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The Response of the Clinic

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The Development and Expansion of University-Based
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Foreword

As this journal goes to press, clinicians in England and Wales face the most rapidly changing and challenging set of circumstances in the short history of clinical legal education in this country. Within a very short period of time (probably less than two years) two radical changes will have occurred. First, our undergraduate students will be expected to meet virtually the full economic cost of their education with the advent of the new tuition fees regime. Second, the current government will have sought to radically reform legal aid with the intention of reducing the legal aid budget by £315 million by 2014–15¹ and at the same time, significant reductions in government spending will reduce the provision by other legal advice centres, such as the Citizens Advice Bureau².

This being the International Journal of Clinical Legal Education, some may query the focus of this editorial on such a parochial issue. In fact, in deciding whether these changes should encourage clinicians in this jurisdiction to change their practice, and the direction of any such change, it would be wise for us to look at the range of experience internationally. Many of those jurisdictions have long had less, often far less, generous legal aid schemes and/or a requirement that students fund most or all of the fees for their tuition. In contrast to this country, in several jurisdictions, the legal aid that is available has been channelled to a certain extent through university legal clinics. Experience in other jurisdictions may well indicate the trajectory of travel for clinic in this country.

In England and Wales, there has been a growing movement in recent years to provide pro bono advice as part of legal training³. Many postgraduate professional training courses offer pro bono advice usually as a part of additional activities that students can undertake beyond their studies. Those programmes tend to emphasise that they exist both to improve the student educational experience and to, for example, “benefit members of the community who might otherwise not have access to legal services.”⁴

However, while some law schools (one of the longest running being the University of Canterbury at Kent) place significant emphasis on providing legal advice for those who cannot afford it alongside providing a learning experience, others, such as here at Northumbria University have

¹ *Proposals for the Reform of Legal Aid in England and Wales Consultation Paper CP12/10*, (The Stationary Office, Norwich, November 2010) Cm 7967 accessed at <http://www.justice.gov.uk/consultations/docs/legal-aid-reform-consultation.pdf> 24.3.11

² The CAB chief executive Gillian Guy was reported as warning of a 45% drop in CAB funding: *Labour criticizes CAB funding cuts*, http://news.bbc.co.uk/1/hi/newsid_9389000/9389960.stm accessed at 25.3.11. In 2009-10 CABs provided help to 2.1 million people in solving 7.1 million problems, <http://www.citizensadvice.org.uk/index/aboutus.htm> accessed at 25.3.11.

³ The number of Law Schools with pro bono programmes in England and Wales rose from 33% to 65% of all schools from 2006-2010: Grimes, R and Curtis M, *Law Works Student Pro Bono Report 2011*, (Law Works, 2011). The report reviews the provision of all forms of pro bono assistance by students, not just clinics. In fact, according to the report, only 50% of those Law Schools offering pro bono to students run in house representation and/or advice clinics.

⁴ BPP pro bono statement <http://www.bpplawschool.com/probono/BPP> accessed at 3.6.11

placed more emphasis on the student learning experience. There is no requirement for clients at Northumbria's Student Law to show that they cannot afford other types of representation. The emphasis has always been on whether the cases are of educational benefit to students. Of course, many cases are brought to the office by those who cannot find legal assistance elsewhere. Sometimes this is because legal aid, though previously well resourced, does not adequately fund that area of law (particularly for employment and welfare benefits representation or certain criminal appeals). Often it is because although the individual has means that take them out of the legal aid regime, it would not be economical for them to seek the help of a lawyer with their particular problem. This is particularly the case in civil small claims cases, criminal injuries compensation matters and some family work.

It appears that in other countries there is far more emphasis on meeting unmet need and pursuing social justice imperatives.

In the U.S. in particular, social justice was and remains at the heart of the clinical movement, even if tensions exist between that and the move toward a more professional skills oriented focus.⁵ Even those who place education as the first priority often recognise the "social justice mission assigned to the legal profession"⁶ and advise that in-house clinics should respond to the legal needs of the community.⁷

In Australia, the trend is to establish clinics not in the law school but as part of legal aid provision or other government and community provision⁸ and Australian clinicians often still tend to see community service and law reform as an important element of their work⁹. This is contributed to by the funding by the Federal Government of clinical programmes at the universities of Monash, Griffith, Murdoch and New South Wales.

In South Africa, given the significant unmet need, all clinics either represent the disadvantaged or take on law reform or community based projects aimed at the disadvantaged.¹⁰

In Eastern Europe, much of the rise of clinics in countries such as Poland has been fuelled by the desire to meet unmet need. The Legal Clinics Foundation requires that all clinics who seek support from it include provisions that ensure that their clients are unable to afford legal advice elsewhere.¹¹ One of the key reasons why there is less emphasis on pursuing a social justice agenda in England and Wales is that legal aid as part of the welfare state has long provided for many of the most crucial aspects of work with disadvantaged groups. While financial eligibility and scope have reduced over time it is still the case that many of the most disadvantaged in our society have been able to secure legal assistance and representation. There was a strong feeling amongst many clinicians that clinic should not attempt to provide for unmet need where that need should be met

⁵ See for example Bloch F, Prasad M, *Institutionalising a social justice mission for clinical legal education: cross-national currents from India and the United States*, 13 *Clinical L. Rev* 2006-2007 166

⁶ Stuckey R, et al *Best Practices in Legal Education*, (Clinical Legal Education Association, 2007) 145

⁷ Ibid.

⁸ Giddings, J *Contemplating the Future of Clinical Legal Education* *Clinical Legal Education Symposium* 17 *Griffith L. Rev.* (2008), p 3

⁹ Ibid. P 9

¹⁰ Maisel, P *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa* 30 *Fordham Int'l L.J.* (2006-2007) 378

¹¹ Krasnicka, I, *Legal Education and Clinical Legal Education in Poland*, 13 *Int'l J. Clinical Legal Educ.* (2008) 47, 53-54

by the state¹². Those assumptions about the level of support the state should offer are however being swept away.

The coalition government's reforms¹³ threaten access to justice by the removal of legal aid in the following areas, amongst others:

- Most claims involving clinical negligence
- Most cases involving debt other than those in which the individual's home is at immediate risk
- Most disputes involving the family other than those which involve domestic violence – though a small level of legal aid will be available to attempt to mediate such disputes
- All education cases, including advice on special educational needs
- Most housing cases other than those involving repossession proceedings, serious disrepair affecting health and homelessness
- Most non-detention immigration cases
- Most legal aid in welfare benefits disputes

In its response to the government's proposals the Law Society of England and Wales states¹⁴:

If it proceeds with the proposed cuts, the Government runs the risk of reduced social cohesion, increased criminality, reduced business and economic efficiency, and increased resource costs and transfer payments for other Government departments.

These radical reforms pose a challenge to clinicians and universities in this jurisdiction. Should those clinics that currently do not have an overtly social justice agenda, incorporate such a mission, if not as a primary goal then at least as an important secondary one¹⁵? Additionally, do all clinics need to reassess the areas of law in which they work to maximise the impact that students can have when working on cases? Currently clinics tend to concentrate on areas not met by legal aid. The question is whether clinics need to look to prioritise the areas outlined above. Areas which the government has decided are no longer of sufficient priority in our financial climate but which arguably are of more importance to those concerned than the areas currently undertaken by clinics.

¹² That concern has recently been mirrored in the profession more generally: *Is the legal profession being unwittingly manoeuvred into establishing a de facto safety net?* Law Society Gazette comment (14th April 2011).

¹³ Footnote 1 above

¹⁴ *Green Paper proposals for the reform of legal aid In England and Wales Law Society response*, (The Law Society, February 2011) <http://www.lawsociety.org.uk/influencinglaw/policyinresponse/view=article.law?DOCUMENTID=434634> accessed at 25.3.11.

¹⁵ Many would argue that a social justice dimension is necessary not only to assist those in need now but equally or more importantly to educate future

lawyers about the realities of the law in action and to encourage them to include pro bono service and law reform in their later professional lives. See for example Barry, M et al, *Clinical legal education for this millennium, the third wave*, 7 *Clinical L. Rev.* 1 2000-2001 1.

A variety of counter arguments can be ranged against this call to pursue a more coordinated and overt social justice agenda. The first is that clinics cannot hope to replace the services that are lost. Ministry of Justice figures indicate that 502,000 fewer people will be assisted when legal aid reforms take place¹⁶. Northumbria's Student Law Office is a large law clinic. In 2009-10 it dealt with 358 cases as open client files. Clearly the yawning chasm which will open up in the provision of legal services cannot be filled by clinics.

There are also powerful arguments concerning the tension between education and providing access to justice. As noted above, undergraduate law students in England and Wales are about to see their fees rise from just over £3000 per annum to as much as £9000. Some students will now be meeting virtually the full economic cost of their education (albeit via a student loans scheme). In that climate, it may be even more difficult to persuade students that part of their mission as clinic students is to provide access to justice to those less fortunate than themselves. It might also be argued that while at Northumbria there is no overt social justice mission, the concentration on professional education, with clinic as a compulsory, heavily weighted module has seen more practical help given to members of the public than at universities where clinic is a voluntary non-credit bearing module albeit with a more overt social justice mission¹⁷.

Some would also argue that if the overriding goal is not education, then the student experience will suffer. If clinics were to pursue the goal of helping those most in need they might attempt to develop a model in which students deal with a large number of similar cases with minimal supervision in an attempt to help as many as possible. Students would lose the benefit of careful supervision and guidance, of time to reflect on their learning in a rush to provide volume legal advice.

For clinicians in this jurisdiction it is surely right that there is at least a debate about the place of social justice in their mission. Few would insist that clinics should do their utmost to provide legal services to the greatest number possible and to the disadvantage of their students' education. However, if one analysed the most pressing unmet need in one's area and determined that destitute asylum seekers and those refused basic welfare benefits were those most in need of assistance should the clinic continue to work on small claims civil cases? There might be good reasons to do so. Perhaps those cases prepare the students best for practice. Perhaps the clinic supervisors cannot develop expertise in these other areas. If, however, the only reason for not repositioning the clinic's work is truly that the clinic has failed to assess what might be necessary or consider the educational costs and benefits then that position is open to criticism.

¹⁶ *Cumulative Legal Aid Reform Proposals, Ministry of Justice*, <http://www.justice.gov.uk/consultations/legal-aid-reform-151110.htm> accessed at 25.3.11. The Legal Action Group queries these figures and calculates that over 650,000 people will no longer have their cases funded <http://legalactiongroupnews.blogspot.com/> accessed at 25.3.11.

¹⁷ It is interesting to note that 43% of all Law Schools offering pro bono activity in 2010 did not allocate any staff teaching time to it. Only 5% of all Law Schools have compulsory pro bono activity and only 10% assess student performance. Law Works Student Pro Bono Report 2011, footnote 3 above.

Several years ago my firm meeting at Northumbria was attended by lawyers from Estonia involved in their country's nascent legal aid provision. They listened to a debate between me and my students over an interesting package travel claim on behalf of two clients who had taken a holiday in France. After the firm meeting our visitors expressed their amazement to me that we would consider taking such a case, that in Estonia there were far more pressing matters for the clinic to be dealing with. I replied that we were currently dealing with other cases of more pressing importance to disadvantaged clients but that legal aid, to a large extent, ensured access to justice in most cases. In the future that will no longer be the case and clinicians need to decide how to react to that change.

In this edition

Several of the articles in this edition directly address the social justice and/or educational agenda. **Professors Lasky and Nazeri**, describe the movement in Malaysia and Southeast Asia generally towards an expansion of clinic and community based legal education with a strong social justice and educational agenda. Their article gives an interesting account of the developments particularly in Malaysia of both in-house clinics and community based legal education.

In **'Bridging the Academic/Vocational Divide: the Creation of a Law Clinic in an Academic Law School,'** **Frank Dignan** provides an insight into the process of developing a law clinic at Hull University as part of the undergraduate programme. His article indicates an approach which put the legal needs of the local community at the centre of the clinic's *raison d'être* and is an example of how other providers of community advice can be involved in helping to set the clinic's objectives.

'Clinic and the Wider Curriculum,' looks to a future in which clinic is more pervasive throughout the teaching of law. **Kevin Kerrigan** and I argue that an integrated curriculum would invigorate the teaching of law and increase student engagement and deepen understanding. The article gives examples of simulated and real experience through which students might learn traditional substantive legal subjects. It particularly argues that real experience should not be limited to the final year of education in a clinic. This article was written before the legal aid changes that are outlined above and is perhaps an example of a tradition on focusing upon educational objectives rather than social justice ones.

In **'Walking on two legs in Chinese Law schools,'** **Professor Landsberg** gives a fascinating insight into the US "Educate the educators" programme in China. The programme was designed to enable Chinese Law schools to successfully use experiential teaching. The article highlights the significant legal, political, structural and cultural differences between the two countries. It contains many lessons learned not only by the Chinese academy but also the Americans involved. In an echo of the article by Kevin Kerrigan and myself it is interesting to note that Professor Landsberg queries whether the US should have separated clinic from the teaching of doctrinal subjects and whether China has the greater potential to fully integrate clinic and experiential methods.

Frances Gibson's article on the 'Convention on the Rights of Persons with Disabilities: The Response of Clinic,' investigates both how clinics should be focused on achieving access to the clinic for staff and students with disabilities and improving access to justice for those with disability. The guidelines proposed for clinics include a plan of action for ensuring that clinics themselves make proper adjustment for student disability. It is a reminder of the power of clinic to enhance the lives and prospects of its students as well as the community it seeks to serve.

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“The Convention on the Rights of Persons with Disabilities”: The Response of the Clinic

*Frances Gibson**

Abstract

The Convention on the Rights of Persons with Disabilities (CRPD) which entered into force on 3 May 2008 offers the opportunity to people with a disability to press governments for change on the basis of rights accorded to them under the treaty. Article 13 of the Convention requires States to ensure effective access to justice for persons with disabilities on an equal basis with others. This article draws on the Australian experience. The Convention is particularly relevant in all States that have ratified it but can be used as an indicator of best practice by all States and organisations. Up to twenty per cent of all people have a disability and all clinics may have clients, staff and students with a disability. This paper examines the parameters of the right to access to justice as it relates to the clinic and proposes a set of guidelines drawn from the literature that enable clinics to assess their current practices.

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Repositioning disability as an inclusive concept embraces disability as a universal human variation rather than an aberration.¹

The Convention on the Rights of Persons with Disabilities (CRPD) and the associated Optional Protocol was adopted by the General Assembly of the United Nations on 13 December 2006. The Convention entered into force on 3 May 2008. The Convention lays down broad guidelines and each State has to determine how its provisions will be implemented. Each country that ratifies the Convention has to submit a comprehensive report on progress to an international monitoring body within 2 years.

The treaty has an Optional Protocol that sets up a communication procedure. This allows individuals, groups of individuals or people acting on their behalf to submit a communication to the Committee on the Rights of Persons with Disabilities (Committee) alleging violations of the substantive rights protected under the CRPD. The inquiry procedure under the Protocol allows the Committee to initiate inquiries into information indicating grave or systematic violations of the CRPD by a State. Parties to the Convention must separately sign and ratify the Optional Protocol and they must be parties to the Convention in order to become parties to the Optional Protocol.²

Why a special Convention?

Although other human rights conventions apply to people with disabilities, they have rarely been used to promote or protect their human rights. People with disabilities continue to experience widespread discrimination in healthcare, education, employment and other areas of their lives. Other treaties have not addressed the social, cultural, economic, and legal barriers that prevented people with disabilities from participating in their communities and fulfilling their human rights.

This treaty, the first human rights treaty to be adopted in the twenty first century, has a number of notable features in that;

- it involved a high level of participation by representatives of those directly concerned with the subject matter of the Convention—persons with disability and disabled persons organisations³
- was the most rapidly negotiated treaty ever⁴
- the Convention embodies an international movement away from a medical model or social welfare approach where people with disabilities are seen as passive recipients of services, and embraces a human rights-based understanding of disability.⁵

¹ Michael Ashley Stein, 'Disability Human Rights' (2007) 95 California Law Review 75.

² As at 2 January 2011, 97 countries had ratified the Convention. Australia did so on 17 July 2008 and ratified the Optional Protocol on 21 August 2009.

³ Rosemary Kayess, and Phillip French, 'Out of Darkness into Light? Introducing the Convention

on the Rights of Persons With Disabilities' (2008) 8(1) *Human Rights Law Review* 1, 3.

⁴ Kayess and French, above n. 3, 2.

⁵ Harvard Law School, *Why a Convention was needed* (2009) <<http://www.hpod.org/convention/why-a-convention-was-needed>> at 30 May 2009.

The text of the Convention was drawn up at the United Nations and disability rights advocates had an influential role at every step of the drafting process. People with disabilities represented not only themselves and their organisations, but governments as well. This was the first time that the United Nations allowed civil society to take such an active part in influencing how a human rights treaty was written.

In the past disability has been conceptualised through a medical model. This approach focuses on the particular attributes of a person with a disability with a view to providing treatment, or cures to help the person get as close as possible to what is regarded as a social norm.⁶ The social model of disability on the other hand “locates the experience of disability in the social environment, rather than impairment and carries with it the implication of action to dismantle the social and physical barriers to the participation and inclusion of persons with a disability”.⁷

In the past the most common approach to disability law has been what Fredman⁸ describes as a “minority approach” whereby a class of persons is identified that is entitled to protection from discrimination and to special measures to compensate for disadvantage. Fredman points out problems with this approach in:

- the difficulty in identifying who has a disability,
- that various minority classes are then competing against each other for scarce resources.

Another developing way of approaching disability issues is known as the universal approach. This approach recognises the fact that there is no precise social norm and humans come in an infinite variety of characteristics. Impairment is seen as “an infinitely various but universal feature of the human condition”.⁹

A universal approach then, is aimed at providing conditions in education, employment, health care etc that will work effectively for all people regardless of personal characteristics. The CRPD defines "Universal design" as the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.¹⁰

This Convention establishes rights, but it does not include comprehensive standards setting out how rights are to be measured. Governments need to develop standards with people with disabilities, their representative organizations and other members of the community.

⁶ Kayess and French, above n 3,5.

⁷ Kayess and French, Phillip, above n 3,6. note also their comments on critique of this model at 7.

⁸ Fredman, ‘Disability, Equality and the Existing Anti Discrimination Paradigm- European Discrimination Law’ in *Disability Rights in Europe: From Theory to Practice* (2005) 211.

⁹ Bickenbach, ‘Minority Rights or Universal Participation: The Politics of Disablement’ in Jones and Basser Marks (Eds) *Disability Diversity and Legal Change* (London: Martinus Nijhoff 1999) 101, quoted in Kayess and French, above n 3,10.

¹⁰ Article 2 CRPD

What does this have to do with the clinic?

It is clearly difficult to give an accurate figure of how many people are living with a disability. Estimates range from around 10 to 20 per cent of the world's population (the world's largest minority)¹¹. In Australia it is estimated that approximately 20% of the population has a disability.¹² This figure is increasing through population growth, medical advances and the ageing process. According to data from the U.S. Census Bureau for 2005, which was released in December 2008, 54.4 million Americans were reported as having a disability—nearly one in five (19%)—with 6.5 million reporting a severe disability.¹³ In countries with life expectancies over 70 years such as Australia, individuals spend on average about 8 years, or 11.5 per cent of their life span, living with disabilities.¹⁴

The CRPD does not explicitly define disability but refers to persons with disabilities as including “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.¹⁵ Obviously there are also many people who by reason of accident, illness etc have impairments for short term periods.

What may be called impairments can be and have been classified in many ways. Categories may include: (a) physical impairments, including cerebral palsy, spinal cord injury, spina bifida, arthritis, head injury, epilepsy, multiple sclerosis, and other orthopaedic or chronic health impairments; (b) sensory impairments, which include vision, hearing, and language or communication impairments; (c) specific learning disabilities; and (d) psychiatric/addictive disorders, which consist primarily of people with long-term mental illness, but also include people with chronic alcohol and drug dependency.¹⁶

It stands to reason then, that there is unlikely to be any clinic that does not have people with a disability among their clients or among their target groups from which clients come. If clinics are representative of the population they will also have staff and students with disabilities. The diversity of possibilities means that staff of clinics have to be thinking about how to incorporate people into the clinic in all ways. Disability issues have largely been hidden in clinics except in the client population or occasional student and the marginalization of disability in human rights law has been noted.¹⁷ The advent of the CRPD allows clinics a framework for taking a step back and assessing their policies and practices to ensure they are in keeping with human rights.

¹¹ Disabled World. World Facts and Statistics on Disabilities and Disability Issues <<http://www.disabled-world.com/disability/statistics>> at 3 January 2011.

¹² ABS Disability Aging and Carers (2009) <<http://www.abs.gov.au/.../29ac3ed8564fe715ca256943002c4e3c!OpenDocument>> at 23 July 2009.

¹³ American Bar Association Commission on Mental and Physical Disability Law, ‘Goal III Report 2009- A report on the status of the participation of persons with disabilities in ABA Division, Section, and Forum leadership positions.’ (ABA, 2009), 4.

¹⁴ United Nations, *Factsheet on Persons with Disabilities*

(2009) <<http://www.un.org/disabilities/default.asp?id=18>> at 6 June 2009.

¹⁵ Article 1 CRPD.

¹⁶ Michael West et al., *Beyond Section 504: Satisfaction and Empowerment of Students with Disabilities in Higher Education; Section 504 of the Rehabilitation Act of 1973, 59 Exceptional Children 456* (1993).

¹⁷ Janet E Lord, ‘Disability Rights and the Human Rights Mainstream: Reluctant Gate Crashers’ in Clifford Bob (ed), *The International Struggle for New Human Rights* (2009)

Article 13 of the CRPD is of particular import to the Clinic. It deals with access to justice and states that:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Obviously clinics are not parties to the Convention and are therefore not legally bound to comply with the Convention but clinicians could be said to be in the business of justice and clinics should be run in accordance with human rights values and to the highest possible standard. Clinics are also in a potentially influential position in respect of the training of lawyers and have the capacity to make an impact in a number of ways. There are also of course questions as to whether clinics are discriminating against students with disabilities in their courses if they do not develop policies and approaches for students with disabilities. Law clinics are in a unique position at the crossroads of education and service provision. Their client base often has problems accessing justice due to endemic discrimination. Their students are in the formative years of their legal careers and are beginning to develop attitudes that will remain with them throughout their working lives. The Convention provides a catalyst for thinking about disability issues as human rights issues and enables clinics to enrich the education of faculty and students.

