompanied by the relevant learning.<sup>43</sup>

In the case of the Derby law clinic, the use of PTA as a replacement for the traditional portfolio has much to offer for the future, even without the use of digital media to support this, since the findings of the project revealed that the selected digital media itself did not appear to add value to the overall assessment or learning process. The impact of PTA on learning may have been more apparent had the PTA been specifically designed alongside the learning outcomes rather than grafted onto these. The engagement with PTA may have varied with the selection of a different form of digital media, or indeed allowing students to select the form they felt comfortable with. For the future the author is keen to explore the use of PTA as an alternative to portfolios given some of the advantages they have yielded within this project.

PTA offers a structured form of assessment that can potentially be applied to other law modules. However such an application needs careful consideration as to its application to other law modules as to the number of patches, student numbers and time available for providing feedback. The sharing of patches for assessments sharing the same substantive content/ knowledge may need consideration regarding plagiarism and collusion. The DePTA project allowed students to share their unique ‘clinic’ experience and reflections on these, the substance of which varied for each student and so avoided any concern arising over the originality of the student’s work

The provision of generic feedback can overcome some of these concerns, students in this project valued the individualised nature of their feedback which was manageable for tutors given the small size of the student cohort. The provision of pre-assessment guidance and post submission feedback can assist learning but a careful balance is required in maintaining student autonomy and encouraging students to take a lead role in the assessment process so reducing tutor dependence in this respect.

PTA is an innovative form of assessment which has the potential to enable students to learn and work effectively where the learning outcomes and assessment strategy are creatively designed and aligned to promote this. Its potential as an assessment strategy is directly linked to the context of learning and assessment. The design and aims of PTA align well to the experiential model of

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41 Hounsell, D., McClune, V., Hounsell, J. & Litjens, J. (2008) The quality of guidance and feedback to students. *Higher Education Research and Development*, 27(1), 55-67.

42 Ledvinka G. ‘Reflection and assessment in clinical legal education: Do you see what I see?’ (2006) 9 *Int’l J. Clinical Legal Educ.* 29

43 Wayne V, Faulkner M, ‘Embedding E-portfolios in a Law Program: Lessons from an Australian Law School’ 61 *J. Legal Educ.* 560 2011-2012, 576

learning, which had the most significant impact on learning. The use of digital media to enhance PTA is however more sensitive to the profession and practice norms, which seemed to operate as a barrier to engagement with PTA here, rather than a trigger to facilitating this. Student attitudes to the mode of assessment are very much influenced by their previous experiences and understandings<sup>44</sup> and their confidence in any digital media used in this process. The concept of patch text assessment aligns well to assessment strategy of law clinics, in promoting concise and incisive reflection on experiential learning. It also provides a structured assessment process that is aligned to capture and promote the development of personal and legal skills and substantive knowledge acquired from practice settings, which the essence of the law clinic experience.

Karen Clubb

University of Derby

IJCLE Conference Durham, July 2012

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<sup>44</sup> Marcangelo C., 'Jisc Final Report' 02/08/2011 para 2.3 Available at <http://dpta.wordpress.com/an-overview/>





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# A Client-Focused Practice: Developing and Testing Emotional Competency in Clinical Legal Interviews

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## Introduction

Law students learn interviewing skills as part of their clinical legal education. Teaching this skill to students involves helping students relate to clients. Recent suggestions for teaching students have included adopting a client centred approach to legal interviewing.<sup>1</sup> Similarly, in the face of growing concerns about the adversarial culture of lawyers there have been calls for lawyers to develop relationship-centred competencies.<sup>2</sup>

Typically, law students attending law schools are in their early twenties and, in terms of experience and developmental capacities, many may not be at a stage where thinking about the client comes naturally.<sup>3</sup> Students interviewing clients tend to ignore visual or spoken clues from the client. A law student, observed by one of the authors, recently demonstrated this tendency whilst interviewing a client at the University of Newcastle Legal Centre (UNLC). The client's gaunt physical appearance made it clear that the client was unwell. The student took instructions for a Will without asking any questions about the client's motivation for seeking legal help. It later transpired that the client needed advice about a terminal illness claim.

If law students can learn how to improve their emotional competency whilst interviewing a client, they may relate better to clients in a clinical legal setting and be able to obtain more relevant information.<sup>4</sup> We have found no recent research in the discourse on clinical legal education as to whether training in emotional intelligence can improve law students' performance in a client interview. At the University of Newcastle we have designed a research project to test whether training students in emotional competence (applied Emotional Intelligence) can produce a measurable change in the client's experience of a legal interview.

One of the major challenges in researching this question is the lack of guidance in the literature as to how best to train law students for emotional competence. Many publications have focused on the validity or measurement of emotional intelligence and less on the functional aspect of how to increase emotional competencies. Part of the research project therefore involves designing a training program to assist clinical law students to develop emotional competencies.

This paper is in two parts. The first part discusses the background to the research and some preliminary findings from stage one of the research. The second part discusses a proposed outline for the training program.

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- 1 Binder et al, *Lawyers as Counsellors: A Client Centered Approach* (West Thomson 3rd ed, 2011).
  - 2 Susan L Brooks & Robert G Madden (eds), *Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Practice* (Carolina Academic Press, 2010).
  - 3 Research by Deborah Yergulun Todd, for example, using brain scans has found that adolescents use a different part of their brain (amydala) and not the pre-frontal cortex when appraising emotions. Whilst her focus is on children she notes that changes in the brain occur until the early twenties see Deborah Yergulun Todd 17(2) 'Emotional and Cognitive Changes During Adolescence' *Current Opinion in Neurobiology* 251.
  - 4 Marjorie A. Silver, 'Emotional Intelligence and Legal Education' (1999) 5 *Psychology Public Policy and the Law* 1173.
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## A. Background and Preliminary Research Findings

### 1. History and Terminology

The interdisciplinary nature of much of the discourse on emotional intelligence makes it difficult to identify a commonly accepted definition. In addition, early claims made about emotional intelligence were not supported by empirical data.<sup>5</sup> This is likely to have made the concept of ‘emotional intelligence’ unattractive to legal educators. For the purposes of legal education, more helpful terminology is to describe the process of becoming emotionally intelligent as the acquiring of “emotional competencies”.

The emergence of the concept of emotional intelligence can be attributed to many different sources. Many accounts start in the 1920s with Edward Thorndike, who identified what he called ‘social intelligence’ skills.<sup>6</sup> In the 1980s, the psychologist Howard Gardner developed a theory of multiple intelligences that included what he called ‘interpersonal’ and ‘intrapersonal’ intelligences.<sup>7</sup> In the 1990s, psychologists Peter Salovey and John Mayer took the research further. They identified ‘emotional intelligence’ and developed a tool to measure it.<sup>8</sup> Their ideas took hold in popular literature when Daniel Goleman, psychologist and journalist, made claims that ‘emotionally intelligent’ people were more likely to be successful in life.<sup>9</sup> From its base in psychology, the literature on emotional intelligence has grown significantly in a number of disciplines. A 2012 review in the medical discipline found 1,947 articles on emotional intelligence.<sup>10</sup>

In the mid-1990s the debate in the literature focussed on whether emotional intelligence had any discrete validity that could be distinguished from General Mental Ability (GMA) or personality differences.<sup>11</sup> Many publications assumed either that emotional intelligence was a trait or an ability. The trait approach has been criticised on the basis that assessments of trait emotional intelligence may not be distinguishable from assessments of personality factors.<sup>12</sup>

If emotional intelligence were a “trait” then it may not be possible to ‘develop’ it, or change how a person experiences, perceives or engages with emotions in themselves or others. There are studies,

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5 For a comprehensive discussion on these issues see Kevin R Murphy (ed) *A Critique of Emotional Intelligence, What are the problems and How Can They Be Fixed* (Lawrence Erlbaum Associates, 2006).

6 Thorndike E., ‘Intelligence and its uses’ (1920) 140 *Harper’s Magazine* 22; for a detailed history see Frank J Landy, *The Long, Frustrating, and Fruitless Search for Social Intelligence: A Cautionary Tale in Ibid*, ch 4.

7 Howard Gardner, *Frames of Mind: The Theory of Multiple Intelligences* (Basic Books, 1983).

8 The test has been refined and the latest version is version 2.0 see John D Mayer et al, ‘Measuring Emotional Intelligence With the MSCEIT V2.0’ (2003) 3 *Emotion* 97.