A catchcry of the Disability Rights movement is “Nothing about us without us”¹⁸ and clinics must include people with disabilities in their planning and implementing changes along the lines suggested in this article.

Direct and indirect participants in the justice system

The areas where clinics could examine their practices and approaches for compliance with the CRPD and particularly Article 13 are in relation to:

1. clients
2. law students
3. staff
4. the legal profession
5. the justice system

A survey of relevant literature on these issues and applying these concepts to the Clinic leads to 7 suggested guidelines for clinics. These provide a basic framework for clinics to assess their current practices.

¹⁸ See James Charlton *Nothing about us without us: disability oppression and empowerment*. (2004). Univ. of California Press.

Suggested Guidelines

1. Clinics should adopt a universal approach aimed at providing conditions in their education, employment, and service programs that will work effectively for all people regardless of personal characteristics.

Clinics should ensure as basic measures and as a priority that their facilities incorporate universal design – in physical accessibility - for instance teaching rooms with hearing loops and space for wheelchairs and other mobility devices in the main body of the room (not at the back or front), and staff and interview rooms, front counters and bathrooms, kitchens that are accessible for people with mobility impairments. Currently most websites and web software have accessibility barriers that make it difficult or impossible for many people with disabilities.¹⁹ Clinics should ensure that all internet and computer materials comply with accessibility guidelines so that clients students and staff can use them.²⁰ They should ensure that their telecommunications system allows easy contact with the clinic and that the staff and students are trained to use the technology.

Conditions for employees and students should be flexible and allow opportunities to discuss and implement accommodations that will allow people to complete their tasks well. Staff or students may need to do some work from home, or may need longer to undertake tasks or need time off for rest or medical treatment.

Information provided by clinics should be accessible - pamphlets, staff business cards, consultation times, libraries should be reviewed to determine how they could be more accessible e.g. Braille versions etc.

2. All clinical staff and students should undergo mandatory, skills-based disability awareness training.

One barrier that clients, staff and students with a disability face is the non disabled staff and students in the clinic and their knowledge and attitudes. A recommendation by the Disability Council of NSW in relation to legal aid services that is relevant to clinics was:

*all staff in private and public legal services undergo mandatory, skills-based disability awareness training. This was particularly important in community legal centres (where many clinics are located) where volunteers and students support advice services. It was also important for counter staff in legal aid services and private solicitors fulfilling a legal aid duty solicitor role in criminal courts.*²¹

All people in clinics will be working with people with a disability and the better informed they are the better they can perform their jobs. The Law Society of England and Wales has proposed the following statement of the core general characteristics and abilities that solicitors should have on

¹⁹ Ibid. See also Gerard Goggin and Christopher Newell, *Digital Disability The Social Construction of Disability in the New Media* (2003).

²⁰ See for instance WC3 Web Accessibility Initiative <<http://www.w3.org/WAI>> 1 July 2009.

²¹ Disability Council NSW, *A Question of Justice Access and Participation for People with Disabilities in*

Contact with the Justice System, (2003) <<http://www.disabilitycouncil.nsw.gov.au/archive/03/justice.html>> at 1 July 2009.

day one in practice.... “Demonstrate the capacity to deal sensitively and effectively with clients, colleagues and others from a range of social, economic and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client’s objectives”.²² The clinic is an ideal place for these skills to be learnt.

Everyone in the clinic should be aware of the CRPD and be encouraged to take time to reflect on what this means for clients, fellow students and the justice system generally. Training where possible should be run by people with a disability and could include information about different types of disability and associated behaviour, basic etiquette and issues to do with language about disability. While language may seem to be a minor issue as McCurdy points out:

*There has been a great deal of debate over the years regarding the acceptable way to refer to both individuals with disabilities and the aggregate population of people with disabilities. While this debate has often deteriorated into absurdity, and distracted people with disabilities from combating more palpable sources of oppression, we have learned that in a world of hierarchy and marginalization, words do matter. Newborns labelled as “defective” receive substandard care, adults marked as “incompetent” lose all autonomy, and “special needs” can mean social death.*²³

3. Clinical staff should work with Faculty on policies for getting more students with disabilities into law schools and encouraging colleagues to consider disability issues. The legal profession and the community needs lawyers with all types of disabilities. Legal educators are the gatekeepers to the profession for students with disabilities

Studies in the USA suggest that approximately ten percent of law students possess a physical or mental disability although most law students with a physical or mental disability apparently do not self-identify.²⁴ Statistics are not available in most jurisdictions although I suspect the figure would be somewhat lower in Australia. As has been pointed out ‘access and participation at all levels at schools and universities for people with disabilities still moves far too slowly’.²⁵

It can be difficult for people with a disability to get into law schools, complete studies and get jobs as lawyers. Clinicians cannot be expected to be able to achieve change in every aspect of the system but at the least could work with law school colleagues responsible for student entry into law school on looking at developing policies that will attract and make it possible for more students with disabilities to gain entry to law schools. Clinics have made many efforts to ensure more indigenous and people from other cultures are represented in clinics as students and staff²⁶ and need to do the

²² The Law Society, Second Consultation on a New Training Framework for Solicitors, § 4, ¶ 46 (Sept. 2003) [Law Society Second Consultation] [http://www.lawsociety.org.uk/documents/download s/becomingtfranalysisifirms.pdf](http://www.lawsociety.org.uk/documents/download/s/becomingtfranalysisifirms.pdf) at 17 July 2009..

²³ Allan H McCurdy, 'Disability Ideology and the Law School Curriculum' 4 *The Boston University Public Interest Law Journal* 443,457.

²⁴ Kevin Smith, Disabilities, Law Schools and Law Students: A Proactive and Holistic Approach, 32 *Akron L. Rev.* 1 (1999),2.

²⁵ Gerard Goggin and Christopher Newell, *Disability in Australia Exposing a social apartheid* (2005), 209.

²⁶ See Falk, P & Ruska, K (2006) Report on Indigenous Australian Legal Clinic Programs as part of the Effective Integration of Community-based Learning, and Lisa Pusey and Frances Gibson, Kingsford Legal Centre Christine Forster, Jill Hunter, Mehera San Roque, Sean Brennan, and Megan Davis (2003). Two programs to improve first-year indigenous law students' retention rate and communication skills: clinical legal education and a focused tutorial program University of New South Wales Faculty of Law < learningandteaching.unsw.edu.au/content/userDocs /fye_2003_pusey.pdf> at 4 January 2011.

same for people with disabilities. We can also advocate that our Law Schools have good accessible facilities in buildings, lecture theatres, libraries etc.²⁷

Rethinking on the part of legal educators will not come easy. Law professors, as a group, resist changes in the way that they teach. As Jolly Ryan points out

*This resistance is not surprising, given a number of factors designed to maintain the status quo in legal education. Very few law professors were effective educators before setting foot in the classroom. Nor is it likely that they had any formal training in education, including recognizing and accommodating their students' learning styles. However, they were successful law students and expect their own students to learn the same way that they learned in law school: through competition and rigor.*²⁸

Clinical staff can assist law school colleagues to experience and understand issues about disability through seminar programs on the issue, encouraging students with and without disabilities to present aspects of their work relating to disability rights, to encourage sessions at university level to be run for staff on disability issues and through collaboration on research on legal issues that incorporate issues of disability.

4. Clinics have an important role for students with disabilities and clinical staff should encourage students with disabilities to enrol in clinics. Clinical lecturers should publicize the essential functions required of student lawyers in the clinic so that staff and students with disabilities can make informed decisions about their participation and work.

Traditionally, law school clinics have played a key role in bridging the gap between the study of the law and its practice. Studies show that there are few lawyers with disabilities in practice and it is difficult for them to get jobs. Students with disabilities rarely disclose their impairments because of fear of discrimination. Research shows that students and graduates with disability often face significant barriers during their education, and have often never held a position of paid employment by the time they graduate. As a result, students with disability often miss out on the opportunity to develop skills and experience, build networks of contacts and develop a sense of 'job readiness' within a professional environment. This lack of work experience acts as a compounding disadvantage when it comes time for the graduate to begin their career in their chosen field.

²⁷ See for instance at the University of Melbourne Law School where the Law School has appointed a Disability Equal Opportunity Liaison Officer. The primary roles of the officer are:

- To address disability policy issues and to facilitate the progress of students with disabilities through the law programs.
- To liaise with and support students in academic and other related matters.
- To liaise between the DLU and the Faculty.

The law building has the following design features:

- All lecture theatres have hearing loop facilities and wheelchair access.

- Lifts include information in Braille and speaking facilities.
- The floor layout includes bumps to aid the visually impaired.
- Toilets for disabled people are available on every level of the building.

²⁸ Jennifer Jolly-Ryan, 'Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner' (2005) 6 Nevada Law Journal, 124.

Anderson and Wylie point out “Given this professional climate, it is critical that law students grappling with mental health and learning disabilities be able to use law school to help prepare them for the reality of practice.”²⁹ Buhai points out that clinical legal education provides exceptional benefits to law students in that it allows students to:

- (1) identify which type of law they wish to practice,
- (2) make connections in the legal field to foster future employment opportunities,
- (3) develop mentoring relationships,
- (4) learn many important skills, and
- (5) learn professional responsibility and competence. These benefits directly translate into increased opportunities for successful employment upon graduation.³⁰

These experiences and the opportunity to experiment and prove their skills may make the difference for a student with disabilities being able to go into practice or not.

Law school staff should review the subjects chosen by students who are receiving accommodations before they go into clinics in order to discuss with the students whether they will disclose their disability to the clinicians, and, if so, whether an accommodation will be necessary or possible. In law schools across the world,

*students with disabilities receive academic accommodations in their traditional law school classes on a regular basis. However, often those accommodations do not translate easily from the classroom to the clinic. To take but one example, more time on tests does not have any direct analogy to accommodations in practice.*³¹

Harder issues to grapple with may be adjustments to our teaching practices in the clinics. How do we encourage students to disclose their disabilities in the clinic? Clinical teachers lack the training to assist students with non-visible impairments even if they do elect to disclose.³² How do we work with students with disabilities in court matters? What approach do we take to matching up students and clients who may have certain expectations of their student lawyers that may not accord with reality?

As Jennifer Jolly Ryan points out:

*accommodations for students with disabilities result in good teaching for all students. It emphasizes that there are “many roads to learning” and reiterates a well-known principle for good teaching; good teaching requires a respect for “diverse talents and ways of learning.”*³³

²⁹ Alexis Anderson, Alexis and Norah Wylie, ‘Beyond the ADA: How clinics can assist law students with non visible disabilities to bridge the accommodations gap between classroom and practice’ (2008) 15 *Clinical Law Review* 1,10

³⁰ Sande L.Buhai, ‘Practice Makes Perfect: Reasonable Accommodation of Law Students with Disabilities in Clinical Placements’ (1999) 36 *San Diego Law Review* 137.

³¹ Anderson, Alexis and Wylie, Norah, ‘Beyond the ADA: How clinics can assist Law Students with non visible disabilities to bridge the accommodations

gap between classroom and practice’ (2008) 15 *Clinical Law Review*, 3.

³² Anderson, and Wylie, above n 29,16.

³³ Jennifer Jolly-Ryan, ‘Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner’ (2005) 6 *Nevada Law Journal* ,117.

Anderson and Wylie suggest that to assist students, clinical lecturers should publicize the essential functions required of student lawyers in the clinic. One writer has stated her belief that there are no lawyering skills that are so fundamental to being a student attorney in a clinical program that a student has to perform all of them to be able to be in the clinic.³⁴ This approach means the door is open for all students. Anderson and Wylie's article describe a sample welcoming letter to all students which invites students to discuss any disability issues they feel relevant. Clinical lecturers should disseminate information about access to accommodation and protocols for triggering disability services for student lawyers.

Clinical law teaching can occur either in-house at the law school clinic, in legal aid organisations or in an externship placements with government departments, private firms etc. Law Schools need to ensure that they can offer students with disabilities placements at organisations that can accommodate their disabilities and give them a reasonable choice as is available to other law students

Clinics should have clear policies to assist and encourage students. A suggested plan of action would be to

- Draw up a list of tasks students may be engaged in at clinic and publicise this
- Consult the university's equity officer about ways of assisting students with disabilities to participate in these tasks
- Talk about disability in sessions promoting clinics in the law school and in promotional material.
- Identify and welcome students and encourage students to disclose their disability if they want to
- As with all students, decisions about the work allocated will be a balance of the needs of the student, needs of the clinic and needs of the clients

If the student can perform the essential functions of the legal role in the clinic that should be sufficient and the clinic can work around that basis.

5. Clinical lecturers should adopt a critical analysis of the law's approach to questions of disability.

McCurdy points out the:

*degree of invisibility faced by individuals with disabilities in the legal system. People with disabilities, if judged by the casebooks we use to educate young lawyers, play no role, have no legal interests, engender little substantive law, and need to be locked away as dangerous or vulnerable. The legal system, to be sure, reflects the society at large. Invisibility is a hallmark of the disability experience...*³⁵

There are very few areas of law where disability issues are not integral when one adopts a critical eye. We should be asking questions in our teaching such as -Why in some jurisdictions are charities excluded from disability discrimination laws, do migration laws deny entry to people with

³⁴ Jennifer Gundlach in Robert Dinerstein, 'Assisting Law Students with Disabilities in the 21st Century Brass Tacks: Panel 2 Clinical and Externship Programs' (2007) 15 *American University Journal of Gender, Social Policy & the Law* 817

³⁵ McCurdy, above n 23,449.

disability? What are the rules around capacity of people to give evidence in courts and who do they exclude? How are disability rights covered in existing and proposed Bills or Charter of Rights, how does disability affect employer/employee relationships and bargaining? What rules relate to disability in contract law? etc.

An examination of these issues will allow students to explore the operation of the law in practice and assumptions and stereotypes on which it may be founded. This will deepen their understanding of the law and encourage better practice.

6. Clinical staff should serve as a model for promoting diversity in law practice and the community, including employment of staff with disabilities.

One way in which law schools can enhance their students’ abilities to deal sensitively and effectively with diverse groups of clients and colleagues is by serving as a model for promoting diversity in law practice and the community, including having in the law school community a critical mass of students, faculty, and staff from minority groups that have traditionally been the victims of discrimination.³⁶ This is particularly important in the clinic and especially in the case of lawyers working in clinics. Clinics should be promoting employment of staff with disabilities and working with barristers and other legal professionals who have disabilities or have an understanding of the issues.

The legal profession

The legal profession in and outside the clinic is generally unrepresentative of the disability community and most lawyers are ignorant about disability issues.³⁷ Members of the legal profession may have no understanding or lack the skills to communicate with people who have particular disabilities. Unless lawyers and other spokespersons are sensitized to the needs, requirements, strengths and weaknesses of people with disabilities, they will not be good advocates for those people.³⁸

As the organisation People with Disabilities state:

*The scenario for many of our consumers is that of difficulty in accessing legal support and the reliance on duty lawyers who do not have the time or expertise to fully understand the impact disability may have on an individual’s ability to operate in the court the relationship between a particular disability and the ‘offending’ behaviour.*³⁹

In the USA the American Bar Association conducts an annual census of its lawyer members. In 2008 of the 30,400 respondents who answered the query “Do you have a disability?” only 2,033,

³⁶ Roy Stuckey and others, Best Practices for Legal Education Clinical Legal Education Association 2007,66.

³⁷ See for instance Susan Hayes *People with intellectual disabilities as victims of crime – the police and judicial response*. Paper presented at the 39th Annual Conference of the Australasian Society for the Study of Intellectual Disability, 9-12 November 2004, Adelaide SA.

³⁸ Issues of Fairness and Justice in Alternative

Dispute Resolution, Discussion Paper, National Alternative Dispute Resolution Advisory Council, Canberra, November, 1997.

³⁹ People with Disabilities (WA) Inc, ‘Report on Justice and People with Disabilities In Western Australia’ (2001)

or 6.69%, answered affirmatively. As the ABA point out this percentage is far lower than one would expect given the national statistics on the percentage of Americans with disabilities.⁴⁰ Past ABA President William H. Neukom has noted that “lawyers with disabilities, too, have greater difficulty getting a job after law school and have higher rates of unemployment than lawyers who do not have disabilities.”⁴¹

Statistics in Australia are hard to come by. In 2003 in NSW there were 18,434 solicitors and a further 12,000 or so law students. Among them there were roughly 650 lawyers and law students with disclosed disabilities, but the full-time employment success rate for these people is well below the average.⁴² As Laffan pointed out:

Newly qualified lawyers with disabilities are finding it very difficult to gain fulltime employment. The great achievement of having attained their degrees are muted by the fact that to take the next step to become a practicing lawyer and fully employed is continually frustrated by a reluctance of law firms to employ them.

*As intakes of fresh graduates are accepted by the big and small end of town those who have disabilities are left on the outside and their untapped potential is wasted.*⁴³

The Law Council in Australia does not collect information on the numbers of lawyers or law students with disabilities. The Law Council's Equalising Opportunities in the Law Committee is developing a statement of diversity for the Law Council and this will be an over-arching policy which will encompass race, ethnicity and disability. However, this project is in its very early stages of development and it is likely the policy will not be released publicly for some time.⁴⁴

Jolly Ryan hypothesises that the lawyer with a disability will

*likely have the empathy and sense of justice to serve clients and the public in an exceptional manner. The legal profession, and the society that it serves, is in need of lawyers with all types of disabilities, and it is up to legal educators in the first instance to clear the path to the profession for students with disabilities.*⁴⁵

As the Australian Employers' Network on Disability state:

*The biggest barrier to employment faced by people with disability is the attitude of employers. Changing attitudes comes down to raising awareness of disability issues, and repositioning disability as a business concern. Employers can help by providing mentoring, work experience and internships for people with disability.*⁴⁶

⁴⁰ ABA Disability Diversity Statistics -2009 <http://www.abanet.org/disability/resources/statistics.shtml> at 1 July 2009.

⁴¹ American Bar Association Commission on Mental and Physical Disability Law, 'Goal III Report 2009- A report on the status of the participation of persons with disabilities in ABA Division, Section, and Forum leadership positions.' (ABA, 2009),6.

⁴² Matt Laffan, *Equal Opportunity: Lawyers with disabilities seek access and opportunity* (2003) <http://www.mattlaffan.com.au/article_lawsocietyjournal_082003.html> at 31 May 2009.

⁴³ Disability Council of NSW, *Matt Laffan Creating*

opportunities for potential employees with disabilities: A personal experience (2001) at 2 July 2009

⁴⁴ Email from Nicole Pulvirenti Law Council of Australia 1 July 2009

⁴⁵ Jennifer Jolly-Ryan above n 28 , 132.

⁴⁶ Australian Network on Disability, Corporate Social Responsibility <<http://www.and.org.au/content/view/10/1>> at 4 January 2011.

Programs such as the *Stepping into Law Program* run by Australian Employers’ Network on Disability provide a paid internship program designed specifically for law students with disability. The program provides a “step into” practical work experience for students with disability who may otherwise face significant barriers to finding employment. Major law firms and Government Departments participate.⁴⁷

Clinical staff should consider participating in such programs and making positive attempts to include staff with disabilities in clinical programs in all capacities. This will not only enrich the workplace and but also provide role models for students.

7. Clinical staff should advocate to make the justice system accessible.

As we all know, there are many problems people face when they need legal assistance. The complexity of the legal system is intimidating. Free legal advice to avoid legal problems is often not available. Lawyers are very expensive and beyond the reach of most people. There is insufficient funding for legal aid services. Provision of legal aid services is generally obligatory only for criminal cases and strict eligibility criteria rule most people out anyway.⁴⁸ As Noone and Tomsen comment “The general demand for public legal assistance in the industrialised world remains massive and mostly unmet”.⁴⁹ People with disabilities will in many cases find it difficult to find out about sources of assistance, may have difficulty physically accessing services and information and may lack the confidence, experience or skill to communicate with potential advisers or advocates effectively.

The NSW Disability Council’s survey of experiences with the justice system⁵⁰ found that there are significant barriers for people with a disability trying to access information, advice or support. These barriers include inaccessible information formats; inappropriate consultation; negative staff attitudes; and lack of service continuity and that the procedures in the justice system are applied narrowly and inflexibly, to the disadvantage of people with disabilities. The financial, physical and emotional costs of legal action are major barriers. People with disabilities are less likely to be in a position to afford private legal advice and more likely to rely on the resources of community legal services, pro bono schemes, and Legal Aid.

There is a lack of access to AUSLAN interpreters and legal information websites are often inaccessible.⁵¹ People with intellectual or psychiatric disabilities may have their capacity to give instructions doubted. People with a disability may face additional problems in that they may not be able to physically access legal institutions such as courts or legal aid/lawyers’ offices.

⁴⁷ Australian Employers’ Network on Disability, *Stepping Into Law* <http://www.aend.org.au/index.php?option=com_content&task=view&id=242&Itemid=23> at 15 July 2009.

⁴⁸ United Nations Development Programme, *Programming for Justice: Access for All, A Practitioners Guide to a Human Rights based approach to access to Justice* (2005) at page 143. Also see Simon Rice, ‘A Right to Legal Aid; the Kyiv Declaration’ (2007) 32. *Alternative Law Journal* 169.

⁴⁹ Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict* (2006), 241.

⁵⁰ Disability Council NSW, *A Question of Justice Access and Participation for People with Disabilities in Contact with the Justice System*, (2003) <<http://www.disabilitycouncil.nsw.gov.au/archive/03/justice.html>> at 1 July 2009.

⁵¹ Schetzer, Louis and Henderson, Judith, ‘Access to Justice and Legal Needs Stage 1 Public Consultations’ (Law and Justice Foundation of New South Wales, 2003), xvi.

Some of the access solutions that are available in the courts include: pre-hearing orientation of the court room; formatting documents in alternative formats (for example, in large print or email for people with vision impairment); breaks and drinks of water; and accessible premises. For those with a hearing disability, the following services may be available: infra-red system for the courtroom; Auslan interpreters; real-time translation (captioning); and TTYs (teletypewriters). Those with speech impairments may require the use of their own augmented speech equipment or just patience from the listener.⁵²

Clinicians should be advocating to make Article 9 of the CRPD a reality as it applies to the justice system. This Article requires States to make buildings, transport, workplaces, information, communications, signage and interpreters accessible and provide other assistance and support to persons with disabilities to ensure their access to information. Perhaps apart from health care, nowhere can this be more important than in the machinations of the legal system which can have such significant effects on the lives of participants.

Conclusion

These guidelines provide a starting point for clinics that have not yet done so to improve their services both in education and community service. The advent of the Convention on the Rights of Persons with Disabilities can be the means to focus attention on these issues. Law students, lawyers and other people with disabilities are leading the call for change in many areas of the justice system and it is to be hoped that clinics will be in the forefront of productive change in this area.

⁵² People with Disabilities (WA) Inc, above n 39.

“Clinic and the wider law curriculum”:

*Jonny Hall** and *Kevin Kerrigan,#* Northumbria University

Introduction

We have always been quite proud of this student feedback about our clinical programme and still use it in publicity material:

“The SLO transformed what seemed like an academic subject into a practical one with very real consequences that I felt that I could shape. My perceptions of employment law changed drastically as did my view of the law in general. It reminded me of why I wanted to study law initially.”¹

Looking at it more carefully while writing this piece it did not seem so impressive. What had we done in the first three years of this student’s legal education that made her forget why she wanted to study law in the first place? We had provided clinic as the capstone on what was, in many respects, a programme of study that focused on legal rules and legal theory.² Although this student had eventually benefited significantly from the reality that clinic provided, her comment reflects a growing debate about whether these benefits could be introduced at an earlier stage. We have become uncomfortable with the isolation of the substantive aspects of the programme from the clinical aspects and are currently grappling with how we can integrate doctrinal knowledge with a fuller clinical experience throughout the student journey.³

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¹ Anonymous student feedback in Student Law Office questionnaire for graduating students, 2005.

² This is a somewhat over-simplistic description of the Exempting law degree at Northumbria. In fact the programme does seek to integrate practical skills and understanding with legal knowledge throughout and for many years was the only law degree to combine the “academic” stage of legal education with the “vocational” stage. However, the live clinical course has been available only towards the end of the programme with little real experience prior to this.

³ This is by no means a novel insight. Commentators have for some time advocated the idea that clinical methodology may be able to play a more central

role within legal education and that in this sense the clinical project remains a work in progress. As early as 1933 Jerome Frank was arguing, Why not a clinical lawyer school? 81 U. Pa. L. Rev. 907. Although in a somewhat different context to the modern debate he clearly had in mind the use of clinical methodology as a significant aspect of legal education: “The law student should be taught to see the inter-actions of the conduct of society and the work of the courts and lawyers. The usual law school curriculum largely omits such teaching. It relies on prelegal courses in the so-called social sciences. The result is that the law student is graduated with the vaguest recollections of his pre-legal work, an insufficient feeling of the inter-relation between law and the phenomena of daily living, and an artificial attitude towards “Law” as something totally distinct and apart from the facts.” (at page 921-922). More recently it has been addressed for example by Barry et al in Clinical

Hence, the problem this paper addresses is that although there is general consensus as to the value of clinic and recognition that it has enhanced creativity and vitality in legal education, there is still a tendency to see it as something apart from the regular law curriculum. We want to explore the viability of making the key benefits of clinical education pervade the whole of the student's time learning the law. We draw some encouragement from official reports from the US and the UK which, although not concerned primarily with the place of clinical legal education, do provide general support for an approach which combines theory and practice.

The Carnegie Report from the United States recently sought to convince the legal academy of the value of integrating the learning of legal rules with the learning of legal realities:

“How then can we best combine the elements of legal professionalism – conceptual knowledge, skill, and moral discernment – into the capacity for judgment guided by a sense of professional responsibility? We are convinced that this is a propitious moment for uniting, in a single educational framework, the two sides of legal knowledge: (1) formal knowledge and (2) the experience of practice. We therefore attempt in this report to imagine a more capacious, yet more integrated, legal education.” Carnegie Report, 2007, page 12.⁴

Just over ten years earlier, the ACLEC report in the United Kingdom offered similar guidance on the combining of these two facets of legal understanding:

“A liberal and humane legal education implies that students are engaged in active rather than passive learning, and are enabled to develop intellectually by means of significant study in depth of issues and problems as part of a coherent and integrated course, and that the teaching of appropriate and defined skills is undertaken in a way which combines practical knowledge with theoretical understanding ... the rigid demarcation between the “academic” and “vocational” stages needs to disappear; what is required is a new partnership between the universities and the professional bodies at all stages of legal education and training.”⁵

With rare exceptions,⁶ law schools in the United Kingdom have so far largely resisted this exhortation. Even where legal practice is addressed it tends to be in isolation from the core business of teaching students substantive legal knowledge. It remains to be seen whether the

Education for this Millenium: The Third Wave, Clinical L. Rev. 1 2000-2001. We agree with their proposition at page 33 that “The dichotomy between doctrinal analysis and theoretical considerations on the one hand and practice on the other is unfortunate, since each has an important role to play in a sound legal education”.

⁴ Educating Lawyers – Preparation for the Profession of Law, William M. Sullivan et al, The Carnegie Foundation for the Advancement of Teaching, Jossey-Bass, 2007.

⁵ Lord Chancellor's Advisory Committee on Legal Education and Conduct 1st Report, April 1996, paragraph 2.2.

⁶ At the time of the ACLEC report Northumbria had recently introduced its Exempting Law Degree and the report acknowledged this development: “We have extolled the virtues of integrated education

and training ... as exemplified at present by the Northumbria exempting degree.” ACLEC 1st Report paragraph 5.19. This programme integrated the first two stages of legal education (academic and vocational) but did not at that stage seek to address the training / practice stage and did not see clinic as a pervasive teaching methodology. Further exempting law degrees have since been introduced at other institutions but we are aware of no programme which utilises clinical education as a pervasive vehicle for delivery of the core curriculum.

Carnegie report makes a more immediate impact in the United States. In any event both jurisdictions currently show a clear tendency to keep traditional and clinical teaching separate.⁷ Although clinical legal education often thrives in law schools it does so with a distinct identity, purpose and values so that a psychological (and sometimes physical) barrier is erected between regular learning and clinical learning. In most institutions clinic is seen as an optional course or extra-curricular activity rather than a core vehicle for delivering knowledge and skills.⁸

This paper argues that separateness of clinic from the mainstream learning methods leads to disadvantages for students, for the clinic and for the wider law school. It suggests that real legal experience, broadly conceived, can not only enhance student appreciation of professional skills but also benefit their understanding of key legal knowledge and principles. Further Integration of clinical methodology into the regular curriculum has the potential to make the student learning experience more engaging, more challenging and ultimately more valuable. We think it might be time for clinic to emerge from the margins and come to centre stage in legal education.

This is not uncontroversial. There are clearly risks with trying to synthesise the doctrinal study of law with an exposure to the practical realities of the law. However, we think that there are ways in which it can be done which enhances student appreciation of substantive law while engaging student enthusiasm and developing an essential early exposure to law in its natural setting.

Cart before the horse? Must basic substantive legal knowledge of any legal area come prior to clinical experience?

Stefan Kreiger has argued⁹

“Basic knowledge of substantive legal doctrine is a necessary pre-requisite to learning effective legal practice.”¹⁰

He rests his arguments partly on research carried out in the medical school context by Vilma Patel and others¹¹ which compared students who had studied basic science prior to clinical training (a traditional clinical curriculum) with those who had been trained in a Problem Based Learning

⁷ See Barry et al Clinical Education for this Millenium: The Third Wave, Clinical L. Rev. 1 2000-2001: “As we enter the new millennium, the movement beyond the casebook method to the wider integration of clinical methodology throughout the curriculum stands on a solid intellectual foundation. Yet, although clinical legal education is a permanent feature in legal education, too often clinical teaching and clinical programmes remain at the periphery of law school curricula.”

⁸ We think that this development would help us move towards Twining’s Holy Grail of the law school as a House of Intellect: “... an institution which purports to be the practising profession’s House of Intellect, providing not only basic education and training, but also specialist training, continuing education, basic and applied research and high level consultancy and information service. The nearest analogy is the medical school attached to a teaching hospital which, inter alia, gives a high priority to clinical experience with live patients as part of an integrated process of professional

formation and development. In no western country has this model been realised in law.” Twining, Blackstone’s Tower: the English law school (1994, Sweet and Maxwell, London) at p.52.

⁹ Domain Knowledge and the Teaching of Creative Legal Problem Solving, 11 Clinical L Rev 2004-5.

¹⁰ Ibid. p.149.

¹¹ Extensive references to this research can be found in footnote 10 of Kreiger’s above mentioned article.

method involving brainstorming and dealing with clinical problems involving both basic science and clinical application from the start of their education:

“With law school skills training courses, if students are asked to brainstorm or use other problem-solving techniques in doctrinal areas in which they have limited exposure and in which they must perform extensive legal research, these studies [i.e. by Patel et al] suggest that the burden on their mental processes may actually obstruct learning both the doctrine and the techniques.”¹²

Part of his argument, as we understand it, is essentially that teaching using clinical methodology prior to a sound basic understanding of substantive law in the area will:

- Lead to an unsound grasp of the substantive law
- Result in ineffective problem solving because the student has an insufficient grasp of the substantive law
- Involve teaching a method of problem solving which is not one which experts use to solve problems and may hinder the acquisition of expert problem solving skills

“students should not be expected in a single semester course to acquire basic knowledge of the substance and procedure of a complex legal area concurrently with their handling of cases in that area. At the very least, such courses should have rigorous prerequisites in the relevant doctrine and procedural law. Ideally they should be capstones to other doctrinal courses in the area all organized with the intent of training students to apply their knowledge in practice.”¹³

In his response Mark Aaronson argues that Kreiger overstates the ability of any substantive law course to teach more than the basics of that course:

“What we provide students at the end of three years is a learning permit. Their development of substantive expertise occurs over time once they are in practice and have repetitive exposure to similar problem situations.”¹⁵

However, Aaronson also agrees that substantive legal training should first be undergone. His school places this training immediately before the clinic module takes place and during it.

Kreiger raises legitimate concerns about the limits of clinical methodology. We add that to attempt to teach the entire syllabus using clinical or problem based learning methods would:

- Be excessively time consuming for staff and students
- Result in wasted effort pursuing avenues which the tutor knows will be fruitless but which the students do not
- Result in incomplete understanding of subject areas in which the “problem” dominates the students’ learning objectives and other crucial areas of the substantive law subject are ignored because they are not raised by the “problem” at hand

¹² Ibid. p.182.

¹⁵ Ibid. p.487.

¹³ Ibid. p.202.

¹⁴ Teaching Problem Solving Lawyering: An Exchange of Ideas, 11 *Clinical L Rev* 2004-5 at p.485.

However, we have reflected on the conclusions of the overwhelming majority of research on learning and motivation points to the conclusion that education should always involve variety (see for example, Hattie, 2004¹⁶; Apter, 2001¹⁷; Moseley, *et al*, 2005¹⁸). A model that proposes substantive legal education to be focused solely on didactic teaching in strictly compartmentalised subject areas where the curriculum and learning is solely set by the teacher is no more likely to succeed than one in which only PBL is used. To accept only one monolithic method at any particular stage is to deny to the student those opportunities that each offers to broaden their repertoire and increase their intellectual flexibility. We do not suggest that this is Kreiger’s proposal, but it has been the reality of many law programmes in the UK in the past. Our aim is not to limit the early years of undergraduate education, nor to confuse students: the ideal should not be the case method, learning through problems, problem based learning or simulated/real clinical experience but experience of all of the methods, with the role of the lecturers to make explicit both to themselves and to students the marriage of content and process which is designed to maximise depth and breadth of learning. Different students will respond more positively or negatively to each different method and lecturers can make use of the strengths within teams to build a cadre of future professionals who know both how to model good practice and how to ask for help.

We do not accept that by occasionally or even regularly asking students to set their own research objectives in a supportive learning environment that that learning will necessarily be at a lower level than on a traditional substantive law course.¹⁹ We also reject the assertion that learning how to deal with unfamiliar areas of law will hinder the ability of students to learn to problem solve when they already have a body of knowledge to work from. Kreiger’s use of studies from the medical school field involved a comparison of a programme that offered no problem based learning with a school where problem based learning was the only or dominant method of teaching. We do not advocate that students learn from clinical problems exclusively. Simply that they sometimes do. There is currently no empirical research that we are aware of that would suggest some exposure would hinder the development of problem solving abilities. More fundamentally, we are working towards an understanding of expertise which focuses on the distinction between the ‘experienced’ professional whose knowledge and skills are extensive but also *crystallised* and the ‘expert’ professional whose knowledge and skills are fluid and constantly evolving.²⁰ As legal educators we have a duty to students to best prepare them for lifelong practice and a duty to the profession to equip them with the flexibility to adapt to a future we cannot predict.

¹⁶ Factors that influence students’ learning: results from a study involving 500 meta-analyses. Paper presented at The ESRC seminar ‘Effective Educational Interventions’, University of Newcastle upon Tyne, July 8th 2004.

¹⁷ Motivational Styles in Everyday Life: a guide to reversal theory Washington, DC: American Psychological Association.

¹⁸ Frameworks for Thinking: a handbook for teachers and learners Cambridge: Cambridge University Press.

¹⁹ Indeed our experience on a second year public law course using Problem Based Learning, has been that

students developed a far stronger grasp of the legal issues than was formerly the case using a traditional method of teaching. See the summary of this project below in the section on integration of simulated activities.

²⁰ See Berliner, Learning about and learning from expert teachers *International Journal of Educational Research*, (2001) 35, 463-482.

The benefits of integration

Integration of clinical legal education with the core law curriculum has the potential to benefit the School as a whole. This section sketches some of the wider advantages we suggest can flow from a clearer focus on clinical methods across the curriculum. More specific issues are dealt with in the next section where we consider practical examples of clinical activities.

Inclusivity – integration can help to break down some of the barriers between academic and clinical faculty that sometimes exist. This would address the feeling that clinicians sometimes have of being marginalised or undervalued and the reaction of some non-clinical teachers of being excluded from clinical activities. Tactics such as the use of “consulting professors” whereby academic lawyers provide legal guidance to clinical students provides real assistance to the provision of the legal service and goes some way to making academics feel valued as part of the clinic’s case work but is still very much an arm’s length collaboration. Moreover, it goes only one way. It fails to take advantage of the clinical professor’s knowledge and expertise in the context of students’ study of legal doctrine. We envisage a more intensive, mutual and fruitful partnership which should ultimately break down the distinction between clinical and traditional teaching sessions.

Enhancing the personal development and expertise of the academy – we do not advocate that all academics become clinicians or practising lawyers. However, the more engaged those academics become in practical issues experienced by clients, the richer their own knowledge of the interaction between their specific subject expertise and the current legal system. There is an opportunity for the academic themselves to learn new insights. In one sense much of substantive law teaching is based on reality through use of real case precedents to illustrate legal principles and the development of the law. Nevertheless, the inevitable focus on appellate decisions provides an artificial perspective of how the legal system routinely operates. Knowledge of “coal face” issues can prove a catalyst for reflection, critique and renewal of perspectives.

Sustainability – While clinical legal education remains a separate enterprise from the core teaching of law it is vulnerable to being undermined due to ideological opposition, changing educational fashions or resource cuts. In many jurisdictions clinical legal education survives (if at all) due to the personal dedication of those involved rather than deep-rooted institutional support. There are numerous examples of clinics that have emerged due to the availability of external funding or the interest of key faculty members only to fall away once the funding ends or faculty move on. That which makes clinical education distinctive is also that which makes it expendable if an institution is looking to make cuts or to go “back to basics”. Integration of clinic with the core curriculum reveals its value as a teaching methodology and enhances its prospects of surviving and prospering in the long-term.

Student engagement – As noted above, pedagogic research confirms that which intuitively makes sense: learners respond positively to variety.²¹ Clinical legal education provides a different perspective on the meaning, operation and consequences of legal rules and doctrines. As part of a legal education that includes instruction, dialogue and critique, clinical activities can provide students with a richer tapestry for their learning. Moreover, as will be argued below, some forms of clinical legal education – those which involve real legal consequences – have the potential to engage student imagination and enthusiasm in a way that no other methodology can achieve. By

²¹ See the sources cited at footnotes 14-16, above.

harnessing some of this energy within the regular law curriculum it is possible to lift the whole experience.

Mechanisms for clinicalising the curriculum

If the principle of integrating clinic is accepted we must address how best to achieve this. There are various approaches that can be adopted. We wish to outline two approaches: (i) integration of simulated activities and (ii) integration of real legal experience. Our Law School has made significant strides towards the implementation of the first but we now think the time has come to be more radical and seek to achieve a fuller integration of reality into the law curriculum.

Integration of simulated activities

The obvious means for programme designers seeking to bring in more clinical methodology is to draw upon simulated experiential activities. These are often more resource friendly and almost always more predictable and manageable than real experience. We have done this to a significant extent in recent programme re-design at Northumbria. The new degree programmes contain a much more obvious clinical flavour than previously.

At a definitional level we have adopted a broad and flexible spectrum of “clinical and experiential learning” meaning “learning that requires students to engage with and reflect upon the practice of law.”²² This encapsulates modest skills-based and simulation activity at one end and full blown live client representation at the other. We encourage faculty to incorporate clinical and experiential learning within their modules in a way that enhances the delivery of their core syllabus rather than detracting from it or supplementing it.

On a structural level we have ensured a minimum guaranteed clinical and experiential content by agreeing to implement a clinical “stream” within all compulsory subjects in the first three years. Thus compulsory modules each have responsibility for delivering the clinical stream activities for a significant but not dominant period throughout the year. For example, there are four core modules in year one: Contract, Property, English and EU Legal Systems and Crime, Litigation and Evidence. Each takes responsibility for the clinical stream for a period of approximately 4 weeks during the year which gives the students 4 months of exposure to clinical activities across the year in a variety of substantive contexts.

Examples of experiential activities are as follows:

Criminal case study – In Crime, Litigation and Evidence year one students are provided with a bundle of realistic prosecution and defence statements and exhibits regarding an alleged sexual assault. This forms the basis of numerous small and large group sessions to examine in detail issues relating to the parameters of sexual assault, police powers and court procedure, the role of prosecution and defence lawyers and the principles of admissibility of evidence. Exercises include case analysis, drafting defence disclosure, bail applications, and challenges to indictments and evidence. It culminates in a mock trial.

Cross-module²³ problem based learning project - Students studying on separate second year modules

²² Northumbria University M Law Teaching and Learning Strategy, 2008.

²³ Barry et al note that while teaching doctrine in distinct areas such as tort and contract is useful: “teaching law without giving students a feel for the

of public law and tort/civil litigation interviewed an actor client wrongfully arrested by the police – thus involving both public law, tort and litigation issues. Students were not lectured on the areas of law. Instead, students set their own research objectives using PBL methodology²⁴ and researched the facts and the law in order to come to reasoned conclusions on advice to give to the client. Outcomes included: greater levels of student motivation and preparation; enhanced performance in examination on the areas studied; students expressed the belief that their ability to research had been enhanced and several commented that they felt able to work far more independently and with more self confidence

Integrated mootng programme – Rather than a traditional Socratic seminar discussion students are required to prepare a fictitious appellate case relating to the area of law being studied in a particular subject. They are required to exchange authorities and then in class perform the roles of appellate bench and senior and junior counsel for each party. In this type of role play exercise they develop deeper research skills and enhance their experience of oral communication in a structured environment.²⁵

Simulated interview with an actor - we have used this activity in conjunction with problem based learning projects. Students interview an actor in order to obtain instructions about the legal problem. The advantage of presenting the problem in this way is that students are highly motivated by the opportunity to begin to practise lawyering skills. They work harder than would usually be the case to obtain the factual information and analyse it. This provides a powerful boost to the problem based learning study.²⁶

Mock transactional file – Students studying property law and practice are divided into teams representing the vendor and purchaser of a fictitious property. They open up dummy files and correspond with each other, negotiating a deal, drafting contracts, raising queries about title, requesting relevant searches, arranging completion and transfer of monies etc. The tutor is able to intervene to inject complications or to resolve problems. In this way the students begin to understand the procedural framework within which land law operates and appreciate how disputes can arise.

The key to the success of these activities in the context of a programme that seeks to provide a fully rounded legal education is ensuring that they aid the students' understanding of the law and legal system at a level appropriate to their abilities and motivations. They are delivered alongside

confluence of these categories in addressing client interests instills a fractured understanding of how to approach legal problems that is hard to overcome," Clinical Education for this Millenium: The Third Wave, Barry et al, Clinical L Rev 1 2000-2001, 35.

²⁴ For an enlightening account of Problem Based Learning in legal education see: The Problem-Based Education Approach At The Maastricht Law School Jos Moust, The Law Teacher 31-32 1997-98

²⁵ See Gillespie and Watt, Mooting for Learning project Interim Report, a UKCLE research project, <<http://www.ukcle.ac.uk/research/projects/gillespie2.html>> research (accessed 14th January 2009). This study found that 93% of responding institutions

undertook mootng activity, 59% within the curriculum. It is evidence that some forms of experiential methodology are already embraced within academic programmes.

²⁶ In some environments the use of actors for interviewing has been taken a significant stage further so that the simulated client becomes involved in the assessment of the student interviewing skills. See Barton et al, Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence, 13 Clinical L. Rev. 1 (2006-2007). In the present context we are contemplating the use of an actor to add realism and urgency to the learning of legal rules within the context of a doctrinal law class.

more traditional methods of teaching law and need to be seen as part of the core teaching programme rather than a supplementary skills-oriented / vocational stage. They should therefore be seen as part of the varied repertoire for delivering core knowledge and skills.