9 D Goleman, *Emotional Intelligence: Why it can matter more than IQ* (Bloomsbury, 1996).

10 M. Gemma Cherry et al, ‘What Impact do Structural Educational Sessions to increase emotional intelligence have on medical students?’ (2012) 34 *Medical Teacher* 11.

11 M Davies, L Stankov and R D Roberts ‘Emotional intelligence: In search of an illusive construct (2008) 75 *Journal of Personality and Social Psychology* 989.

12 M Zeidner, G Matthews and R D Roberts, *What we know about emotional intelligence: How it affects learning, work, relationships, and our mental health* (MIT Press, 2009).

however, which suggest that training in emotional intelligence can lead to increased emotional competencies.<sup>13</sup>

In seeking to find ways to develop and measure emotional competency in legal interviewing, the authors adopt the 'ability' model. The ability model is described by Salovey and Mayer:

'the ability to accurately perceive emotions, to access and generate emotions so as to assist thought, to understand emotions and emotional knowledge, and to reflectively regulate emotions so as to promote emotional and intellectual growth'.<sup>14</sup>

## 2. Why the time is right to start teaching emotional competencies to law students

The Australian Government is currently developing a new Higher Education Quality and Regulatory Framework, which includes the establishment of the Tertiary Education Quality and Standards Agency (TEQSA). As part of this process, the notes for the development of Threshold Learning Outcome 6 on self-management state:

Legal employers have identified the need for graduates to have emotional intelligence – the ability to perceive, use, understand, and manage emotions. The TLOs encourage the development of emotional intelligence by attending to both self awareness (TLO 6) and the need to communicate and work with others (TLO 5).<sup>15</sup>

In the field of clinical medicine, a review found that measures of emotional intelligence correlated with many of the competencies that the modern medical curricula seek to deliver.<sup>16</sup> These include the ability to provide more compassionate and empathetic patient care, greater capacity to cope with organisational pressure and enhanced communication with patients. Similar competencies are necessary for the developing legal practitioner and are qualities expected in clinical law students.<sup>17</sup>

Legal educators in the US have begun to acknowledge the value of emotional competencies in legal practice and have incorporated discussion about emotion into negotiation training.<sup>18</sup> A US

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13 Nicola S Schutte, John M Malouff and Einar B Thorsteinsson, 'Increasing Emotional Intelligence Through Training: Current Status and Future Directions' (2013) 5(1) *The International Journal of Emotional Education* 56; for a finding that training in emotional intelligence results in better patient care see for example H C Weng et al 'Doctors' Emotional intelligence and the patient- doctor relationship' (2008) 42 *Medical Education* 703 and for a comprehensive analysis in the medical field see above n10. For findings that emotional intelligence results in better student outcomes in schools see the meta analysis conducted by Durlak et al, 'The Impact of Enhancing Students' Social and Emotional Learning: a meta-analysis of school-based universal interventions' (2011) 82(1) *Child Development* 405.

14 J D Mayer, P Salovey, and D R Caruso, 'Emotional Intelligence: Theory, Findings and implications' (2004) 15 *Journal of Psychological Inquiry* 197, 197.

15 See discussion by Anna Huggins, Sally Klift and Rachael Field, 'Implementing the Self Management Threshold Learning Outcome for Law: Some intentional design Strategies from the Current Curriculum Toolbox' (2011) 21(2) *Legal Education Review* 183.

16 Arora et al, 'Emotional Intelligence in Medicine. A systematic review through the context of the ACGME competencies' 2010 (44) *Medical Education* 749.

17 For example, the theoretical framework for best practice in clinical legal education is described as including the ability to develop student emotional skills, their confidence, self- esteem and an ability to sensitise students to the importance of client relationships see <[http://www.cald.asn.au/assets/lists/Resources/Best\\_Practices\\_Australian\\_Clinical\\_Legal\\_Education\\_Sept\\_2012.pdf](http://www.cald.asn.au/assets/lists/Resources/Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf)>

18 Peter Reilly Teaching Law Students How to Feel: Using Negotiations Training to Increase Emotional Intelligence (2005) *Negotiation Journal* 301; Roger Fisher and Daniel Shapiro, *Beyond Reason: Using Emotions as You Negotiate* (2005, Viking).

legal educator who suggests that emotional intelligence should be taught in law schools observes:

‘Without great cost or even restructuring the standard law curriculum it can be easily incorporated into legal education. Social science research on emotional intelligence has matured to the point that its usefulness is becoming clearer’<sup>19</sup>

In addition, interest has been growing in helping law students develop their emotional competencies as a way to manage their law school experience and to protect their own wellbeing. This response arises from research in both the US and Australia suggesting that law school can be detrimental to law students’ mental health.<sup>20</sup>

### **3. The current research project**

The research is being conducted at UNLC. The research project was submitted for human research ethics evaluation and approval was obtained on 25 October 2012.<sup>21</sup> The UNLC is a community legal centre funded by the University of Newcastle which, as well as helping those people with limited financial means or dealing with matters of public interest, teaches clinical skills to students enrolled on the University’s Legal Professional Program. The Professional Program is an accredited Practical Legal Training program (PLT). If students complete the PLT program then they gain eligibility to obtain a certificate to practice as a lawyer. The Program involves students undertaking 360 hours of professional placement and learning clinical skills in the classroom through practical legal modules. The participating students enrolled on the Profession Program are senior students in the last 2 years of their studies.

As part of their placement, law students on duty at the UNLC interview almost all clients who attend the Centre’s drop-in clinic as a precursor to working on the clients’ legal problems under the supervision of UNLC solicitors.

At present the students receive one day of induction training prior to conducting interviews with clients and this induction training is along traditional lines borrowing from standard legal texts on interviewing and includes seminar instruction and role-plays. The emphasis is upon listening, summarising, open/closed questioning, problem identification and fact finding.

The format of a standard live client interview at the UNLC involves a student or a small group of students, greeting the client, taking them to an interview room, explaining the process (including that the interview is confidential and that the service is pro bono) and then spending time with the client asking them about their problem. The student then leaves the client in the interview room for about 10 minutes to discuss the problem with a supervising lawyer, after which the lawyer and the student return to provide the client with legal advice.

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19 John E Montgomery, ‘Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students’ (2008) *University of Toledo Law Review* 325.

20 Krieger, L.S. ‘Institutional denial about the dark side of law school and fresh empirical guidance for constructively breaking the silence’ (2002) *Journal of Legal Education* 52; M Townes O’Brien, S Tang and K Hall, ‘No Time to Lose: Negative Impact on Law Student Wellbeing May Begin in Year One’ (2011) 2(2) *The International Journal of the First Year in Higher Education* 49.

21 University of Newcastle Human Research Ethics Committee, Approval No. H-2012-0368.

#### 4. Research methodology overview

The purpose of the research project is to determine whether students who have been trained in emotional competencies perform better in the initial legal interviewing process (described above) than students who have not received the training.

The research design involved three stages: a pilot stage in late 2012, a 'control group' in stage one in early 2013 (which has been completed at time of writing) and an 'intervention group' in stage two which is designed for the first half of 2014.

Clients assess student performance in the interviews using short questionnaires, which involve the collection of quantitative and qualitative data. In addition, students and supervisors complete similar questionnaires to enable some triangulation of results. The quantitative data involves asking each participant to record a response to a statement using a simple scale of 1 – 5 ('Likert'). The collection of qualitative data is through open questions on the surveys inviting more detailed responses than can be provided in the short Likert questionnaires.

Our questionnaire design, for stages one and two, was informed by two sources: the 'standardized client' research by Barton et al (2006) and the CARE questionnaire developed by Mercer et al (2004).<sup>22</sup> Further refinements were enabled by the results obtained in the pilot stage with an early version of the instrument completed by 12 clients.

The Barton standardised questionnaire was based on existing research about legal interviewing and was designed simply to 'reinterpret the 'do's and don'ts' of good interviewing'.<sup>23</sup> We used the essence of questions from this questionnaire, designed to test rapport creation and information exchange between the client and the student interviewer. The CARE questionnaire comes from the medical field, and was designed to measure patients' responses to interviews by medical practitioners, specifically, whether an interviewer was "patient centered". One credential of the CARE model was its testing across a diverse population from backgrounds of socio-economic deprivation to those of more affluent people. In our case, the majority of clients who attend the UNLC advice clinic are from a low socio-economic background.

#### 5. The pilot

The pilot involved survey responses from 12 clients, 25 students and 4 supervisors and was conducted at the UNLC legal advice clinic on 31 October 2012.

The pilot responses from the clients indicated significant 'participant bias'. We anticipated that the clients would be positive in their responses, as reported in the Barton et al research where live clients 'gave very positive responses to all the items'.<sup>24</sup> However, our pilot clients were overwhelmingly positive in their responses to the student interviews, which made it difficult to

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22 K Barton et al, 'Valuing what clients think: standardized clients and the assessment of communicative competence' (2006) 13(1) *Clinical Law Review* 1; S W Mercer et al, 'The development and preliminary validation of the Consultation and Relational Empathy (CARE) Measure: an empathy-based consultation process measure (2004) 21(6) *Journal of Family Practice* 699; Mercer et al, 'Relevance and practical use of the Consultation and Relational Empathy (CARE) Measure in general practice' (2005) 22 (3) *The Journal of Family Practice* 328.

23 Above n 22, 36.

24 Above n 22, 27.

distinguish and interpret useful information from the data.

Consequently, we made changes to the questionnaire including an additional qualitative question to invite the clients to think more critically about the interview by asking them to suggest ways the students might improve. We also added a brief explanation to each Likert question. The refined questionnaire had 8 quantitative questions and 2 qualitative questions. A copy of the client questionnaire forms Annexure “A” to this paper.

## **6. Stage One of the Research**

Stage One was conducted during each advice clinic at the UNLC on every Wednesday morning between 10 April 2013 and 29 May 2013 (8 weeks). A research assistant spoke with the students and invited them to read the Participant Information Statement (PIS) and, subject to agreement, to participate in the project by completing the short questionnaire after each client interview. The research assistant also spoke with the supervisors and clients, inviting each client to consider participating. During the research period, 116 clients, 52 students and 4 out of the 6 potential supervisors participated (the remaining supervisors are the authors).

Of the client responses, 15 responses were not counted for the preliminary results leaving 101 results. Two of the 15 responses were not counted because the client did not record any answer at all. The remaining 13 were not counted because the client just circled the same answer and provided no qualitative feedback to suggest they had thought about their answers.

## **7. Preliminary Quantitative Results of Stage One**

Despite the changes to the questionnaires, the Stage One clients were very positive when reporting their experience of the interview. For example, in five out of the eight questions, the clients mostly responded as “agree” or “strongly agree” and rarely strayed into the negative or “unsure” categories.

For this reason, the answers to questions 3 and 4 stand out because some clients recorded that they “disagreed” with the statements. Question 3 asked whether the student had accurately summarised the story from the client. Question 3 was “reverse oriented” (ie contrary to all other statements in the questionnaire a positive response required the client to “disagree” or “strongly disagree” rather than “agree” or “strongly agree” and it may be that some respondents failed to appreciate this.

Question 4 read:

4 The law student was interested in me as a whole person

*(asking/knowing relevant details about your life, your situation; not treating you as “just a number”)*

In our view, the key preliminary quantitative result from the client questionnaire is that the clients felt that the quality of their interview with the students was good however just over 10% disagreed or were unsure that the law student was interested in the client as a “whole person” and just over 10% disagreed or were unsure that the student had demonstrated asking/knowing relevant details about the client’s life or situation.

## 8. Qualitative Results of Stage One

The questions directed at the clients were: "Please use the space below if you would like to explain how the student could improve upon their interviewing skills" and "Please use the space below if you would like to explain any of your answers to the questions on the survey".

58 clients chose to answer one or both of the qualitative questions. Some of the answers were discounted as not useful because they were directed at the format of the questionnaire and not the client's reaction to the interview process. 27 responses provided positive feedback such as:

*I think they did well I had a very difficult situation and they were very calm and patient and helpful*

Our preliminary analysis reveals three common themes in the responses: Those which discussed the importance of "listening" (12), those in which the client stated that their matter was "complex" (4) and those who made references to the concept of an emotional connection (9). Examples relating to the emotional connection included the following comments:

*Did not really get to a real human level as did not discuss family issues at this time*

*The students did not ask if everyone was OK.*

*The students seemed keen to help, just a bit distant, hopefully this is helpful*

*This is a speeding fine case, I would be alarmed if the students were overly compassionate and interested in me as a person. A certain level of "detachment" is required to maintain professionalism*