To these could be added significant innovative experiential modules which involve students in role playing not only (or perhaps not even) the lawyers but also the clients and other roles that play out in the real world. For example at CUNY school of law in New York, Professor John Cicero taught labour law through turning his classroom into the shop floor, utilising the parallels of the power imbalance between employers and workers and teachers and students to enable the students to feel some of the effects of that imbalance²⁷. Other examples include Barbara Woodhouse’s course at University of Pennsylvania Law School where students in a “Child, Parent and State” module explored family policy and state intervention from theoretical, doctrinal and practical perspectives involving simulated role playing of not only the lawyers for all parties but also the parents. The module involved the playing out of these roles through simulated negotiation, and hearings if negotiation failed, using realistic case documents together with practical insight from experienced practitioners and exploration of theory including conversations with policy makers.

Integration of real experience

Simulated activities, if they are well designed and implemented intelligently as part of an integrated learning package, can go a long way to breaking down the artificial distinction between the theory and practice of law. We think they have an important place in the encouragement of a more holistic view of the study of law. They will remain a substantial part of our move towards clinicalising the curriculum. However, our aim is to go beyond this and provide students with increased exposure to the operation of law in its real setting. Part of the spectrum of learning opportunities permeating a law degree programme should be actual experience of law in context. This has rarely been attempted to our knowledge – though Barry et al cite several isolated examples²⁹. We should emphasise that we are not attempting to teach the whole of the law curriculum via this methodology – merely to add to the variety of current techniques.

There are three main reasons for our focus on real experience. First, real law operates in ways that cannot be predicted by manufactured case studies. By creating problems the teacher deliberately closes off blind alleys and predetermines the outcome. At worst, students will wait for the answer from the teacher. At best, they will attempt to take the predetermined facts and conduct basic research and then apply it to the problem.³⁰

²⁷ The Classroom as Shop Floor: Images of Work and the Study of Labor Law C. John Cicero, 20 VT. L. Re. 117 1995-1996 as cited in *Clinical Education for this Millenium: The Third Wave* *ibid*. We confess that the extent to which Professor Cicero was prepared to role play and potentially lose control through “firing” one of the students and prompting a student walk out, would prove too challenging for most law teachers.

²⁸ *Mad Midwifery: Bringing Theory, Doctrine, And Practice to Life*, Barabara Bennett Woodhouse 91 Mich. L. Rev. 1977 1992-1993

²⁹ *Clinical Education for this Millenium: The Third Wave*, Barry et al, *Clinical L Rev* 1 2000-2001.

³⁰ *Teaching Legal Research and Writing With Actual Legal Work: Extending Clinical Legal Education into the First Year* Michael A. Millemann and Steven D Schwinn, 459, 441, 12 *Clinical L. Rev* 2005-2006.

Real problems have an organic property giving truth to the saying, “you couldn’t make it up.” As Jane Aitken has commented in the context of client representation:

“Once they encounter a client, the blind faith that there is a ‘truth’ or a ‘law’ that can be applied must give way to a more sophisticated understanding. Clients’ cases rarely present simple facts that lend themselves to right and wrong answers. It is the complexity and unpredictability of working with real people that makes clinical legal education so rich.”³¹

A second and linked notion is that real cases enable students to scratch beneath the surface of the legal system and explore the hinterland of expectations, promises and fears engendered by the legal process. As Stuckey has argued:

“Even the best simulation-based courses, however, provide make believe experiences with no real consequences on the line. As early as possible in law school, preferably in the first semester, law students should be exposed to the actual practice of law. Exposure to law practice may be the only way through which students can really begin to understand the written and unwritten standards of law practice and the degree to which those standards are followed. Students need to observe and experience the demands, constraints, and methods of analysing and dealing with unstructured situations in which the issues have not been identified in advance. Otherwise their problem-solving skills and judgment cannot mature.”³²

Thirdly, students generally respond positively to real experience. They sit up and take notice. Reality engenders a motivation that is not possible to create with an artificial scenario. This graduating student feedback is representative of many:

“Over the past four years I have participated in theoretical cases which are supposed to increase my understanding as to how the law operates in practice, but in reality I subconsciously know that they are false representations and thus there is no incentive to want to understand things quickly. If the degree focused more quickly on working with actual clients with real cases I would definitely suggest that there would be an improvement in the work ethic.”³³

The passion for acting in the best interests of a client, particularly clients who are disadvantaged or oppressed by the legal and social system provides a strong motivation to work and a key opportunity to learn:

“imparting passion for the law may be the most critical aspect of legal education, for with that passion will come the desire to achieve whatever else is needed. For some students – those most like the typical law professor – passion may be derived from the inherent intellectual challenge of the issues presented by the law. For many other students, however, that intellectual challenge is too abstract. For these students motivation must come from other sources.”³⁴

³¹ Provocateurs for Justice, 7 Clin L. Rev. 287 at page 292.

³² Stuckey, Roy, Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses (2006-7) 13 Clinical L. Rev. 807-838.

³³ Anonymous graduating student feedback, Northumbria university, 2006. See also: Angela Campbell’s conclusions as to the need for students studying legal writing to feel that their writing is

taken seriously and that it matters – a recommendation for teaching legal writing, a compulsory course in the United States, through real clinical work: Teaching Advanced Legal Writing in a Law School Clinic Angela J. Campbell, 24 Seton Hall L. Rev. 653, 659-60 (1993).

³⁴ Maranville, Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences, 7 Clinical L. Rev. 126 2000-2001.

Nevertheless, we are not suggesting that students should be thrown in at the deep end of performing the role of a lawyer right from the outset of their legal studies. In the United Kingdom this would be far too early as students typically commence their law degree immediately upon leaving school at the age of 18. It is important for students to develop maturity, knowledge, understanding and experience in a progressive manner throughout their studies. The experience they have should be commensurate with the stage of their development. But this is most certainly not an argument for leaving the real experience until the end of their studies. Rather, it is a reason for being more flexible and sophisticated about the choice of real experience. Full client representation is only one facet of law in practice. There is a multitude of other activities that students can undertake in order to build their appreciation of legal rules and legal practice short of actual client representation. Ideally such experience will culminate in client representation but the transition will be smoother due to the progressive development of real experience in the context of the core curriculum throughout their legal studies.

Progression through levels of experience

We have identified four levels of real experience that we suggest may coincide with the typical four years of university study for students who undertake the academic and vocational stages of legal education for the legal profession in England and Wales. Our argument is that these levels should be added to the panoply of existing methods of educating law students. They should be seen not as part of a purely skills-based agenda or as an eccentric but unnecessary luxury but as part of the routine means of delivering the curriculum. For each level we have given one brief example and we go on to provide a more detailed example below. We are aware that a large proportion of law graduates do not progress to the vocational stage. However, these levels of experience are, we feel, equally valid for a law graduate who does not go into legal practice. The justification for exposing students to real legal experience is to enhance their understanding of the subject they are studying, not to train them to be practitioners.

Level 1 – Observational experience – at an early stage of their studies students should be able to observe the law in practice without having any responsibility for performing tasks. By observing the law in practice they can make connections with their classroom discussions and begin to understand the context within which the legal rules operate. Our example is a first year court visit requirement whereby our students are required to make arrangements to visit a local court for a day to observe legal proceedings and then to write a reflective commentary about their experience. The key to making this effective within a substantive class is ensuring that students attend hearings where they can observe the practical application of the legal rules and principles they are studying.³⁵

Level 2 – Collective participation – as students progress in their understanding of legal rules they can be challenged to participate in activities that have real consequences. Collective participation shares the burden of responsibility thereby reducing the individual pressure students might feel but raising other dynamics such as the need to work as a team and to begin to understand the

³⁵ We recognise that court observation is hardly an entirely new idea: “Is it not absurd that during his law-school career a student should not be encouraged frequently to visit court rooms?” Why Not a Clinical Lawyer School? Jerome Frank 81 U.

Pa. L. Rev. 917, 907 1932-1933. It is a matter of concern that there is still so little use made within degree programmes of the excellent free resource of the courts. Learning law without observing courts is like learning music without attending concerts.

responsibility involved when working on behalf of “client”. An ideal method of helping students to understand legal rules is to require them to articulate those rules to people or organisations likely to be affected by them. Students can plan, prepare and deliver a legal presentation in accordance with a brief they have agreed with the prospective audience. Student participation in public legal education projects like Streetlaw schemes has the potential to provide a valuable service to the community while at the same time pushing students to explain often complex provisions and appreciating the difficulty lay people have in understanding legal rules.³⁶

Level 3 – Individual participation – Students can become involved in clinical case work without necessarily having full responsibility for the progress of a case. Early exposure to the discipline of meeting and dealing with real clients is an ideal way of inducting students into a professional organisation. Alternatively, students can be required to work on part of a clinical case even though they will not have personal ownership of the file. One example is our third year interview and referral module whereby students prepare to conduct an initial interview with a potential client of the fourth year Student Law Office programme. It can involve any area of law and so the students are only able to perform a basic fact finding function. Following the interview, the students prepare an attendance note and refer the case to fourth year students. The third year students continue to work on the case, however. Working in small groups with a tutor over a series of seminars, they focus on one of the cases they interviewed clients on to identify research objectives and research the legal issues surrounding the case. Within a matter of a few weeks they produce a research report for the fourth year students and meet with them to discuss how the case has developed and their view of the legal issues.

It appears that in the United States there is a movement in the Legal Research and Writing (LRW) sphere towards using real cases³⁷, sometimes in first year (though in the US this is of course postgraduate) classes. This appears to us to be a good example of an attempt to achieve outcomes via integration of traditional and clinical methodology.³⁸

³⁶ It has been argued that Street law and other community engagement activism can fact produce deeper and more long lasting benefits to the community than individual client representation: “community education reaches under-served populations, provides opportunities for clients to have their voices heard, responds to concerns that cannot be adequately addressed by the legal system, encourages individuals to solve their own problems, and develops leadership skills in community members.” Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 *Clinical L. Rev.* 433 (1997-1998).

³⁷ For details of the extent of collaboration between clinical and LRW faculty see Comment: *Survey of Cooperation Among Clinical, Pro Bono, Externship, and Legal Writing Faculty* Sarah E. Ricks and Susan C. Wawrose 4 *J. Ass’n Legal Writing Directors* 56 2007 and for the 2007 survey by the US Legal Writing Institute: *Collaboration Between Clinical, Externship, Pro Bono and LRW Programs Results of 2007 Survey* by LWI Committee on Cooperation Among Clinical, Pro

Bono, and Legal Writing Faculty see <http://www.lwionline.org/surveys.html> last accessed 23.12.09

³⁸ Millemann and Schwinn have presented an inspiring study of a first year class in LRW. (*Teaching Legal Research and Writing With Actual Legal Work: Extending Clinical Legal Education into the First Year* Michael A. Millemann and Steven D Schwinn, 459, 441, 12 *Clinical L. Rev.* 2005-2006). Two different models were used, one of which utilised a criminal appeal case being conducted by more experienced upper year students in the school’s clinic. The upper year students took responsibility for the client’s case overall, gathering the facts and briefing the LRW students. The LRW students had to evaluate the legal issues, understand the criminal process as it stood at the time of the appellant’s trial and brief on and argue the points in class. Their conclusions were that actual legal work motivates students to learn the basic skills of LRW and begin to develop the use of facts and construction of legal arguments in response to indeterminate legal issues. Professor

Level 4 – Personal professional responsibility – As students mature and develop their understanding of law and legal process they can be expected and trusted to take more responsibility for the handling of client affairs. This is particularly, though not exclusively applicable to students who clearly intend to practice law as a career. Student participation in in-house clinical courses or externship programmes place the student in the position of prototype lawyer. They will be closely supervised but they will have ownership of the case and will feel the weight of professional responsibility and commitment to a client’s case. It provides an opportunity for the student to see the pieces of the learning jigsaw finally fit together. Their substantive knowledge, intellectual and legal skills should combine to produce an experience that is similar to real life practice. As previously stated this may still be seen as the capstone on earlier experience but the difference with existing practice is that it will not be such a shock to the system because the student will have encountered real law and its implications throughout their studies. A further development could be that the full clinical experience will be part of or sit alongside the students’ substantive law study so that there is integration of doctrinal and practice-oriented learning.³⁹

Conclusion

We accept that clinical legal education has its limits. We do not suggest it is the best methodology for achieving all objectives of the law school. However, we argue that its integration with other techniques can provide students with a more complete legal education. It has value not only in developing skills competencies but in deepening understanding of the substance of the law. We think that careful, progressive use of simulated and real experience in the core modules will help to achieve the hopes for the future expressed by Barry et al that:

“In the new millennium, law school clinics cannot continue to be the repository for the many aspects of lawyering that are excluded from substantive law courses taught with the casebook method. The aim ... should be to incorporate clinical teaching methodology into non clinical courses to teach lessons that will be further developed and re-inforced by in-house clinic and externship experiences.”⁴⁰

Tracy Bach of University of Vermont Law School describes a LRW class for first year postgraduate students whereby they researched and wrote memoranda concerning a civil action relating to lead poisoning of a child. The case was to be brought by a public interest lawyer who needed research assistance (Cooperation, Not Collision: A Response to When Worlds Collide Tracy Bach, 4 J. Ass’n Legal Writing Directors, 62 2007). Others examples from the US include an attempt to involve undergraduate students in experiential learning using either an active capital case being conducted by external lawyers or reviewing previous erroneous convictions. (It’s not just for law school anymore: clinical education for on the death penalty for undergraduates Jon Gould 53 J. Legal Educ. 174 2003). In the case review class, students

researched through news reports and the internet to find suitable miscarriage cases and finally investigated 3 such cases. Students obtained both written material and sought information from the subjects involved in the cases. A report was produced and students presented their recommendations for reform to both justice officials and a former US Attorney General. Students were as likely to praise the course for its emphasis on critical analysis as they were to praise it for a first hand experience of the justice system.

³⁹ See Mitchell et al, And then suddenly Seattle University was on Its way to a parallel, integrative curriculum, 2 Clinical L. Rev. 1 (1995-1996) which describes a shift to combined doctrinal / clinical classes.

⁴⁰ Barry et al op. cit. at p.38.

“Walking on two legs in Chinese law schools”¹: A Chinese / U.S. Program in Experiential Legal Education

Brian Landsberg*

Dong Jingbo, a young faculty member at the China University of Political Science and Law in Beijing, used to teach using only the traditional lecture technique which she had experienced in her own legal education in China and Korea. Until, that is, Professor Dong attended summer workshops given by Pacific McGeorge, in partnership with American University's Washington College of Law, and also earned an LL.M. at Pacific McGeorge, in the Teaching of Advocacy. Her classes no longer are limited to lecture. She has developed a simulation to use in Chinese criminal law classes, has demonstrated it to other Chinese law professors and has written a law review article about it.² The simulation is based on a news story about a man who used his wife's ATM card to make two successive withdrawals of 10,000 RMB, while the receipts reflected a total withdrawal of only 2 RMB, and even though his wife had only 10,000 RMB in her account. The man was charged with theft. Professor Dong assigns students to play the role of the prosecutor, defense counsel and judge. They are given the definition of theft, and must argue and decide the case. She then provides a series of additional facts, requiring deeper analysis. Introduction of this role play into the class builds on learning theory to provide deeper

¹ A report in March 2010 from Southwest University of Science and Technology Law School, regarding a workshop our US AID program conducted in Wuhan, China in December 2009 informed us: “After much discussion, our teachers adopted ‘walking on two legs’ guiding principle for the practical teaching reform; it means legal clinic teaching and traditional teaching develop in a two-pronged way to promote the experiential teaching.” Translated by Wang Yongmei, e-mail to Brian Landsberg, April 2, 2010.

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States of America. There are many people to thank: those who have participated in our program, who are too numerous to list, and those who have graciously commented on earlier drafts. First, however, I want to express gratitude to Elliott Milstein, who brought great passion and depth of understanding to the program, as well as commenting on a draft of this article. Frank Bloch, Jay Leach, Thomas Main, Jarrod Wong, and Dorothy Landsberg have provided very helpful suggestions.

² Dong Jingbo, *How to Incorporate Simulations in Traditional Courses*, China legal education, 2009, volume 3. She is also co-teaching a new course in

understanding of the elements of the crime of theft than a student could obtain by listening to a lecture. Moreover, this learning by doing encourages analysis, fact development, understanding of the important role of the theory of the case, and independent thinking. For these reasons, and as our experience in China affirms, role play is a useful learning method in traditional, simulation, and clinical law courses.

Our “Educate the Educators” program to teach Chinese law professors such as Professor Dong U.S. experiential education techniques has itself taught us many lessons. Perhaps the most important – and one amply supported by experience – is that law schools should adopt an integrated legal education approach, blending traditional, simulation, and clinical law courses. Each type adds value to legal education; each reinforces the learning under the other two methods.

In varying degrees legal educators in many countries, including the United States and China, have come to accept the need to find more effective ways to teach professional skill and values. I believe that experiential teaching methods best meet that need. Experiential education refers to learning by doing. The main branches are clinical education, where students represent real clients, and simulation courses where students work with case files to represent fictional clients in client counseling, business planning, negotiation, mediation, arbitration, trial advocacy, and appellate advocacy. These two branches can be understood as belonging to the same tree. As Frank Bloch has put it, “three elements stand out as constituting the most important commonly conceived notions of clinical legal education around the world: professional skills training, experiential learning, and instilling professional values of public responsibility and social justice.”³ These observations form the base upon which the Pacific McGeorge School of Law built a program to educate Chinese law professors in experiential teaching methods, especially as used in professional legal skills courses and clinical legal education courses.

Although lecture is the traditional teaching method in China, Chinese law schools have shown a growing interest in “practical” education, partly under prodding from the Ministry of Education. As Elliott Milstein noted at our recent training for Chinese law professors in Wuhan, China today calls to mind an earlier moment in the development of U.S. legal education, when, in the 1960’s and 1970’s, with support from the Ford Foundation, law schools began an era of experimentation and openness to new ideas, and when new organizations arose to promote clinical legal education.⁴ This movement not only promoted skills education but also the transmission of values: providing platforms to enable students to learn what it means to be a lawyer, including promotion of a more just society. The history of that movement has been marked by continued challenges which persist to the present day, but overall clinical education has advanced in the United States, and the American Bar Association recognizes its importance to legal education.⁵

Our program for Chinese law professors began in 2006 with a “rule of law” grant from the United

advocacy skills. Moreover, she is now part of the Chinese faculty training other Chinese law professors in experiential legal education, as part of the second phase of our program. She is writing a book about advocacy education.

³ Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 Wash. U. J. L. & Pol’y 111, 121 (2008).

⁴ See Robert MacCrate, *Foreword*, in Roy Stuckey and others, *Best Practices for Legal Education*, vii (Clinical Legal Education Association 2007).

⁵ ABA Standard 302(b)(1) requires law schools provide “substantial opportunities” for students to take live client clinical or externship courses. Standard 405 requires that clinical faculty be given “a form of security of position reasonably similar to tenure.”

States Agency for International Development (US AID) based on two premises. First, the rule of law depends upon the existence of lawyers, judges, and prosecutors with professional skills and a professional identity based on values.⁶ Second, experiential legal education is an essential method for inculcating skills and professional values. These premises were validated by the publication the following year of the Carnegie Foundation report⁷ and Best Practices in Legal Education.⁸ An unstated premise of our proposal was that U.S. assistance in promoting the rule of law in China would have to come primarily through indirect means. In the words of one western scholar of Chinese law: “Foreign actors lack the local knowledge and the influence to significantly shape the outcome.”⁹ We recognized from the beginning that cross-cultural and cross-system legal training ultimately depends upon the Chinese trainees to design appropriate curricula and adopt appropriate teaching methods, by combining their understanding of local culture and legal system with their learning from the training. We aspired thus to empower Chinese law professors.

These premises seem to be consistent with Chinese government and academic thinking. Hu Jintao expressed commitment to “comprehensively implement the rule of law as a fundamental principle and speed up the building of a socialist country under the rule of law.” He noted the need to “strengthen the enforcement of the Constitution and laws, ensure that all citizens are equal before the law, and safeguard social equity and justice and the consistency, sanctity and authority of the socialist legal system.”¹⁰ Achievement of these goals requires a well-trained, ethical professional

⁶ Professionalism is a necessary, but not a sufficient prerequisite to the rule of law. Rule of law also depends upon the structure and content of the legal system. But a well designed structure and just laws are unlikely to bring about the rule of law if the lawyers and judges lack professional skills and values. For example, “an independent and authoritative judiciary assumes a competent and clean corps of judges.” Randall Peerenboom, *Judicial Independence in China: Common Myths and Unfounded Assumptions*, in Randall Peerenboom [ed.], *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, 69, 87 (Cambridge Univ. Press 2010). See also Stéphanie Balme, *Local Courts in Western China: The Quest for Independence and Dignity*, in Peerenboom [ed.], supra, 154, 173 [“Professionalism and transparency are both an objective and a precondition for the independence of the judiciary”]. As one Chinese legal scholar put it, “if there are only legal rules without highly-qualified law professionals, the rule of law is like a castle in the air.” Mao Ling, *Clinical Legal Education and the Reform of the Higher Legal Education System in China*, 30 *Fordham Int’l L.J.* 421 (2007). William P. Alford warns against assuming that the legal profession in China will promote the rule of law; indeed, he suggests that it has been complicit in corrupt practices. William P. Alford, *Of Lawyers Lost and Found: Searching for Legal Professionalism in the People’s Republic of China*, in William P. Alford, *Raising the Bar: The Emerging Legal Profession in East Asia*, 287, 293 (Harvard Univ. Press 2003). But see, Xiaorong Li, “Aspiration for Rule of Law Spurs

Chinese Civil Society”, presentation at George Washington University Law School, Feb. 19, 2010: “First, the promise of rule of law gave people hope, inspired them, and the law supplied the ammunition. The Chinese law has been the double-sword which the party-state uses to put people in their place but it is also used by the people to hold the government accountable and seek justice. Second, many young lawyers, products of the newly minted law schools in China’s universities, take the government’s promise of rule of law and what they learnt in law textbooks literally, but as they meet the reality of rule by the CCP political and legal committees, they become the front-row challengers of the system, and leaders in the civil rights movement.”