One interesting response from a student interviewing a client about a Will (not the same matter used in the example in the introduction) was:

*Due to the nature of the matter we couldn't ask detailed and sensitive questions*

A supervisor reported:

*The first thing the student said to me was "this client is nuts" ..she wasn't just very passionate and their whole demeanour was "what's this client on about?"*

## 9. Summary of Part A

Overall, the quantitative and qualitative results to date suggest that there is room to improve the quality of the interaction between a law student and a client in a live client interview. As discussed above, in seeking to improve the quality, we aim to train law students to develop emotional competencies and to see whether the training can make a difference to the Stage two results. Stage two will involve asking clients, students and supervisors to answer the same questionnaires in 2014 but after the students have received emotional competency training.



## **B. Training for emotional competency in a live client interview – how much training and what training should the students receive?**

### **1. The amount of the training**

The teaching of law continues to have a content focus.<sup>25</sup> It is difficult to find space in the curriculum to add skills and abilities training.

However, research suggests that improvements can be achieved within modest time frames. A small study in empathy training carried out by John Barkai and Virginia Fine written up in 1982 suggests that 4 hours of training made a difference in the rating responses for empathy between a control group and a trained group of law students.<sup>26</sup> In the medical context, 14 studies demonstrated a link between training and improvement in emotional intelligence and these involved training periods of between 4 to 30 hours.<sup>27</sup>

Based on this research, the authors believe that a 10 hour training module made up of 8 hours of face-to-face training and 2 hours of reading and reflective activities is sufficient for the purposes of improving student competency.

### **2. The characteristics of the training**

Students will not be receptive to gaining competency if they see no relevance to the training. Thus, whilst ideas can be obtained from other disciplines, the context must be changed.

There is a risk of demoralising students if they cannot adjust to the skills training or feel that their abilities are being judged as sub-standard. Academic success at law school does not involve assessment of emotional competency and some students who are used to obtaining high marks may feel challenged if they feel they are not excelling immediately. A small qualitative research study from Ireland justifies these concerns. The study set out to answer the question why students choose not to avail themselves of emotional competency coaching and includes this response about results of testing for emotional competency: “I’m kind of afraid” and “I didn’t want to go back in case it was really low”.<sup>28</sup>

To avoid the risk of demoralisation, the “public face” of the training should foster collaborative learning where students work in pairs or in groups and the teacher must be able to encourage non-competitive behaviour when leading discussions.

Group discussions both in small groups and with the whole class are extremely important.

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25 PLT “areas of knowledge” are listed in the Fifth Schedule of the *Legal Admission Rules 2005* (NSW) and there are “core” subjects which must be taught as part of a law degree if students are to gain eligibility for legal practice see Schedule 1, Law Admissions Consultative Committee Uniform Admission Rules <[http://www1.lawcouncil.asn.au/LACC/images/pdfs/212390818\\_1\\_LACCUUniformAdmissionRules2008.pdf](http://www1.lawcouncil.asn.au/LACC/images/pdfs/212390818_1_LACCUUniformAdmissionRules2008.pdf)>

26 The study tested students before and after training using the Truax Accurate Empathy Scale and found that students increased their scores after training, John L Barkai and Virginia O Fine, ‘Empathy Training for Lawyers and Law Students’ 13 (1982-83) *SouthWestern University Law Review* 505.

27 Above n10.

28 Aiden Carthy et al, ‘Reasons For Non-engagement With The Provision Of Emotional Competency Coaching: A Qualitative Study Of Irish First Year Undergraduate Students’ 2012 (4) *All Ireland Journal* 75.

Emotions are to some extent “socially determined”<sup>29</sup>. There is real value in students learning from each other and from the lecturers in the classroom through discussion.<sup>30</sup>

Apart from the teaching of the theory of emotion and emotional intelligence, the training module should not involve didactic teaching but should aim to transform the students’ frame of reference. The training should build on the students’ first impressions of working with live clients or any similar experience and their capacity to try out what they are learning inside and outside the classroom.

### **3. The Four Key Domains**

Based on the Mayer and Salovey ability model described above, there are four key domains or “branches” to seek to improve: understanding emotion, identifying emotions in oneself and others, expressing and using emotions and managing emotions. These are discussed below as separate components but in reality the concepts merge into each other.