⁷ William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (John Wiley & Sons 2007).

⁸ Roy Stuckey and others, *Best Practices for Legal Education* (Clinical Legal Education Association 2007).

⁹ Peerenboom, supra, at 88. See also, Paul Gewirtz, *The U.S.-China Rule of Law Initiative*, 11 *Wm & Mary Bill Rts. J.* 603, 620 (2002-3) (“This kind of cooperative work must be done in a spirit of multiple humilities”).

¹⁰ Hu Jintao, Report to 17th National Congress of the Communist Party of China, Oct. 15, 2007, http://news.xinhuanet.com/english/200710/24/content_6938749.htm. Elliott Milstein has

cadre of lawyers and judges. The latter, in turn, depends upon the committed training by Chinese law schools of tomorrow’s lawyers and judges. As Professor Guo Jie, Vice-president of Northwest University of Political Science and Law, has observed: “The outcome of the legal education will influence and even decide, in some sense, the direction, process and future of the judicial reform and development of the whole country.”¹¹

I

This article describes how our “rule of law” program has been structured and will be structured going forward and the methods used in the program. It then turns to the challenges we have faced and will face going forward and the lessons we have learned. It concludes with a discussion of the program’s impact.

In designing our program, we were struck by the seeming consensus among many Chinese educators at a conference of Chinese and American law school deans in Beijing in 2005. Professor Huang Jin of Wuhan University noted that China needs a large number of lawyers equipped to perform on the global market. He believed that although lawyers should be professionals with practical problem-solving abilities, the curriculum neglected practical skills. President Huai Xiaofeng of the National Judges College also mentioned the need to enhance the problem-solving ability of students, as well as their professional ethics and ability to handle trials and mediation. Another speaker, from China University of Political Science and Law (CUPL), also noted that practical skills training in China was under-developed.¹² The list of core and elective courses taught in China consists almost entirely of doctrinal courses rather than skills courses. It is unclear from the list how many of those courses also have an analytical component, such as the U.S. case discussion method. Professor Wang Weiguo has written that “the Socrates method, or in Chinese usage ‘elicitation method (Qi-fa-shi)’, is always encouraged.” However, he also refers to mock court as a student-organized activity, with some faculty guidance.¹³ Professor Huang Jin has noted that in China some “consider legal education as quality education, some as academic education, some as professional education.”¹⁴ Finally, Professor Cai Yanmin, a leader in China’s clinical education

described the belief of Chinese participants in our program “that if clinical education is widely introduced, including simulations and the real case method, this will change the entire vision of legal education and lead to wider understanding of the value of the rule of law.” Elliott S. Milstein, *Experiential Education and the Rule of Law: Teaching Values Through Clinical Education in China*, 22 Pac. McGeorge Global Bus. & Dev. L.J. 55, 56 (2009). He adds that “Professor Teng [Hongqing, of South China University of Technology] insists that in order to move the idea of a just society from a romantic ideal to a reality, students need to come out of law school knowing rules and possessing the skills to combine facts with the rules to successfully deal with real cases.” Id. at 57.

¹¹ Guo Jie, *Reform of Legal Training and Education Pattern of LLB Programs – A Study and Experience from Northwest University of Political Science and Law*, in conference book for Chinese and American

Law Deans’ Conference, Beijing, April 1, 2005, p.22. See also Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 J. Legal Ed. 60, 88 (2009)(“From the U.S. perspective, the contemporary drive to institute ROL in China concentrates much of its resources, manpower, and funding on training the next generation of lawyers via methodologies developed in the U.S. with the intent that these lawyers will be agents of change toward a more open, rights-based China”).

¹² Author’s notes on presentations at Chinese and American Law School Deans’ Conference, Beijing, China, March 31-April 2, 2005.

¹³ Wang Weiguo, A Brief Introduction to the Legal Education in China, <http://www.aals.org/2000international/english/chinaintro.htm>.

¹⁴ Huang Jin, The Structure of Legal Education in China, <http://www.aals.org/2000international/english/china.htm>.

movement, argued: "Constructing clinical legal education programs in China is not a denial or replacement of the current Chinese legal education, but a reform and improvement of it. Therefore, the Chinese legal education shall formally incorporate clinical legal education into its curriculum."¹⁵ This emphasis on experiential education, while an abrupt change from most current education in Chinese law schools, may not be foreign to Chinese culture, as exemplified by this aphorism attributed to Confucius: "I hear and I forget. I see and I remember. I do and I understand."¹⁶

Taking our cue from these Chinese scholars, our program undertakes to educate the educators. Experiential legal education is not intuitive or easy, and its success depends upon the existence of educators who understand the theories and methods of delivering lawyering skills. U.S. professors initially developed theories and methods through trial and error, interdisciplinary research, and sharing of information.¹⁷ U.S. clinicians formed the Clinical Legal Education Association and the Clinic Section of the Association of American Law Schools, created the Clinical Law Journal, and wrote books and articles grounded in theory. In that process, "[c]linicians have developed a very strong sense of community with one another."¹⁸ The American Association of Law Schools offers conferences and five-day workshops that provide training to clinicians. Some schools, such as Yale Law School and Georgetown Law Center offer two-year fellowships to lawyers who wish to become clinicians.¹⁹ However, there is little other formal training of U.S. faculty in experiential legal education. Our program was based on our belief that it is feasible and desirable to provide such education to law faculty members in general, including those from Chinese law schools.

Our program is designed to create multiplier effects: Chinese faculty trained in phase I of the program are now educating other Chinese faculty in phase II. All the trained faculty use experiential methods to teach their students. In addition, Chinese professors who have completed our training program can then spread experiential education in other ways, such as writing books and articles and creating simulation case files. This approach is similar to prior activity by the Ford Foundation, and the Committee of Chinese Clinical Legal Educators, as well as Yale, Columbia,

¹⁵ Cai Yanmin, *The Key Issues in the Institutionalization of the Clinical Legal Education in China*, materials from Chinese and American Law School Deans' Conference, Beijing, China, March 31-April 2, 2005.

¹⁶ Quotation #25848 from Laura Moncur's Motivational Quotations, <http://www.quotationspage.com/quote/25848.html>, viewed on January 25, 2010. See David F. Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 *Pac. McGeorge Global Bus. & Dev. L.J.* 3 (2009). Another author quotes Confucius as saying: "What I hear, I forget. What I hear and see, I remember a little. What I hear, see and do, I acquire some knowledge and skill. What I hear, see, do and discuss with another, I begin to understand." Jay Pottenger, *The role of [clinical] legal education in legal reform in the People's Republic of China: chicken, egg --- or fox?*, 6 *Int'l. J. Clinical Legal Educ.* 65, 73 (2004). Another version, attributed to an ancient Chinese proverb, is "Tell

me, I forget. Show me, I may remember. Involve me, and I understand." Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 *Clinical L. Rev.* 37, 50 (1995).

¹⁷ See William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law*, 91-95 (John Wiley & Sons 2007).

¹⁸ Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 *Howard L. J.* 31, 44 (1993).

¹⁹ See http://www.law.yale.edu/documents/pdf/Cover_Fellowship.pdf for a description of the Yale fellowships. The Georgetown fellowships are meant "to provide highly motivated lawyers the chance to develop skills as teachers and legal advocates within an exciting and supportive educational environment." <http://www.law.georgetown.edu/clinics/fellowships.html>, viewed on March 4, 2010.

Georgetown and other Law Schools.²⁰ It differs from other prior U.S. involvement in Chinese legal education, which largely consisted either of U.S. teachers teaching Chinese law students or of U.S. entities funding programs they deem beneficial. A multiplier program aims for self-sustaining long range effect, by emphasizing the creation of a cadre of Chinese academics who have participated in creating experiential curricula based on Chinese needs and circumstances.²¹

After receiving the US AID grant, we held a planning session with our partner schools at Zhejiang Gongshang University in Hangzhou in December 2006. We had recruited one U.S. partner, American University’s Washington College of Law, which offers one of the top clinical programs in the United States. Our Chinese partner schools covered a spectrum: China University of Political Science and Law is one of China’s top law schools and had created several clinics in 2004 with assistance from the Ford Foundation. Zhejiang Gongshang University (ZGU) is a provincial university whose law school, operating under a dynamic relatively young Dean, Qingjiang Kong, is firmly committed to becoming a leader in experiential education. It had formed Zhejiang Province’s first legal clinic in 2005, on an experimental basis. South China University of Science and Technology (SCUT) is recognized by the Chinese government as a “key university” and has a fairly new law school and clinical program, some of whose faculty shows great interest in experiential education. While all three Chinese partners already offered their students a mock trial program, this programs was voluntary, not for credit, and teachers were also volunteers.

The planning session was an essential first step in creating relationships and in educating one another on our respective legal and educational systems. We emphasized from the outset that our program was to be a Sino-US collaboration, not a top down program from the U.S. to China.²² The bulk of the meeting was devoted to presentations by Chinese legal educators and judges on the current state of Chinese legal education and on the Chinese legal system, followed by questions

²⁰ For example, in 2000 Chinese and U.S. clinical educators conducted a one week training conference at Wuhan University, followed by an Autumn week long training at Yale and a December forum at Renmin University in Beijing. See Cai Yanmin and J.L. Pottenger, Jr., *The “Chinese Characteristics” of Clinical Legal Education*, in Frank S. Bloch, *The Global Clinical Movement: Educating Lawyers for Social Justice* 87, 92 (Oxford University Press 2010). Columbia law school adopted a “train the trainers” approach in 1979, and in 1983 the Committee on Legal Exchange with China (CLEEC) was formed and began bringing to U.S. law schools young Chinese law teachers for training. R. Randle Edwards, *Thirty Years of Legal Exchange with China: The Columbia Law School Role*, 23 *Colum.J.Asian L.* 3, 10-12 (2009). In 1997 a U.S.-China summit meeting led to the adoption of a Joint Statement providing for cooperation between the two countries in the field of law, which led to a conference of law deans on expanded cooperation on legal education. Paul Gewirtz, *The U.S.-China Rule of Law Initiative*, 11 *Wm & Mary Bill Rts. J.* 603, 613 (2002-3). See also the testimonials to the Yale China program, at <http://www.yalechina.org/testimonials.php?Id=10&SubId=95>, viewed on May 14, 2010.

²¹ An early study of clinical programs in China distinguishes between reductive and pragmatic strategies. In a reductive strategy “we know at the commencement of the developmental process what the institution being ‘developed’ should look like after that development is completed.” A pragmatic strategy makes “the discovery of developmental paradigms the goal of the project, rather than a prior (and hence ideological) condition for the project.” The reductive strategy focuses primarily on training, while pragmatic strategies focus more on discourse. Michael William Dowdle, *Preserving Indigenous Paradigms in An Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China*, 24 *Fordham Int’l. L.J.* S56, S59, S73-S74 (1980). Our program emphasizes the pragmatic strategy, recognizing, though, that this is a matter of degree rather an absolute.

²² The program is consistent with the premise “that legal education reform in China proceeds by the ‘pull’ of domestic actors more than the ‘push’ of external reformers.” Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 *J. Legal Ed.* 60, 62 (2009).

from the U.S. participants. When the U.S. participants stressed that we were not there to tell Chinese educators what to do, Chinese legal scholars responded that the U.S. professors were the experts on experiential education and that Chinese law schools wanted us to tell them how to provide it.

Our meeting also exposed disagreements among the Chinese about the relevance of teaching trial skills such as cross examination and opening statements and closing arguments. Some welcomed that emphasis, arguing that the judge-centered civil law system that governed Chinese trials was gradually giving way to a more adversarial system; others saw no evidence that that was happening. All agreed, however, on the basic proposition that Chinese legal education needed to include clinical and professional skills courses – learning by doing, and abandon its pervasive reliance on the lecture system. At the same time, however, there was general agreement with the sentiment subsequently expressed by a leading Chinese scholar: “[W]e should not take a model deeply embedded in the historical, institutional, theoretical, and discursive contexts of the West, decontextualize it, and accept it uncritically as the standard of reference for China’s experience.”²³

We continued dialogue with our Chinese partner schools during week-long visits to each. On-site visits not only enhanced the building of relationships, but enabled further exchange about the objectives and methods of the program and provided greater understanding of the existing curriculum and of possibilities for change. We were also able during these visits to interview applicants for the LL.M. programs described below. During this trip we also learned about other important players, such as the CCCLE, the Ford Foundation, Yale-China, the American Bar Association Rule of Law project, International Bridges to Justice, the Asia Foundation, and the Temple Law School program. Each of them has provided us with insights into the needs of Chinese legal education. Finally, we had the benefit of a Board of Advisors, half of them nominated by our Chinese partner schools; we were able to meet with most of our advisors during this trip. They include scholars, judges, practitioners, and a consultant and have provided helpful suggestions and insights, as well as lending legitimacy in the eyes of Chinese educators.²⁴

II.

Our program emerged from this crucible by creating three distinct platforms for educating the educators.

1. Pacific McGeorge School of Law created an LL.M. in Experiential Law Teaching. Over the course of three years eight Chinese law teachers will have earned this LL.M. The heart of the LL.M. is found in a seminar on teaching methods and in

²³ Zhu Suli, *The Party and the Courts*, in Randall Peerenbaum [ed.], *Judicial Independence in China: Lessons for Global Rule of Law Promotion*, 52, 65 (Cambridge Univ. Press 2010). See also, Julie Davies, *Methods of Experiential Education: Context, Transferability and Resources*, 22 *Pacific McGeorge Global Bus. & Devel. L.J.* 21 (2009) (noting the need to avoid the unsuccessful effort of the 1950s and 1960s to spread the U.S. Law and Development Movement to other countries); Matthew S. Erie, *supra*, at 87, 95 (noting the need for joint PRC-U.S. training programs to cultivate grassroots legal transplants).

²⁴ For example, at the January 26, 2008 meeting of the Board of Advisors, we discussed how to improve the summer workshops by creating material more adapted to Chinese needs and by use of Chinese faculty as some of the trainers. Other topics included the need to stress legal ethics and the possibility of using part of the workshop time for the trainees to develop simulation materials. All of these suggestions were incorporated in later trainings.

a thesis requirement; enrollees also take lawyering skills courses and will shadow clinical law teachers. The theses typically discuss the applicability of experiential techniques to a Chinese law school course, including concrete plans or case simulations. We also have sent three Chinese law teachers to receive an LL.M. from American University’s Washington College of Law (WCL). These students worked extensively with WCL’s clinical faculty and wrote theses on clinical education.

2. Workshops in China for Chinese law school faculty members. We have held two three- week summer workshops, a two-day workshop, and a one-week winter workshop in which numerous Chinese faculty have interactively learned how to teach clinics and lawyering skills such as persuasion, interview, examination, negotiation. In the first two workshops half the participants studied clinical education and half studied professional skills education. In subsequent workshops we have merged the teaching of these two forms of experiential education.
3. Two scholarly conferences of Chinese and U.S. faculty, focused on experiential education in China. The papers from the first conference have been published and the papers from both are available on-line, in both Chinese and English.

Within these platforms our primary method of educating the educators is learning by doing. After initial discussion of the objectives of clinical and lawyering skills legal education, the teaching proceeds through three stages: First, the trainees participate in simulations – role plays and demonstrations – taking the role of law students. The simulations themselves use a tripartite method: students describe objectives, engage in the simulation, and then reflect on both what worked and what didn’t work to achieve the objectives.²⁵ Second, they learn to teach students experientially, through meta-simulations involving other participants playing the role of students, in which they evaluate and critique and elicit reflection, with feedback from the trainers.²⁶ After progressing from what we teach to how we teach it, the third step is to enlist the Chinese trainees as trainers, who teach the “what” and the “how” to other Chinese law faculty. These skills are taught in various contexts, including clinical seminar discussion, case rounds, one-on-one supervision, client counseling, negotiation, arbitration, legal writing. Throughout this process we encourage discussion of the objectives of experiential education and of which techniques best serve those objectives in the context of Chinese law schools.

The U.S. faculty began with expertise in clinical and lawyering skills education, but not in Chinese law or language. Similarly, the written materials with which we were familiar were U.S.-centric. For our first advocacy training we got permission from the National Institute of Trial Advocacy to adapt one of its case files into the context of an arbitration governed by the rules of the Chinese. We used an arbitration rather than a court case because of our lack of expertise in Chinese judicial procedure. The rules of the China International Economic and Trade Arbitration Commission (CIETAC), a Chinese arbitral body, are similar to other international western arbitration rules.

²⁵ The reflection may follow the feedback model described in Beryl Blaustone, *Teaching Law Students to Self-Critique and to develop Critical Clinical Self-Awareness in Performance*, 13 *Clinical L. Rev.* 143 (2006).

²⁶ For illustrations of these techniques, view the video at http://www.mcgeorge.edu/Experiential_Education_in_China/Curriculum_Materials/DVD_Content.htm.

Both our clinical and advocacy trainees, however, became involved in creating experiential exercises within the Chinese context. For example, in our first clinical workshop, the Chinese trainees created a simulation in which the “clients” brought the “student practitioners” fruit and a red envelope containing cash. The trainees playing the role of supervising “professors” of the clinic then guided the “students” through reflections on what to do with the fruit [a gift to them] and the envelope [intended as a gift to the judge].²⁷ In the second clinical workshop, students interviewed a real client in front of the trainees and then faculty guided them through reflections on the goals and techniques of the interview. In the second advocacy workshop, trainees created simulation case files suitable for use in Chinese law schools, and those five case files were subsequently published.²⁸

We ended each day by asking participants to fill out a “two-minute wrap-up,” and we reviewed the completed forms each evening. The form asked for a rating of the day’s work, an explanation of the rating, and what questions remain unanswered regarding the day’s topic. This enabled us to adjust the following day’s session to address unanswered questions. Finally, the addition of Chinese trainers after the first year enhanced our ability to provide training that would be optimal for Chinese trainees.

III.

We have faced two types of challenges: challenges based on difference and challenges that flowed from the type of experiential education we are teaching. The differences are many: the legal systems, the educational systems, the languages, the cultures.

A.1.

The legal systems differ in several ways. China mainly follows the civil law system, while the U.S. is a common law system. Case law, thus, assumes a much less important role in China than in the U.S. China, like most civil law jurisdictions, uses an inquisitorial procedure while the U.S. uses the adversary system. China lacks compulsory process of witnesses, so usually the record in a case is primarily paper rather than oral testimony. As a practical matter, a Chinese clinical student facing possible litigation will need to focus on how to muster facts in a paper record and will give less emphasis to live witness development. We decided, though, that the job of the lawyer in both systems is one of problem solving and persuasion and that if we taught about basic advocacy techniques with which we were most familiar, such as direct and cross examination and opening statements and closing argument, the Chinese professors would be able to adapt those techniques to the Chinese system.²⁹ They generally began learning these techniques with some skepticism, but eventually came to find them very valuable and transferable. The key to transferability is adaptation

²⁷ Described in Elliott S. Milstein, *Experiential Education and the Rule of Law: Teaching Values Through Clinical Education in China*, 22 *Pac. McGeorge Global Bus. & Dev. L.J.* 55, 59 (2009).

²⁸ Luo Wenyan and Brian Landsberg (eds.), *Representing the Client*, [in Chinese], Zhejiang Gongshang University Press 2008.

²⁹ This conclusion was supported by limited observation of a Chinese trial and of Chinese law school mock trials. My notes on one such mock

trial in May 2007 say: “Observed two hour moot court criminal trial. On one hand, attorneys were very active and seemed like adversaries; on the other hand, there were only three witnesses, and their examination was quite brief. Quite a bit of time taken arguing facts and law and presenting evidence such as the weapon and expert reports [experts don’t testify]. A student journalist took pictures for an internet report on the trial. Organizer will give me a disc of the moot court. One professor came in briefly....”

to local circumstances. “The significance and nature of such skills as fact investigation, litigation, and alternative dispute resolution ... differ in ways that Chinese clinicians need to consider when developing their own course syllabi.”³⁰

China’s legal system is also, at least nominally, a Communist legal system. The legal system must act in harmony with the Communist Party, while the United States’ legal system reflects capitalist and democratic values. This leads to different conceptions of the rule of law. China officially embraces the rule of law.³¹ What that means is not at all clear and may differ from one person to the next. Jerome Cohen has pointed out that this means a “political-legal” system in which “to an unusual extent, ‘politics takes command,’ as the slogan puts it, at least in the many types of cases the state regards as ‘politically sensitive.’³² Moreover, even though China’s legal history is millennia longer than that of the United States, China had to reinvent its legal system after the Cultural Revolution. As Jianfu Chen has pointed out, “rule of law” is largely a Western notion, and modern China has used the term “Yifa Zhiguo, Jianshe Shehuizhuyi Fazhi Guojia”, or “ruling the country according to law and building a socialist country governed by law.”³³ Jiang Ping, noting that the story of rule of law in China has been two steps forward and one step backward, also tells us that “more and more people are genuinely interested in the fate of China’s rule of law.” He adds that “lawyers definitely don’t only want to make money; many lawyers have come to understand and think about our country’s destiny, the future of the rule of law, and the protection of human rights.”³⁴

³⁰ Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale H.R. & Dev. L.J. 117, 140 (2005). Jay Pottenger has observed that “the addition of ‘Chinese Characteristics’ to clinical methodology is most crucial, most delicate in the area of Legal Ethics and Professional Responsibility,” which are key to our objective of promoting rule of law. Jay Pottenger, *The role of [clinical] legal education in legal reform in the People’s Republic of China: chicken, egg – or fox?*, 6 Int’l. J. Clinical Legal Educ. 65, 72 (2004).