### **4. The Introduction to the Module and Understanding emotions**

It is important to explain to the students at the outset why they should acquire emotional competency. Students trained almost exclusively to “think like a lawyer” need a cognitive frame of reference first. A university is well placed to introduce cross-discipline training. Students should receive didactic teaching from a lecturer skilled in psychology to introduce students to the theories of emotions.

Further explanation can include a wide -ranging discussion from law lecturers about the emergence of the study of emotion and why it is important for lawyers. It should also include discussion about the knowledge of the brain and the role of emotion in decision-making.<sup>31</sup>

Students need to understand what causes emotion and how emotions may appear in clients. They need to learn that emotions are fleeting, changeable, overlap and can be deceptive. For example, an angry client may be a frightened client. In Australian high schools, for example, where aspects of emotional intelligence are already being taught, the curriculum on understanding emotion teaches the causes and consequences of a wide range of emotions and the ability to label emotions.<sup>32</sup>

### **5. Identifying emotions in others**

This skill includes ‘paying attention to and accurately decoding emotional signals in individuals’.<sup>33</sup> A helpful way to train students to identify emotions at first instance is through the use of video

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29 David R Caruso, *EI Tests Emotional Intelligence* <<http://www.emotionaliq.org/Test.htm>>

30 N Clarke, ‘Developing Emotional Intelligence Abilities through Team Based Learning’ (2010) 21 *Human Resource Development Review* 119.

31 For a good discussion see Richard Roche ‘Learning and the Brain’ in Paul Maharg and Caroline Maughan (Eds) *Affect and Legal Education : Emotion in Learning and Teaching the Law* (Farnham: Ashgate, 2011).

32 Marc A Brackett et al, ‘Enhancing Academic performance and social and emotional competence with the RULER feeling words curriculum’ (2012) 22 *Journal of Learning and Individual Differences* 218.

33 Peter K. Papadogiannis, Deena Logan, and Gill Sitarenios ‘An Ability Model of Emotional Intelligence: A Rationale, Description, and Application of the Mayer Salovey Caruso Emotional Intelligence Test (MSCEIT)’ in James D A Parker, Donald H Saklofske and Con Stough (eds) *Assessing Emotional Intelligence Theory Research and Applications* (Springer, 2009).

rather than a written scenario. It is now relatively easy to make good quality videos for use in the classroom. Video clips of actors (who are used to displaying emotion) portraying legal clients can be filmed for use in class. Questions generated from these video clips can help strengthen students' observational skills. Group observation sheets can guide student observation. For example, which emotions is the client definitely not feeling? Which emotions is the client more likely feeling? Is the client displaying conflicting emotions? A video of an actor simulating a client verbally expressing one emotion but displaying another could also encourage observational and listening skills.

## **6. Identifying emotion in oneself -enhancement of emotional self awareness**

Students need to become a good observer of their own feelings, to 'accept and value them, and to attend to what those feelings might signal'.<sup>34</sup> Research in psychology helps identify the physiological changes that take place when different emotions are experienced and these changes can be taught to students to help them recognise their own emotions.

In addition to the recognition of emotions, self-awareness should also include 'knowing one's own values, biases, motivations and attitudes towards others and situations'.<sup>35</sup>

Self-awareness is best achieved through short reflective activities in class and through a journal or self-reflection exercises outside the classroom. Students should be provided with appropriate guidance to practice the skill of self-reflection.<sup>36</sup> Some excellent reflective journal prompts used in nurse education can be adapted for legal clinical practice.<sup>37</sup>

## **7. Expressing and Using Emotion**

Using emotions involves "harnessing the effects of emotions".<sup>38</sup> How a person feels can influence how a person thinks, how they remember what was said and how they make decisions. Students need to learn how to match emotions to the "task at hand" and to recognise when might be the best time for a client to make certain types of decisions and when is the right time to ask the client more questions. This ability can be practiced by students through role-plays and outside the classroom as material for their reflection journals.