³¹ See Hu Jintao, at n. 10, *infra*. Premier Wen Jiabao spoke to students at China University of Political Science and Law in December 2009. He described rule of law this way: “What is the spirit of rule of law? Briefly speaking, I think it is to create a world ruled by law (法治天下), as is inscribed on the rock near the gate of your university.... ‘To create a world ruled by law’ indicates that law is more powerful than the world. Therefore, I can say that the world which is overriden by law shall be ruled by law. I think such a vivid statement grasps the core of the spirit of rule of law. To specify the spirit, I want to say five points. First of all, the dignity of the constitution as well as laws transcends all; second, all people are equal before the law; third, all organizations and institutions shall undertake activities within the scope of the constitution and laws; fourth, laws shall be made in a democratic manner and be publicized and popularized among the masses; last but not least, see to it that there are laws to go by, the laws are observed and strictly enforced, and law-breakers are prosecuted. A

Chinese saying goes that ‘the difficult lies not in legislation, but in implementation’ (天下之事不难于立法, 而难于法之必行). If laws are not fully observed, why should we have them?” Quoted at [http://www.moe.edu.cn/edoas/en/level3.jsp?tablename=1245221141523299&inford=1261726002105485&title=Premier Wen Jiabao Discusses Rule of Law with University Students](http://www.moe.edu.cn/edoas/en/level3.jsp?tablename=1245221141523299&inford=1261726002105485&title=Premier+Wen+Jiabao+Discusses+Rule+of+Law+with+University+Students), viewed on Feb. 16, 2010, attributed to Legal Daily (December 4, 2009)(Editor in Charge: Liu Yi; Translator: Jiang Jianfeng).

³² Jerome A. Cohen, *China’s hollow ‘rule of law’*, CNN Opinion, Dec. 31, 2009, <http://www.cnn.com/2009/OPINION/12/31/cohen.china.dissidents/index.html>, viewed Feb. 1, 2010. See also a study of the treatment by the courts and the party of “Married out women” in Guangdong Province, which “illustrates the complexity of the judicial decision-making process ... where elements of law, power, and politics all come into play.” Xin He, *The Judiciary Pushes Back: Law, Power, and Politics in Chinese Courts*, Peerenbaum (ed.), *supra*, 180, 193.

³³ Jianfu Chen, *Chinese Law: Context and Transformation*, 694-95 (Martinus Nijhoff 2008).

³⁴ Jiang Ping, *China’s Rule of Law is in Full Retreat*, February 21, 2010, anonymous translator. Original speech is at <http://sunguodong2002.blog.sohu.com/144164134.html>, viewed on March 3, 2010.

China's courts do not have the history of independence that U.S. courts have achieved, and they continue to suffer from a large number of poorly qualified judges³⁵ and from corruption³⁶. Concepts such as the lawyer's duties of zealous advocacy and confidentiality may not apply in China.³⁷ In our program we have taken the position that exposure to the Western legal systems' values of due process and transparency and lawyer-client relations are central to the rule of law. Accordingly, their adoption would help the Chinese law professors educate future lawyers and judges to respect the rule of law. Participants read materials about the lawyer-client relationship and discussed how to supervise clinical students in their representation of clients. Our stress on the concept of client centered lawyering met initial resistance, partly because it seems inconsistent with a hierarchy that places the lawyer above the client³⁸ and partly because the Chinese professors thought it "meant that American lawyers did whatever their clients wanted them to do." However, after hearing that the concept stands for assisting "clients in making decisions in which competing values of the client are at stake," the Chinese professors are reevaluating whether client centered lawyering is consistent with Chinese values.³⁹ For our August 2009 training, Professor Xu Shenjian of the China University of Political Science and Law created a power point presentation on client centered lawyering, an indication that the concept is taking hold in China. Discussion of theory of the case underscored that the attorney must be able to tell the client's story in a sympathetic and convincing way.

A.2.

We also had to recognize important differences between the educational systems. One set of differences is in the students. As in much of the world, law is an undergraduate degree in China, though an increasing number of Chinese law graduates go on to study for an LLM or JM degree.⁴⁰ Of course, in the United States it is a graduate program. The Chinese government describes the legal education system as one that "combines the education of law majors and vocational

³⁵ *Id.*, at 679-80.

³⁶ Chief Justice Wang Shengjun has observed that nearly 800 court officials were punished for violating laws in 2009. Prosecutor-General Cao Jianming noted that prosecutors would make efforts to "resolutely punish corrupt act in the judicial sector to purify the judicial team and safeguard integrity and justice." *Top China judge bangs gavel: We won't abide dirty officials*, Shanghai Daily, March 12, 2010, p. A3. See also, Nanping Liu, *Trick or Treat: Legal Reasoning in the Shadow of Corruption in the People's Republic of China*, 34 N.C. J. Int'l. L. & Com. Reg. 179 (2008).

³⁷ See Daniel C.K. Chow, *The Legal System of the People's Republic of China in a Nutshell*, 250-258 (West 2009) (citing problems of independence of lawyers, professional competence, and professional ethics).

³⁸ A related point is that "the lack of attention to client interests may reflect both a traditional lack of emphasis on individuals in the Chinese legal system, and a government view that legal aid serves the state and that individual and state interests

cannot be divorced." Benjamin L. Liebman, *Lawyers, Legal Aid, and Legitimacy in China*, in William P. Alford, *Raising the Bar: The Emerging Legal Profession in East Asia*, 311, 346 (Harvard Univ. Press 2003).

³⁹ Elliott Milstein, *Experiential Education and the Rule of Law: Teaching Values Through Clinical Education in China*, 22 Pacific McGeorge Global Bus. & Devel. L.J. 55, 61 (2009). Client centered lawyering was already a tenet of the Wuhan University clinic. Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale H.R. & Dev. L.J. 117, 136 (2005).

⁴⁰ See Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 39 J. Legal Ed. 60, 68 (2009), stating "It is the goal of the MOJ [Ministry of Justice] and most educators to transform the study of PRC law... to a post-graduate professional school...."

education in law.”⁴¹ Many undergraduate law students will never practice law or serve as judges or procurators. Most U.S. law students become lawyers. These differences suggest the need for adjustment of the U.S. methods in China. Indeed, this is a key area of global adaptation and recognition of differences.⁴² It has been suggested that undergraduates are “too young to think for themselves and need first to accumulate a corpus of knowledge.”⁴³ The opposing view is that learning theory places both upper division undergraduates and J.D. students “squarely within the ‘adult’ cohort for mature learning purposes.”⁴⁴ The experience of our Chinese partners reflects that properly supervised undergraduates can successfully represent clients in legal matters.

Because Chinese law students are in a four year program, there is more opportunity to sequence experiential courses; for example, lawyering skills courses in client interviewing, negotiation, mediation, and arbitration or trial could be made prerequisites to clinical courses. Such sequencing would reserve clinical courses for upper division students, who will be more mature and therefore more likely to be able to interact appropriately with clients. The more difficult question is whether the need for experiential legal education is affected by the existence of a sizable enrollment of students who will never serve in law-related jobs.⁴⁵ One answer is that the problem solving skills acquired in experiential courses have broad application. Another is that there is student demand for lawyering skills and clinical courses. Many students do enter law-related jobs. They want professional skills education, and potential employers want them to have professional skills.⁴⁶ A third is that taking a clinical course may well motivate a student to become a lawyer, because of the satisfaction that can come from representing a client and because the clinical work exposes

⁴¹ PRC State Council White Paper, *China’s Efforts and Achievements in Promoting the Rule of Law*, Feb. 28, 2008, viewed on April 18, 2010 at <http://china.usc.edu/ShowArticle.aspx?articleID=962>.

⁴² See Frank S. Bloch and M.R.K. Prasad, *Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-National Currents From India and the United States*, 13 *Clinical L. Rev.* 165 (2006).

⁴³ Richard Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Education*, 10 *German Law Journal* 823 (2009), quoting Alain Lempereur, *Negotiation and Mediation in France: The Challenge of Skill-Based Learning and Interdisciplinary Research in Legal Education*, 3 *Harvard Negotiation L.Rev.* 151, 164 (1998).

⁴⁴ Wilson, *supra*, at 834.

⁴⁵ See Note, *Adopting and Adapting: Clinical Legal Education and Access to Justice in China*, 120 *Harv. L.Rev.* 2134, 2144, citing statistics showing less than 15% of law graduates from a high ranking law school finding law jobs.

⁴⁶ Major employers in Beijing, both private and public, say that they want to hire lawyers who are already able to handle legal matters independently. See Wang Rong, *On the Role and Significance of Advocacy and Clinical Legal Education in China*, presentation at Pacific McGeorge School of Law conference on Experiential Education in China, Jan.

25, 2008, slide 7, [http://www.mcgeorge.edu/Documents/centers/global/usaid/Rongs%20powerpoint%20\(word%20file%20translated\).pdf](http://www.mcgeorge.edu/Documents/centers/global/usaid/Rongs%20powerpoint%20(word%20file%20translated).pdf). A survey of law school students in Zhejiang Province “reflects that legal skills are eagerly required by law school students...” Pei Bei, *The Expectation of Legal Skills in Chinese Legal Education*, presentation at Pacific McGeorge School of Law conference on Experiential Education in China, Jan. 25, 2008, <http://www.mcgeorge.edu/Documents/centers/global/usaid/Pei%20Bei%20English.pdf>. A Pacific McGeorge professor who taught an advocacy course at China University of Political Science and Law observed, “it would be impossible to overstate the enthusiasm with which all 16 Chinese law students embraced our full-on experiential, simulation-based, American-style trial-skills course.” He concluded, from having observed similar results in China, Italy, and the United States, that “teaching skills in a learning-by-doing ... setting appears to be universally effective.” Jay Leach, *Content and Design of Advocacy Education Courses in Chinese Law Schools: A Proposed Template*, presentation at Pacific McGeorge School of Law conference on Experiential Education in China, Jan. 26, 2008, <<http://www.mcgeorge.edu/Documents/centers/global/usaid/Leach.%20China.Report.pdf>>

students to societal problems and reveals the need for legal representation. In addition, of course, the students have enrolled in a law school, and it seems appropriate for a law school to train lawyers. Finally, these objections to lawyering skills education at the undergraduate level have no application to LL.M. and J.M. education.

Any program in China must confront the daunting scale of the country, so unlike the United States. With over 550 law schools,⁴⁷ many of which are quite new to legal education, how can a relatively small initiative make a substantial impact? We decided that it would be impossible to quickly bring change to a large number of law schools. Instead, we opted to try to have a large impact on a few schools, by limiting our initial program to three partner schools and training ten faculty members from each school. We believe this strategy has paid off. Practitioners of experiential legal education are embedded in those three schools and the future of practical lawyering education seems secure there. All three have expanded their clinical offerings. An extension of our grant enabled us to increase to five additional schools participating in the program, with each school sending six faculty members. Chinese professors from the first phase of the program are now trainers in this Phase II. As more Chinese faculty become proficient in training other faculty in experiential education techniques, we hope the methods will spread further.

There are also curricular and teaching method differences. Law schools tend to adopt the required courses listed by the Ministry of Education, so they are pretty much in curricular lock step with one another. No experiential courses are required,⁴⁸ but the Ministry of Education has approved legal clinics as elective courses and is considering whether to encourage practical education in law schools more actively.⁴⁹ Students are expected to acquire lawyering skills during their fourth year of law school, through three or four month externships with lawyers, courts, or procurators. These assignments have often been of minimal value, however.⁵⁰ The lecture method dominates

⁴⁷ See Liu Xiaobing, *Clinical Legal Education and Legal Aid*, China Legal Education Research 2008 #4, p. 73 ff. (translated by Lei Yu). Over 600 institutions grant law degrees; some are university departments rather than law schools. See Cai Yanmin and J.L. Pottenger, Jr., *The "Chinese Characteristics" of Clinical Legal Education*, in Frank S. Bloch [ed.], *The Global Clinical Movement: Educating Lawyers for Social Justice* 87, 89 (Oxford University Press 2010); PRC State Council White Paper, *China's Efforts and Achievements in Promoting the Rule of Law*, Feb. 28, 2008, viewed on April 18, 2010 at <http://china.usc.edu/ShowArticle.aspx?articleID=962>.

⁴⁸ Required courses are constitutional law, jurisprudence, criminal law, civil law, economic law, criminal procedural law, civil procedural law, administrative law and administrative procedural law, commercial law, intellectual property law, public international law, private international law, international business law, history of Chinese legal system, environmental and resource preservation law, and labor and social security law. Li Huimin, Hu Chenggong and Song Guolei, *Problems and*

Suggestions: On the Development of the Core Curriculum for Chinese Law Schools, China Legal Education Research, 2008, #4, 138 [translated by Lei Yu]. "None of the fourteen courses contains practical curricula or the teaching of lawyer-practice skills." Gerard J. Clark, *An Introduction to the Legal Profession in China in the Year 2008*, 41 SUFFOLK U. L. REV. 833, 841 (2008).

⁴⁹ Cai Yanmin and J.L. Pottenger, Jr., *supra* at 99.

⁵⁰ Zhu Suli, *supra*, 78-79. Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale H.R. & Dev. L.J. 117, 127 (2005) ("the two- or three-month *shixi* period often becomes a mere break for the students from their ordinarily frenzied class schedules"). The objectives of these brief externships are similar to the objectives of experiential classes, see Li Shuzhong, *supra*, 66, but without an academic element requiring reflection on what has been learned, the externships are unlikely to achieve those objectives.

Chinese law classes, while the Socratic method dominates in the United States.⁵¹ Chinese law students have come to believe that the professor’s job is to answer questions, not to ask questions. Thus, they initially resist the more demanding methods that would require advance preparation and critical thinking.⁵² Clinical legal education’s real-world, client-centered focus on facts and practice stands in stark contrast to the rest of the curriculum, with its virtually exclusive emphasis on rules, law, and theory.⁵³

Clinical education is in its infancy in China, having begun at a few schools in the 1990’s.⁵⁴ It is now well entrenched in most U.S. law schools. Lawyering skills courses are virtually non-existent in China, but are found in most U.S. law schools; in China, mock trial programs are common but are not courses for credit. On the other hand the division that has developed in the United States between clinical education and lawyering skills education does not currently exist in China.⁵⁵ Chinese professors generally receive less recognition and pay for teaching experiential courses. The status of experiential education in China, in short, resembles its status in the United States until the 1970’s.⁵⁶ U.S. law schools went through a slow and uneven transition to a curriculum that includes lawyering skills and clinical legal education, creating teaching standards and techniques through trial and error and through dialogue among experiential education scholars. As with so much of Chinese society, more rapid change is possible in Chinese law schools, for several reasons. The Ministry of Education has encouraged higher education institutions to incorporate learning by doing.⁵⁷ Chinese legal scholars are familiar with the U.S. experience and they show high regard for U.S. legal education. Since the U.S. now has a mature, though still evolving, experiential legal

⁵¹ “The education model is ‘knowledge-centered,’ rather than ‘skill-oriented.’” Setsuo Miyazawa, Kay-Wah Chan, and Ilhyung Lee, *The Reform of Legal Education In East Asia*, 4 Annual Rev. of Law and Social Science, 333, 335 (2008). However, Socratic dialogue has become more common in China in recent years. Matthew S. Erie, *supra*, at 77-79.

⁵² This is based on my personal observation, while teaching a course in a Chinese law school. See also, Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale H.R. & Dev. L.J. 117, 142 (2005)(describing a Chinese student who “insisted that he could not learn without the instructor answering his questions directly and resolutely”). However, many students adapt well to interactive learning techniques. See Patricia Ross McCubbin, Malinda L. Seymore, Andrea Curcio, and Llewellyn Joseph Gibbons, *Essay: China’s Future Lawyers: Some Differences in Education and Outlook*, VII Asper Review 293, 299 (2007).

⁵³ Cai Yanmin and J.L. Pottenger, Jr., *supra*, at 90.

⁵⁴ In the late 1980’s some Chinese law schools created law firms that provided legal services, and law school student unions began offering legal advice. However, these were extracurricular activities. Michael S. Dowdle, *supra*, at 175-176.

⁵⁵ See Pamela Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale Hum. Rts. & Dev. L.J. 117, 143 (2005).

⁵⁶ “[I]t is an undeniable fact that such forms of experiential teaching as the so-called legal counseling and service, social survey, clinical legal education, short-term internship, graduation internship are carried out in a nominal manner, without any efficient organization or administration....” Zhang Shengxian, *A Study on Experiential Teaching System for Law Undergraduates*, China Legal Education Research, 2008, #4, 47 [translated by Lei Yu].

⁵⁷ “Training on basic knowledge, theories and skills will be further emphasized. In the field of HE, the service profile for disciplines will be expanded and the teaching and training for application and internship will also be strengthened, so that teaching, research and social application can be integrated and the students’ capacity in analyzing and solving problems will be improved.” The 9th 5-Year Plan for China’s Educational Development and the Development Outline by 2010, [http://www.moe.edu.cn/edoas/en/level3.jsp?tablename=1242700904263396&inoid=1244084931385369&title=The 9th 5-Year Plan for China’s Educational Development and the Development Outline by 2010](http://www.moe.edu.cn/edoas/en/level3.jsp?tablename=1242700904263396&inoid=1244084931385369&title=The%209th%205-Year%20Plan%20for%20China’s%20Educational%20Development%20and%20the%20Development%20Outline%20by%202010), viewed on Feb. 17, 2010.

education, Chinese are very interested in adapting the U.S. methods to Chinese circumstances.⁵⁸ This has become obvious to us as we view the enthusiasm with which Chinese law schools have sought to become part of our program.

It has been suggested that some legal educators in the two systems may pursue different goals for clinical legal education: championing equal access and redressing inequality [United States] versus improving legal skills [China].⁵⁹ This both oversimplifies the two educational systems and creates a false dichotomy. Clinics in both countries promote the rights of the powerless and less privileged among us. Clinical students in both countries acquire both lawyering skills and an understanding of the legal needs of the poor. Of course, it might be possible to pursue one objective without the other. For example, a professor might agree for the clinic to take on a high impact case even though it has little pedagogical value. However, in both countries a properly run clinic will find cases that advance both objectives. As Michael Dowdle points out, law school clinics “often provide a legal aid function by providing legal services to persons who would not otherwise have access to them,” although “one of their principal foci is on pedagogy, and not simply on maximizing the reach and impact of their public service.”⁶⁰

Language differences have presented some challenges as well. Only one of our U.S. faculty speaks Chinese and many Chinese trainees have little or no English language skill. Therefore, most of our activities in China have required interpreters.⁶¹ It is important to use professional interpreters rather than rely on English. The main choice we had to make was between consecutive and simultaneous translation. We opted for consecutive, believing it would probably be more accurate and that the much higher expense of simultaneous translation was not warranted. Simultaneous translation would become especially difficult in the small group sessions which became the heart of our program. We did use the “whisper” system in small groups where the Chinese participants were engaged in learning exercises among themselves.⁶² We discovered an unexpected advantage to

⁵⁸ See, e.g., Kong Qijingjiang, *Practice in Legal Education: International Experience and Chinese Response*, 22 Pacific McGeorge Global Bus. & Devel. L.J. 35 (2009); Zhou Shiwen, *The Reform Strategy of Legal Education in China*, 22 Pacific McGeorge Global Bus. & Devel. L.J. 69 (2009). Others recognize the need for professional skills training without specifically referring to use of U.S. legal education techniques. E.g., Li Shuzhong, *On Practical Teaching Modes: Experience from the China University of Political Science and Law*, 22 Pacific McGeorge Global Bus. & Devel. L.J. 63 (2009); Zhu Suli, *An Institutional Inquiry into Legal Skills Education in China*, 22 Pacific McGeorge Global Bus. & Devel. L.J. 75 (2009).

⁵⁹ “[T]he general direction of the post-transplant development of China’s clinical legal aid and education framework has been away from the dominant paradigms that heretofore informed our perceptions of clinical legal education in its foreign system of origin....” Michael W. Dowdle, *Completing Teubner: Foreign Irritants in China’s Clinical Legal Education System and the ‘Convergence’ of Imaginations*, in Penelope (Pip) Nicholson &

Sarah Biddulph, (eds.), *Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia*, 169 (Martinus Nijhoff 2008). See also, Dowdle, *supra*, at 181; Sarah Biddulph, *Legal Education in the People’s Republic of China: The ongoing story of politics and law*, in Stacey Steele and Kathryn Taylor [eds.], *Legal Education in Asia: Globalization, change and contexts*, 260, 271 (Routledge 2010).

⁶⁰ Dowdle, *supra*, at 174.

⁶¹ We conduct almost all classes in the U.S. in English [plus a couple in Spanish] and require Chinese professors who enroll in our LLM program to demonstrate English language ability, by TOEFL or IELTS score or by interview. Typically they find the first half of the first semester extremely challenging linguistically, but they gain fluency over time, and all have been able to complete the program satisfactorily, with some achieving high success.

⁶² A variant on simultaneous translation, in the whisper system the interpreter whispers the translation to one or two non-speakers of the language.

consecutive translation: it gave time for difficult ideas to sink in, and for bilingual Chinese participants the repetition also enhanced understanding [though a few found it boring and a waste of time].

Language poses challenges in another way: some U.S. legal ideas are hard to translate. For example, we initially divided the program into a clinical component and an advocacy component. The word “advocacy,” however, proved impossible to translate. We had lengthy discussions with Chinese participants and interpreters on how to translate the word and could never find a suitable translation. Similarly, idioms, jokes, and metaphors often do not translate well.

This latter point is also related to cultural differences. Many jokes, idioms, and metaphors depend heavily on shared cultural understandings. A more serious cultural difference is that Chinese culture is much more hierarchical than U.S. culture. Respect (zunjing) for elders and persons with higher status, such as professors, leads to a reluctance to fully engage in discussion, because the younger person and the person in a lower status should not contradict the older and higher status person.⁶³ For example, we planned a role play, where a U.S. professor was to give a closing argument and a more junior Chinese professor was to demonstrate critique method. The U.S. professor told the Chinese professor what mistakes he would make in his closing argument, but even with that advance knowledge, the Chinese professor gave a critique that praised the U.S. professor’s performance.

We had been warned that our program would clash with other aspects of Chinese culture: the concept of face [*mianzi*], the emphasis on community rather than the individual, and the low value placed on independent thinking. In practice we did not find that these values clashed with our program. Properly presented critiques and self-reflection did not seem to raise issues of face, but instead seemed consistent with Chinese traditions from the time of Confucius.⁶⁴ Perhaps this is because we emphasized that critiques should not be sarcastic or belittling. Our classes rely to some extent on communal learning, and once freed from the constraints on independent thinking the Chinese participants enthusiastically embraced it.

Chinese and U.S. cultures tend to feature differing “perceptions of rules and relationships.”⁶⁵ For example, “Western legal systems focus most acutely on principles of law, while the traditional Chinese view is that such abstract principles are too mechanical and devoid of substance. Rather, the emphasis has been on conflict reduction and stability.”⁶⁶ Professors Wang and Young also describe Dr. Milton Bennett’s Developmental Model of Intercultural Sensitivity, reflecting that when exposed to these cultural differences, individuals go through a progression of reactions.⁶⁷

⁶³ See Matthew S. Erie, *supra*, at 79-80.

⁶⁴ According to one of his aphorisms, “These are my worries: not cultivating virtue, not teaching what have been learned, not moving toward what is known of righteousness, and not correcting what is wrong.” Another holds: “If you speak to a man very seriously, how can he not listen to you? Correcting is the most important thing. If you speak to a man in a friendly manner, how can he not be happy? Being able to examine is the most important thing. If a person seems happy, but he does not want to examine; or if a person is listening, but does not correct his mistake, for those people, I can do nothing.” Tom Te-wu Ma and Pan Zhiyong,

Confucius Said, 167 and 189 (Shanghai Worldwide Publishing Co. 2004).

⁶⁵ Francis SL Wang and Laura WY Young, *Cultural Differences and Legal Perspectives: Measuring Intercultural Interactions and Outcomes at the Summer Law Institute – Kenneth Wang School of Law, Suzhou, China*, in International Association of Law Schools, *Effective Teaching Techniques About Other Cultures and Legal Systems*, 53 (May 30, 2008).

⁶⁶ *Id.*, at 54.

⁶⁷ *Id.*, at 56, citing M.J. Bennett, *A development approach to training for intercultural sensitivity*, 10 Intl. J. of Intercultural Relations 179 (1986).

We noted some of these reactions in our training: initial denial, defense, minimization of differences, acceptance, adaptation, and integration. For example, some trainees initially resisted such concepts as client centered lawyering, persuasive argument, and non-directive supervision, but most ultimately found these to be useful concepts that could be transformed for use in Chinese legal education.

B.

Another set of challenges flows from the type of experiential education we are teaching. Our workshops have been of varying length – two days, one week, three weeks. Our objective is to achieve “deep transfer,”⁶⁸ but that is not possible in a two day training. There we limited our effort, to simply provide introductions to various topics and lay a foundation for trainees. Even in the longer workshops, deep transfer can occur only if we limit the topics covered and give the participants ample practice of each skill.

U.S. law schools generally organize their curriculum based on an artificial and historically based division between clinical courses and persuasive lawyering courses. Our first two workshops followed this division, but it became increasingly clear that the overlap between the two exceeded the differences between them. Both teach negotiation, client interviewing, fact development, theory of the case, and courtroom skills. Both rely on reflection as a key teaching device. Both use simulations – clinical courses use them to prepare students for real clients and cases; lawyering skills rely on them exclusively. We decided to merge our consideration of clinical and persuasive lawyering in our workshops in 2009. One advantage of this merger is the opportunity to compare methods of learning by doing. NITA relies substantially on directive techniques, while clinicians typically rely more on self reflection. A related difficulty is finding the correct balance between directive and reflective techniques of educating the educators. Time constraints create pressure to use directive techniques, but discussion and reflection are particularly important when the issue is transferability of techniques to another country’s legal education system. It is generally accepted that we can achieve deeper learning with reflective techniques.

Our Chinese participants proved adept at adapting U.S. techniques to Chinese clinical education. For example, we presented the Blaustone six step method of feedback and reflection. Southwest University of Science and Technology Law School reported to us that they had adopted a six step model. The report described a divorce case in which the client had a poor reaction to their first meeting with the students:

“Our students were very frustrated by it and showed signs of giving up this case. Following these six steps, clinic teacher had a communication with students in time, they listened to students’ report on the meeting with the party, guided the student to analyze this meeting, first teacher let students find out their good performance in the meeting, and then let students reconsider the problems which caused the party to distrust them, finally students proposed a remedy for the further communication with the party, and established the sense of trust of the party. Through this feedback

⁶⁸ Deep transfer is an important concept in learning theory, referring to long term lessons that stick with the learner and that the learner can apply to new situations. David A. Binder and Paul Bergman,

Taking Lawyering Skills Training Seriously, 10 *Clinical Law Review* 301 (2003); Ken Bain, what the best college teachers do, 27 (2004)[referring to deep learning].

mode, students successfully found the reasons for party’s distrust, and they finally got the trust through further communication with the party. Now with the cooperation of students and the party, this case goes well and this divorce trial will begin in April 23rd 2010.”⁶⁹

IV.

What lessons have we learned from this program? Foremost, the core methodology of educating the educators works. Our trainees have enthusiastically embraced the program, in evaluations,⁷⁰ by incorporating into their own teaching the methods they learned in the program,⁷¹ and in books and articles they have written.⁷² The independent evaluator who has reviewed our program, Professor Frank Bloch of Vanderbilt Law School, has concurred in the value of this methodology.⁷³

Second, clinical and persuasive lawyering classes are two branches of the same tree: learning to be

⁶⁹ Translated by Wang Yongmei, e-mail to Brian Landsberg, April 2, 2010.

⁷⁰ The number rankings from the trainees are always quite high. For example, in response to the question whether the 2008 summer workshop had achieved its objectives, 20 replied yes and 3 replied no [ten others did not respond]. As to how clear the objectives of the workshop were, 21 said excellent and 3 said adequate. More informative, perhaps, are narratives. A former associate dean of Zhejiang Gongshang University Law School wrote: “For Chinese legal experiential education, the core concept of American experiential education—learning by doing and the teaching methodologies and techniques, such as simulation, demonstration, roleplay and critique, are really worth being learned from. Wonderful experience!” E-mail from Luo Wenyan to Brian Landsberg, Feb. 8, 2010. A professor at the China University of Political Science and Law wrote: “Right now, China is paying great attention on the reform of legal education. In this context, I believe teaching of legal skills including advocacy skills will be more and more important. This LLM program just provides training for the law professors who had interest in teaching of advocacy skills, thus I sincerely recommend you to this LLM program.” E-mail from Dong Jingbo to Brian Landsberg, Feb. 7, 2010.

⁷¹ See text, 1-2, *supra*, re Dong Jingbo’s courses. See text, *infra*, re Liu Jianming’s clinic. All who responded to the survey regarding the 2008 summer workshop said it would have an impact on their teaching. Typical responses: “change critique procedure,” “add ADR as an individual class,” “use simulation,” “teach students more legal and advocacy techniques,” “how to supervise students.”

⁷² E.g., Luo Wenyan, and Liu Jianming, *Falu Jineng Zonghe Shixun* [Comprehensive training on legal skills], Zhejiang Gongshang University Press, 2009;

Luo Wenyan & Brian Landsberg, *supra*, n. 28; Liu Xiaobing, *Clinic Legal Education and Legal Aid*, *China Legal Research* 2008, No. 4, 73; Dong Jingbo, *Research Practice Teaching of International Law*, *China Legal Research* 2008, No. 4, 127.

⁷³ For example Professor Bloch’s report on the December 2009 training noted: “From the beginning, the Project has sought to address the relevance of US-based materials and US-oriented methods to the Chinese context. As has been the case throughout, many of the Chinese participants expressed great interest in learning about US-style clinical and advocacy skills teaching despite differences between US and Chinese legal systems (and between US and Chinese legal education). Many examples of Chinese clinical and skills instruction were cited, both in the training and by participants during large and small group discussions. Moreover, discussion along these lines seemed more nuanced during this training in that greater attention was given to how the essence of what is taught in the US—as opposed to the specifics—might best help Chinese law teachers develop a clinical and skills curriculum for training a new generation of modern Chinese lawyers. Two examples of this were the session on legal argument that brought out ways in which largely similar simulations could be used to prepare students in both countries despite specifically identified difference between US and Chinese law practice, and the session on “persuasive lawyering” that facilitated cross-system discussion of the lawyering process, how to teach about what lawyers do, and how clinical and skills training in law schools might influence the transition to more adversarial legal process in China.” Frank S. Bloch, *Report to The University of the Pacific McGeorge School of Law on USAID Rule of Law in China Project (October-December 2009)*, 11-12.

an ethical and skilled legal professional. Properly sequenced they reinforce not only the lessons that the other class taught but also the lessons of traditional legal knowledge courses. Persuasive lawyering classes prepare students for clinical classes, as well as concretizing lessons learned in traditional legal knowledge classes. Clinical classes cement the lessons learned in the persuasive lawyering classes, further concretize traditional lessons, and deepen sense of professional values. Moreover, as Pamela Phan has noted, perhaps “the Chinese system of legal education holds greater potential for integrating doctrinal and clinical methods than its American counterpart,” both because of the broad definition Chinese educators give to “clinical education” and “because Chinese clinicians are also educators in doctrinal subjects.”⁷⁴

The U.S. law schools may have taken a wrong turn when most of our schools separated the two. Thus, we have learned about ourselves in the course of teaching the Chinese professors. We have learned to consider the relationship of the clinical, lawyering skills, and doctrinal courses in a systematic way. We have learned to consider the deeper lessons that each type of course offers. We have learned to ask ourselves questions about the most effective teaching methods. For example, when is it appropriate to provide directive critiques of student performance and when is it more effective to simply raise questions upon which the students should reflect?

Other lessons are reflected in the discussion above. We need to be constantly aware of the tension between directive and reflective techniques of teaching/learning. We need to take care in selecting trainees. For LLM programs, English language competency is essential. Critical mass at a specific law school seems essential. Evidence of commitment to experiential education is helpful. We also need to be careful in our choice of terminology. For example, we are now referring to persuasive lawyering rather than advocacy. The differences between the two legal systems require adjustment from US, but the basic skills required are the same in both systems, and we should not overstate the extent of the differences. Properly delivered critiques do not cause undue loss of face. We should not be over-concerned over face. To the extent possible, we should put Chinese law professors in charge. Let them go first rather than trying to have them critique a U.S. professor.

At our workshop in 2008 we merged the clinical and advocacy groups for the final sessions and asked the Chinese participants to comment on what they had learned and what they planned to do with it. Two responses, as reflected from my notes, nicely capture the gist of their comments:⁷⁵

Advocacy skill is like the field test of driving and clinical course is like the live road test. We plan future reform to combine such skills as arbitration law with clinical courses. We need multiple strategies, not a standardized one. In the first stage in China, let multiple models exist.

We should allow various models of experiential learning. We want to be exposed to American methods; then we can figure out how to adapt them to the Chinese context.

⁷⁴ Pamela Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 *Yale Hum. Rts. & Dev. L.J.* 117, 143-44 (2005).

⁷⁵ Brian Landsberg, report on Hangzhou workshop, July 21-August 7, 2008.

Conclusion

The Educate the Educators program has had the hoped-for impact on the Chinese law schools participating in the program and has the potential of more far reaching impact. It has also had an unforeseen impact on the United States faculty who teach in the program. All of the participating Chinese law schools have enlarged their clinical programs, so that each year faculty who have completed our training programs teach clinical and lawyering skills courses to hundreds of students. All of the participating Chinese law schools have incorporated persuasive lawyering skills into their curricula, either in existing courses or in new courses; each year over a hundred students engage in persuasive lawyering learning. At least ten of our initial 30+ trainees are qualified to educate other educators, and most have either done so or will do so in summer 2010 in our upcoming workshop. We have helped strengthen a national vehicle for clinical legal education, akin to the United States Clinical Legal Education Association, the Committee of Chinese Clinical Legal Educators [CCCCLE], by providing it with materials and training, and by encouraging more law schools to join. Participant schools have created experiential education institutes, thus lending credibility to the faculty members teaching experiential courses. Chinese and U.S. publications give added visibility and credibility to experiential legal education in China.

The U.S. faculty has felt energized and inspired by the program. More important, the program has caused U.S. trainers to reevaluate and in some instances revise their teaching methods. We have learned to reconsider the relationships among the types of experiential learning. It has caused us to consider the appropriate balance between directive and reflective learning.

This past September I took a team from US AID to view a clinical education class at Zhejiang Gongshang University Law School, taught by Professor Liu Jianming. I had observed Chinese clinical classes before, where students described problems and professors told them how to solve them. By contrast, Professor Liu skillfully drew from students the objectives of client interviewing. A student typed their points, which were projected on a screen. Professor Liu quizzed two students who had previously conducted simulated interviews about their plans for the real interview that was about to take place. They then interviewed a real client who had consented to be interviewed in front of the class. The interview was videotaped. After the client left, Prof. Liu elicited student critiques of the interview, in light of the objectives they had identified. Then the student interviewers critiqued themselves. Only then did Prof. Liu offer brief comments on the student interviews. This class would have been considered outstanding in a U.S. law school; in China, given its relatively short history and paucity of tradition in experiential learning in law-school settings, it was nothing less than amazing. Both the interviewing students and the observing students were fully engaged in learning how to conduct an initial client interview. The combination of planning, doing, and reflection maximized the transfer of skills and values to the students.

Professor Liu wrote to our partner, Elliott Milstein, on New Years Eve to thank him: “From 2006 to now, only about three years, I have grown from an ordinary teacher to a good clinic teacher, from a trainee to a trainer ... I am fortunate to meet you and your faculty.”

Clinical Practice

The Development and Expansion of University-Based Community/Clinical Legal Education Programs in Malaysia: Means, Methods, Strategies

Bruce A. Lasky¹ and Associate Professor Norbani Mohamed Nazeri²

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Beginning in 2003, the not-for-profit international human rights organization Bridges Across Borders Southeast Asia Community Legal Education Initiative³ (BABSEA CLE) began focusing on assisting in the development and expansion of university-based community/clinical legal education programs⁴ in the Southeast Asia region. Since that time, and as a result of this focus, university-based CLE programs have been developed or expanded in Thailand, Malaysia, Cambodia, Viet Nam, Indonesia and Laos, with a continuously growing network of universities, both nationally and regionally. One of the flagship achievements of these activities has been the successful establishment of an accredited CLE program in Malaysia at the University of Malaya.

Finally the paper will identify strategic next steps in the development of this CLE movement within Malaysia, as well as its connection to institutions regionally throughout Southeast Asia and how the CLE movement intends to broaden its reach both within Malaysia and internationally.

Clinical Legal Education Defined

Clinical legal education is a progressive educational system most often implemented through university-based faculty of law programs to help develop better-trained, more socially conscious ethical lawyers. Yet, while this type of educational program is often implemented by law faculties, it is not limited solely to such institutions and can readily be practiced by a wide assortment of other faculties and in interdisciplinary programs.⁵

Clinical legal education is a process whereby students learn by doing. It is an experiential problem-solving based model, in which students actively involve themselves in either real client/personal interaction or simulation lessons set up to mirror real client/personal scenarios. The process is conducted under the supervision of experienced law clinicians and legal practitioners. As a teaching device, this type of experiential problem-based learning is considered a highly effective means of adult learning where, unlike in rote memorization situations, students can learn and retain a vast amount of what is taught. The use of this interactive method of teaching focuses these students on becoming more able, thorough and ethical advocates, solicitors, governmental and private employers/employees, as well as global citizens.

³ Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE), was originally established as a program of Bridges Across Borders in 2003, which registered as a not-for-profit that same year in Florida, the United States. In 2010 BABSEA CLE independently registered as its own not-for-profit in Florida, United States, in order to pursue its own, yet complimentary mission. BABSEA CLE focuses on the development of university-based clinical legal education programs as well as grassroots community-based legal advisor/paralegal program support. The BABSEA CLE mission is to empower vulnerable and underserved individuals and communities by creating and strengthening sustainable legal and human rights education and access to justice programs worldwide. This mission is accomplished by working globally to connect people, organizations, and resources at the government, non-governmental, institutional, and

grassroots levels through community and clinical legal education programs. These experiential, interactive, and cross-cultural education programs support local struggles for social justice, equitable development, rule of law and protection of human rights while endowing people with a lifelong ethic of social responsibility and public service.

⁴ BABSEA CLE uses the broad term Community Legal Education (CLE) when referring to its overall program, which includes working with grassroots communities as well as universities. BABSEA CLE uses the term Clinical Legal Education when referring only to university-based programs.

⁵ For example, at Pannasastra University of Cambodia, the CLE program was set up in 2003 as an interdisciplinary accredited course program where students from all streams and faculties are permitted to enroll in the CLE Community Teaching Program.

The Goal of Clinical Legal Education

What are the goals of Clinical Legal Education? Clinical Legal Education seeks to achieve multi-faceted goals. Although this list is not exhaustive, some of these goals include:

- a) Providing a progressive method of education that focuses on students learning and improving skills that they will utilize as attorneys and in other professional positions. These skills include those abilities needed to effectively represent clients through the use of ethical value-based actions.
- b) Applying experiential learning methods with students to give them the opportunity to learn more effectively and apply what they learn to actual realistic situations in a way that traditional teaching, through a lecture-based system, can never do.
- c) To provide “back up” legal services and other services for indigent and marginalized community members who may not have an alternative access to the legal and other support systems.
- d) Developing within students the idea of public interest service, with a simultaneous goal of formulating and increasing an ethically aware, proactive community.
- e) Providing ways and means for clinical professors to make important contributions to the development of scholarship on skills and theories of legal practice that can provide closer links between the legal bar and the academy.
- f) Strengthening civil society through supporting lawyers’ responsibility and providing legal services to the vulnerable who find it hard to access legal services.

Clinical Legal Education is a fervent mechanism which can be used to reach these aspirations as it both helps to instill a public interest centered character within students and then pragmatically builds on this character to professionally train the students, via experiential teaching methods, how to reach such objectives.

Clinical Legal Education exposes students to the actions and inner workings of communities and in doing so, gives these students insight into issues affecting marginalized groups of persons. Through this exposure, students begin to understand and learn that they have the ability to make a positive societal difference through their skills as advocates and educators.

The Development of Clinical Legal Education in Southeast Asia and BABSEA CLE’s Role

Clinical legal education is somewhat new to the Southeast Asia region. The basic model of clinical legal education, simply defined as students and university faculties somehow involved in the provision of basic legal consultation services, has existed in some Southeast Asian countries for more than two decades. More than twenty-five years ago, Thammasat University in Bangkok established a clinic that focused on providing a broad variety of legal services to the public. Other Thai universities, such as Chiang Mai University (CMU), followed Thammasat University’s lead and model and created programs centered on providing free legal advice and consultation to members of the community. Established in 1994 and staffed by students and professors on a

volunteer basis, the CMU program not only provides free legal counselling to the community, but also serves the additional function of instilling the idea of duty and public service into the minds of the participating law students. Similar types of non-credited, voluntary legal aid or legal service clinics have been established at a variety of universities in Indonesia, including the University of Indonesia in Jakarta, where students and professors work with actual clients. A number of other programs allow for students to work alongside lawyers at legal aid societies as a type of internship experience. In Malaysia, limited clinical programs began more than twenty years ago at Universiti Teknologi MARA, where final-year students learned lawyering skills through a simulated program requiring them to work in a mock legal firm or clinic.

While the Philippines has had clinics for more than two decades, initially supported by the Ford Foundation, most other clinic type programs existing in the region were more service-related clinics, with little to no jurisprudential pedagogy being used, and without a specific focus of working with marginalized and vulnerable communities. During this period, while there was some international support for more modernization of legal education in the region, this aid was centered around the more traditional legal education models and not Clinical Legal Education. This began to change during the early part of this decade with the development of a Clinical Legal Education program in Cambodia with the help of the Open Society Justice Initiative and Bridges Across Borders Southeast Asia Community Legal Education Initiative, as well as in Indonesia, and more recently in Vietnam, where the United Nations Development Program is now fully engaged in advocating the support of CLE initiatives.⁶

Despite the existence of all these programs, there was no consistent clinical legal education model that provided both a social justice mission and simultaneously integrated the program into an accredited legal education course—with the exception of the Philippines. Strongly influenced by developments in the United States, the clinical movement in the Philippines was much more expansive than those of its neighbouring countries, taking root first at the University of the Philippines and then spreading outwards to universities such as the University of Ateneo. The structured programs in the Philippines, unlike those at law faculties elsewhere in the region, were not only incorporated into the university curriculum, but also charged with the mission of providing much-needed legal services to socially vulnerable, marginalized, and economically deprived members of the community. These clinical programs and the schools which incorporated them are currently involved in an almost-religious mission to spread clinical legal education throughout the country, with some schools making clinics a mandatory course and others setting them up as an elective subject.

More recently, the model adopted in the Philippines—once an anomaly in Southeast Asia—has been recognized increasingly as an effective means of creating a more social-justice-minded legal

⁶ In June 2010, BABSEA CLE and its local Vietnamese partner, the Institute on Policy, Law and Development Vietnam (PLD-Vietnam), were engaged by the UNDP to spearhead an applied CLE research project throughout Viet Nam, whereby they will be working with universities throughout the country to develop and/or strengthen CLE programs by, in part: 1) Assessing the value of different forms of support to clinical legal education programs in Viet Nam; 2) Demonstrating

how CLE programs contribute to the enhancement of legal education in Viet Nam through improving the educational and lawyering skills value of students enrolled in law faculties; 3) Providing evidence-based and objective recommendations to assist the Government of Viet Nam, university law faculties, UNDP and other development partners to formulate broader and longer-term programs of support.

profession and a more progressive legal education pedagogy. For example, Pannasastra University of Cambodia (PUC) established a fully accredited, social-justice-oriented, clinical program in 2003 with support from the Open Society Justice Initiative (OSJI), which had a long history of assisting in the development of clinical legal education in Eastern Europe and Africa, and with the support of BABSEA CLE.