## **8. Managing one's own emotion**

If students can recognise their own emotions then students can learn strategies to self manage. Strategies can include cognitive exercises. "Thinking" strategies include being able to recognise the sensation of emotion and to experiment with ways to maintain or "reframe" feelings. The concept

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34 Board of Trustees of the University of Illinois (2007) <<http://www.counselingcenter.illinois.edu/self-help-brochures/self-awarenessself-care/experiencing-and-expressing-emotions>>

35 Kim Foster and Heather McKenzie, Educational approaches and Activities to Enhance EI in John Hurley and Paul Linsley (eds), *Emotional Intelligence in Health and Social Care, A guide for Improving human relationships* (Radcliffe Publishing, 2012), 127.

36 Anna Huggins, Sally Klift and Rachael Field, Implementing the Self Management Threshold Learning Outcome for Law: Some Intentional Design Strategies from the Current Curriculum Toolbox (2011) *Legal Education Review* 21.

37 Paula A Harrison et al, 'Reflective Journal Prompts: A Vehicle for Stimulating Emotional Competence in Nursing' (2010) *Journal of Nursing Education* 644.

38 Nicola Schutte et al, Increasing Emotional Intelligence Through Training: Current Status and Future Directions (2013) 5(1) *The International Journal of Emotional Education* 56, 56.

of “mindfulness” which comes from positive psychology fits nicely with self- management because it involves training to notice and to self -regulate emotion.<sup>39</sup>

## 9. Managing other people’s emotions

Students need to learn how to respond to client’s emotions and how to anticipate emotional behaviour. Using the video clips and stopping the videos to ask the students “what would you say next to the client?” allow students to start thinking about these management issues.

In addition, groups of students can be invited, for example, to think about a particular case study and to develop a strategy for interviewing the client which they can share with the class. As part of the process, students should be asked to think about what the client might be feeling and what it is like to be the client, and what sort of questions they might ask the client based upon those reflections. The class can later brainstorm the ideas generated and to reflect on how to approach a client in a similar situation in the future.<sup>40</sup>

Barkai and Fine provide useful detail for the type of discussion, which can take place between a lecturer and the students.<sup>41</sup>

There is some helpful literature for students to read (as part of their work outside the classroom) which might start students thinking about the client’s presentation, feelings, concerns and motivations when consulting lawyers.<sup>42</sup> Inviting social workers or lawyers (who have first-hand knowledge of clients and their feelings) into the classroom to explain to the students what it might feel like to be the client in a case study would add some realism to the discussions.

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39 See Seligman and Csikszentmihalyi, ‘Positive Psychology, An Introduction’ (2000) 55 *American Psychologist* 5; M K Rasmussen and A M Pidgeon ‘The direct and indirect benefits of dispositional mindfulness on self esteem and social anxiety (2011) 24 *Journal of Anxiety Stress & Coping* 227; S L Keng et al. ‘Effects of Mindfulness on Psychological Health- A review of empirical students’ (2011) 31 *Clinical Psychology Review* 1041.

40 An idea discussed in Helen O’Sullivan et al ‘Integrating professionalism into the curriculum, AMMEE guide no 61’ 2012 (34) *Medical Teacher* e64, e68.

41 Above n 26, 525-526

42 Tamara Relis, ‘It’s Not About the Money!: A Theory on Misconceptions of Plaintiffs’ Litigation Aims’ (2006) 68 *University of Pittsburg Law Review* 701; Gillian K Hadfield, ‘Framing the Choice between Cash and the Courthouse: Experience with the 9/11 Victim Compensation Fund’ (2008) 42 *Law and Society Review* 645; Nieke E Elbers et al, ‘Exploring Lawyer–Client Interaction A Qualitative Study of Positive Lawyer Characteristics’(2012) 5(1) *Psychological Injury and the Law* 89, Hilary Sommerlad, *English Perspectives on Quality: The Client-Led Model of Quality – A Third Way?*(2000) 33 *University of British Columbia Law Review* 491; G Gellhorn ‘Law and Language: An empirically based model for the opening moments of client interviews’ (1998) 4 *Clinical Law Review* 321.

## **Conclusion**

Law students need to learn how to be effective interviewers as part of their legal training. Students will be more effective if they can relate well to clients. Teaching students how to improve their emotional competency is likely to be an important part of this process.

The research project described above and underway at the University of Newcastle is positioned to help answer questions about how to train for emotional competency and whether such training can improve student emotional competency. The authors hope that their work will ultimately make a small contribution to the design of teaching programs for law students and look forward to sharing further insights after stage two of the research in 2014.