PUC's clinical program began as a two-section clinic, with one section involved in Community Legal Education activities—often referred to as Street Law—and the other section working as a live-client legal services clinic where students worked with a local non-governmental organization (NGO) to provide legal aid services to indigent persons accused of crimes. The strategy was to establish this type of program and then use it as a demonstrative model to promote clinical legal education within Cambodia and in neighbouring countries.

By late 2005, a significant number of outreach activities had occurred in nearby countries, including Thailand, Indonesia, Laos, Malaysia, Viet Nam, and Singapore. Potential additional partners and supporters had been identified, and other organizations began to show interest in the development of clinical legal education in select Southeast Asian countries.

All of these activities resulted in the First Southeast Asia Clinical Legal Education Conference held in Phnom Penh, Cambodia, in November 2005. The conference, using the PUC Legal Clinic as a type of model, provided a forum to discuss opportunities and challenges for creating clinical programs at Southeast Asian universities, as well as the role of clinical legal education in promoting access to justice and a culture of pro bono service. Aimed at fostering an environment in which participants could exchange ideas for promoting clinical programs, the conference was attended by more than eighty representatives from universities, the legal community, and Southeast Asian civil society—as well as regional and international experts on clinical education and access to justice. Many who attended came from countries in Southeast Asia interested in establishing clinical programs, while others were already engaged in clinical legal education and were interested in expanding their programs to include both a social justice theme and an accredited course program.

A companion workshop to the Phnom Penh conference—the First Southeast Asia Clinical Legal Education Training of Trainers Workshop—was held at the University of Ateneo in Manila in early 2007. Similar to the first conference in Phnom Penh, the Manila workshop acted as a means of training nascent clinicians, focusing on the development of clinical programs, clinical teaching methods, and administrative skills. The workshop also served as an opportunity to expose the participants to, and develop linkages with, more established clinical programs, further cultivating network contacts among clinicians in the region initiated at the Phnom Penh conference.

Both the Phnom Penh and Manila events seem to have achieved many of their desired objectives, having played a part in the establishment of a number of additional accredited social-justice-oriented clinical course programs. For example: the University of Malaya launched the first accredited clinical program in Malaysia in 2008; in 2009, CMU, after operating a completely volunteer-supported, in-house consultation clinic for fifteen years, approved and implemented a two-section, fully accredited clinical program consisting of both an in-house consultation clinic and a parallel Community Legal Education section; and in 2009 the National University of Laos Faculty of Law and Political Science began working on having its Community Legal Education program approved to be included as one of the selective options for its mandatory student field

studies requirement. The bona fide potential for a significant number of other such programs in Southeast Asia continues.

Relying on lessons learned and models of successful clinic programs and networks, BABSEA CLE is currently active in Thailand, Cambodia, Viet Nam, Laos, Malaysia, the Philippines, Indonesia and Singapore and has established working partnerships with a number of university, governmental and non-governmental as well as community-based organizations throughout the Southeast Asia region. BABSEA CLE is actively working to encourage cooperation between these programs as well as amongst the larger legal community in Southeast Asia.

Operating in so many Southeast Asian countries at the same time is a challenge BABSEA CLE faces with its CLE initiative. However, while acknowledging the existence of this challenge, BABSEA CLE also sees it as a very logical and strategic step in simultaneously working with a variety of partners for a number of reasons.

Firstly, BABSEA CLE's objective is to work with each of these partners to develop pilot CLE programs in each country and use these core CLE programs to then broaden the reach of CLE throughout Southeast Asia. As many of these partner universities are located in different, yet neighboring countries, this greatly assists in the outreach efforts. Each neighboring country has a different type of legal and educational system. Yet with all their differences, each country is ready and able to begin and support CLE programs.

Secondly, each of the CLE programs is somewhat similar in nature and the partners learn from each other, from the beginning, as their CLE programs are being developed. Most of the university partners eventually intend that their programs use a similar two-section clinic model, one focused on in-house legal consultation and referral services and the other section focused on providing community legal education. Due to this similarity in programs, there are many lessons that can be learned from each of the universities that will likely be strongly pertinent. In working closely with each partner, BABSEA CLE is able to apply and share working models and systems, lessons, curriculum, etc., from each of the programs while helping to avoid and not re-apply challenges and obstacles that have arisen in one or more other programs.

As mentioned in brief above, one way in which BABSEA CLE works to achieve the outcomes of social justice through practical education is by ardently promoting and assisting in the implementation of university-based community legal education clinic programs. Originally begun at Georgetown University in Washington D.C. in 1972, CLE programs have been implemented throughout the years by universities around the world. They are also referred to by many schools as "Street Law"⁷ or "Practical Law" programs. These university courses teach students about law, human rights and civics and then teach them how to teach legal rights in the community, in a student-centred, participatory manner. The university students take both their substantive legal knowledge, as well as their acquired pedagogical skills, and transfer this knowledge and these skills

⁷ Street Law is a registered trademark of Street Law Inc a non-profit organization based in the United States (www.streetlaw.org). Both the Georgetown University Street Law Clinic and Street Law Inc., provided significant technical support, advice and materials, in the process of developing these community legal education clinic programs.

to marginalized communities. Through this process, the students learn by doing, as they simultaneously teach and learn from the recipients of their lessons. This carries with it a strong reflective learning approach. We often find that the law students learn much more from their community students, simply by being exposed to individual and community problems and issues that are new to them.

The CLE programs utilize a wide variety of student-centred activities in their teaching methods. In part, these methods include role plays, simulations, mock trials, games, debates, small group discussions, opinion polls, field trips and street theatre.⁸

CLE programs focus on working with people in a practical way, to understand how they can access both the formal and non-formal justice systems, as well as effective, empowering methods to advocate for social justice and change. The CLE programs not only raise awareness of the law and rights of persons in a theoretical manner; the community teachings provide practical information on how to assert these rights and protections, as well as some of the effective mechanisms for doing so. Moreover, the programs encourage persons at grass-roots levels to reflect on their current and future legal, social and economic environments, and provide empowering ways to improve these arenas. All of this is accomplished with an aim of doing so in a practical and simple manner.

The communities which the students go to are exceedingly varied and wide ranged. They have included, in part, prisons, juvenile detention centres, community centres, domestic violence shelters, life skills teaching organizations and lower socio-economic high schools. The communities are located in both urban and rural areas of countries. In many of the countries we work in, the students often go to areas where there is little to no understanding of the law or of people's rights. At the same time, the students frequently involve themselves in non-law-related projects to immerse themselves in the communities and gain a better understanding of the hardships of others.

In university based CLE programs, the targeted communities vary, ranging from those of urban areas, rural areas, government staffs, community organizations, youth organizations, community leaders, correctional houses, religious organizations to high school students.⁹ Other programs focus a significant portion of their teachings on prison and juvenile justice settings,¹⁰ ethnic minority communities¹¹, single mother shelters¹² and drug rehabilitation centers.¹³

The determination of the targeted communities very much depends on demand from, and cooperation with, the communities themselves. For instance, beginning in December 2007 the CLE program at International Islamic University Indonesia, through a program called Legal Service Outreach: Community Empowerment to Achieve Equality of Rights and Improve Access to

⁸ See David McQuoid-Mason, *South Africa Street Law Practical Law for South Africans*, 2nd Edition, Juta Law Co, Ltd. 2004.

⁹ Nandang Sutrisno, Community Legal Education (Street Law) Program at the Faculty of Law Islamic University of Indonesia Nandang Sutrisno (Dec 7-13, 2008) (paper presented at the Global Alliance for Justice Education Conference, Manila, Philippines).

¹⁰ Chiang Mai University, Thailand, University

Malaya, Malaysia, and Pannasastra University of Cambodia.

¹¹ Chiang Mai University and National University of Laos Faculty of Law and Political Science.

¹² Universiti Teknologi Mara, Malaysia.

¹³ National University of Laos Faculty of Law and Political Science, Lao PDR.

Justice, has focused the CLE Program in areas most devastated by the catastrophic earthquake of 2006.¹⁴

As can be expected, many challenges exist when introducing new, and often unheard of, methods of education in trying to get across CLE/social justice ideology.

While faced with these challenges, BABSEA CLE acknowledges the incredible advancement and success in the expansion of CLE in Southeast Asia.

Some of these cooperative CLE successes have included:

- Jointly attended community legal education teachings by both professors and students alike from throughout the Southeast Asia region.
- Organizing more than two dozen thematic CLE regional workshops and conferences since 2005.
- Regional strategic program planning development sessions.
- Continuously working with experienced clinicians and senior students from partnered programs to assist other, more nascent CLE programs to develop.
- Quarterly student and professor CLE exchanges throughout the region.
- Joint research and academic paper development by regional partners.
- Sharing of curriculum, lesson plans, CLE manuals and other resources, between CLE partners, both nationally and regionally.
- Continued enrollment and participation in the BABSEA CLE Annual International Legal Studies Internship Program, which has been attended by students, professors, and other legal educators from countries throughout the region and around the world.

Types of Support BABSEA CLE Provides to CLE Partners

While BABSEA CLE does provide a limited amount of financial support for some of its CLE partners, the mainstay of support is in the area of technical support centered on creating local sustainable programs. This has included:

- Assisting CLE partners in the development of activity planning, budgeting, proposal writing and other necessary program tasks.
- Assisting CLE partners with the development of administration procedures and policies and process for clinics.
- Assisting CLE partners with development of legal clinical curriculum, teaching modules and teaching syllabi (including integration of professional ethics).
- Assisting CLE partners to develop a cadre of trainers, through training of trainers programs, to increase capacity in clinical education methodology and pedagogy.

¹⁴ These have included Kecamatan (Sub-regency) Imogiri, Kabupaten (Regency) Bantul, and Propinsi Daerah Istimewa (Special Province) Yogyakarta.

- Facilitating visiting foreign clinic experts to share/exchange experiences with CLE partner programs.
- Co-organizing, with local CLE partner hosts, and delivering national and regional workshops for CLE partners.
- Organizing study visits and exchanges for professors and students to other regional and international university legal clinics.
- Supporting the establishment of national, regional and international networks between clinics.
- Supporting the establishment of peer-to-peer mentor relationships between existing CLE partners and nascent CLE programs.
- Providing general organizational capacity development and training support to CLE partners.
- Supporting the development of linkages between university clinics and legal stakeholders (lawyers, prosecutors, provincial justice departments) and other organizations which may be providing legal assistance.
- Working with CLE partners to help increase the knowledge of communities of their legal rights and obligations and how to access justice through ongoing community programs delivered by law clinics, including the use of needs assessments, base line studies and post-training evaluation.
- Providing trainings to improve teaching skills and participatory methodologies being implemented by law clinic professors.
- Assisting CLE partners in developing and delivering community advocacy programs.
- Assisting CLE partners to develop fundraising strategies and grant proposals for funding.
- Assisting in supporting dialogues between CLE partners and government/state officials on policy and law reform issues relevant to the operation of law clinics.

Main Commitment Requirements for BABSEA CLE Partner Institutions

In helping universities to establish these type of programs, BABSEA CLE has employed an ideology that the collaborative partnerships must be a two-way process. This has meant placing the following requirements on all of its partners:

- Programs must significantly focus on marginalized and vulnerable communities and individuals and must offer free support.
- Professors, students, lawyers and others involved in the programs should be strongly encouraged to become involved in a voluntary capacity.
- Partners must be open and willing to working collectively with other partners and be fully open to share knowledge, ideas and assist other CLE programs to germinate and develop.

- Partners must offer in-kind support in some form, usually in the form of offices or premises that are used for CLE as well as human resource supervision and administrative materials.
- Partners must have a concrete plan to infuse the CLE program into the core curriculum either as an elective or mandatory subject.

Malaysia and the Expansion of CLE

BABSEA CLE began CLE exploratory visits to Malaysia beginning in 2005. Various contacts with Malaysian universities, the Bar Council, ministry officials, NGO personnel and other key policy decision makers and implementers were achieved. These initial activities resulted in a number of successes early on, with a fervent and current contemporary expansion. Firstly, in 2006 BABSEA CLE helped to organize and facilitate the following three events:

- 1) The First Malaysian CLE Training of Trainers Workshop held at the University Technology Mara (UiTM)
- 2) The First Malaysian Bar Council CLE Supervisor Training Workshop
- 3) The First Malaysian CLE Conference held at International Islamic University

Following these key instrumental events, in 2006 the University Technology Mara¹⁵ appointed BABSEA CLE Director Bruce A. Lasky to the position of Adjunct Professor to assist in the development of a non-simulated CLE program. This resulted in the formal registration of the currently operating Student Community Law Club (SCLC). The setting up of such a club in the University helps to realize one of the missions of the university in regard to community service programs. The members of SCLC, comprised of students from the Faculty of Law, ranges from the first through fifth semester students. These students join the SCLC on a voluntary basis as one of their students' activities of the Faculty. The objectives of SCLC are to provide legal knowledge and awareness to the communities. In adopting these methodologies the SCLC works with communities who often have a minimal knowledge of the law. These sessions therefore greatly benefit them.

In 2007, with the assistance of BABSEA CLE, members of both UiTM and the University of Malaya were taken on a study visit of CLE programs in the Philippines. As a result of this visit, and with positive partnership with BABSEA CLE, the University of Malaya began to develop what has now become a leading CLE program in Malaysia.

Introducing CLE to Malaysian Universities: with particular reference to the University of Malaya

Malaysian law schools strive to have a satisfactory number and selection of courses to cover the essential areas of the law. A common temptation of law schools is the constant search to ensure a sufficient variety of subjects to prepare their students for various vocations. While core subjects

¹⁵ Prior to this time, the UiTM Faculty of Law operated, and continues to operate, a simulated CLE program which is introduced in the final year for students of the LL.B (Hons) Program. It is a

simulation program in which students are required to work in a mock legal firm or clinic, where they are taught the necessary lawyering skills.

are important, one important principle that law schools have come to realize is the necessity of a broad view of legal education in its goal to produce good law graduates. Thus the focus of law schools for an undergraduate program, in addition to substantive law subjects, must be the development of intellectual abilities in understanding, critical thinking, reasoning, analysis and application,¹⁶ and also to inculcate values and social awareness. This is in line with the spirit of the *World Declaration of Higher Education*¹⁷ to educate responsible citizens who can contribute to society. Law students must be inculcated with values and must be made aware of their roles to ensure justice in society as preparation for their future careers, whether as a member of the judiciary, practicing member of the Bar, or as an officer to the government.¹⁸ To inculcate such values, it is a challenge to all law schools, particularly traditional law schools such as the Faculty of Law, University of Malaya, to realize that the focus of law schools now is not only to transmit knowledge, but to improve course materials and methodology to encourage students to evaluate an issue, test a hypothesis and to find solutions.¹⁹

The Faculty of Law, University of Malaya is a professional law school producing graduates with academic and professional qualifications (LL.B Hons).²⁰ Unlike in England, Malaysia has a fused profession.²¹ Established in 1972, the Faculty of Law, University of Malaya then was the pioneer law school in Malaysia. With the aim of producing local lawyers and legal officers, the curriculum emphasized mainly substantive law subjects²² (in both private and public law) as well as procedural law²³ with greater emphasis on the law in Malaysia, such as the Malaysian Legal System and Islamic Law. Much of the curriculum followed the curriculum taught in English law schools, as Malaysia adopts the common law system.²⁴ The structure has been generally maintained and is periodically reviewed to meet the challenging demands of the Malaysian legal profession and industrial needs.

Since its establishment in 1972, clinical education has always been in the faculty's future plans. It was agreed when the faculty was first established that while teaching the letter of the law is an important function of the law school, it is not the only function.²⁵ What is needed beyond the teaching of the law is a system of legal training devised to assist law students to acquire certain skills of thought, social as well as scientific thinking. Law students need to clarify their moral values, social goals, and to orient themselves toward the future. A law student needs to acquire the scientific knowledge and skills necessary to implement objectives within the context of cotemporary trends. It is believed that with a good system in place, the law student will not only become a lawyer for the future but also be a social technician or a social engineer.²⁶

¹⁶ Cheong M. F., *The Role of Curriculum in Malaysian Legal Education*, *Masalah Pendidikan* 2007, Jilid 30(2) p.11.

¹⁷ UNESCO. *Word Declaration on Higher Education the Twenty-First Century: Vision and Action*. (1998).

¹⁸ Rachagan S., *The Role of Lawyers and the Bar Council in Society*. [1995] 2 *MLJ* xxix.

¹⁹ *Ibid* note xvi, p 13.

²⁰ A four year course (8 semesters) combining the academic and certain professional aspects of law. The LL.B degree is recognized as initial qualification for admission to the legal profession. See Ahmed Ibrahim, *The Law Teacher in Malaysia* (1976) *JMCL* 252.

²¹ An LL.B graduate from the University of Malaya

will only need to go through a nine-month pupillage (reading in chambers) period with a legal firm before she/he is called to the Malaysian Bar as an advocate and solicitor.

²² Such as Contract Law, Tort, Constitutional Law Criminal Law, Land Law, Equity and Trust, Law of Association and Jurisprudence. All these courses are still part of the Faculty curriculum.

²³ Such as Evidence, Civil and Criminal Procedure.

²⁴ Malaysia was a British colony until it gained independence in 1957.

²⁵ *Ibid* note xvi.

²⁶ R. Segal, S.R. Bhosale, *Legal Education in India: Restructuring and Reshaping* Indian Bar Review 1999, 37-46. See also Dyutimoy Mukherjee, *Law Schools and Legal Education*, in *inlaw.com*.

With this in mind, in 1998, the faculty proposed to set up a Legal Aid Clinic. The faculty realized the need of external assistance from the Bar Council in running the clinic. This is due to the fact that since the University of Malaya is a public university, an academic staff member as a government servant is not permitted to practise law (represent clients).²⁷ There is also need for special training for academic staff in the management of clinics, and teaching skills. Due to a shortage of academic staff between 1999 and 2004,²⁸ the introduction of the clinic was postponed. It was not until 2005 that the idea of the proposed clinic resurfaced. Academics were sent to The First Southeast Asia Clinical Legal Education Conference at Pannasastra University in Cambodia in 2005, and made two trips to the University of Ateneo, Philippines, first to attend the First Southeast Asia Clinical Legal Education Training of Trainers Workshop and a separate, smaller Malaysian Clinical Legal Education study tour visit soon afterward in 2007. All programs aimed to familiarise participants with the innovative and interactive law teaching methodology used in Clinical Legal Education programs, as well as Street Law methods.²⁹

In 2007, with three trained academics and four students, the clinical legal education program known as the Community Outreach Program (COP) was introduced as a faculty activity. The program is purely a community-based teaching program. A community-based program was agreed rather than a Legal Aid Clinic for the practical reason that this program can be run solely by the faculty. About 30 students were recruited into the program when it first started in 2007. These students went through a three-day training workshop which not only trained them on the clinical legal education and street law methods but also to work as a team.

Setting up such programs requires great planning, dedication and team work. The faculty needs to set up partnerships with institutions for the teaching of the program, if the program is to run continuously in these institutions. Issues and needs of the institutions will have to be identified and agreed upon before community teaching starts. COP started with a focus on juvenile delinquents and partnerships were set up between COP and juvenile institutions, such as the prison, approved schools³⁰ and secondary and primary schools.³¹ COP students were made to research statutory provisions and the law relating to crime and child rights before they started their program with these institutions. In particular, they studied the Child Act 2001,³² the Penal Code,³³ the United Nation Convention on the Rights of the Child and the Prison Act 1995.³⁴ With this in mind, students were able to focus on their involvement with their clients to gain more understanding on issues involving juvenile justice and welfare. Although COP's main focus is on teaching law, this does not mean that COP only teaches juveniles in institutions their rights,

²⁷ An advocate and solicitor must have a license to practice. A government servant is not permitted to be in any other employment.

²⁸ The Law Faculty employs about 38 academic staff with a 100-undergraduate intake a year. This makes the faculty one of the smallest faculties in the university. Between 1999 and 2004, a number of academic staff were sent for further studies.

²⁹ R. Rajeswaran Legal Education in ASEAN in the 21st Century, paper written for the ASEAN General Assembly Workshop.

³⁰ Institutions under the Social Welfare Department Malaysia for juvenile delinquents and those identified as "in moral danger".

³¹ The coordinator of CLE/COP specializes in Juvenile Justice and Welfare and Criminal Law. She is also a consultant with the Social Welfare Services Malaysia, and works closely with the juvenile prison.

³² Act 611, the law relating to children (those under the age of 18 years).

³³ Act 574, the law relating to criminal offences.

³⁴ Act 537, the law relating to prison and prisoners.

responsibilities and the criminal law. They also encourage their clients to continue their studies and pursue their ambitions. COP students become good role models to these juveniles.³⁵

One achievement that COP is very proud of is its involvement in encouraging and assisting ten boys from the juvenile prison to pursue their studies in local universities. COP has been involved with juveniles in prison since 2007. Students are exposed to life in prison and the kinds of offences committed by these juveniles—an experience not many law students can acquire. In consequence, many COP students were encouraged to do their project paper³⁶ on issues involving children, crime and the prison. In the prison, COP students work closely with all types of offenders, including those found guilty of murder. Juveniles found guilty of murder are imprisoned for an indefinite period until they are given clemency by the Yang di Pertuan Agong (King).³⁷ In the case of these juveniles, COP not only exposes them to their rights in prison, but also helps them write letters requesting clemency to the King,³⁸ assists lawyers in their appeals and in the preparation of their mitigations. This is such a valuable experience for students, who sit with each juvenile discussing and finding out information for their mitigation, which is then submitted to the respective lawyers.

One example is the assistance given to the appeal case of *Mohd Haikal & Ors v PP*.³⁹ In this case, eight juveniles were convicted by the High Court of the murder of a fellow student in their school hostel in 2004. Their appeal to the Court of Appeal was rejected in 2009, and in the appeal to the Federal Court, the Federal Court overruled the decision of the Court of Appeal for the conviction of murder. The juveniles have since been released from prison (29 March 2010), and COP is now involved in assisting them in their rehabilitation and their university studies.

COP is also involved with schools, educating children on issues of crime, bullying and problems of children and the Internet. Currently, with the university's involvement in internationalization,⁴⁰ i.e. accepting exchange students from institutions with a Memorandum of Understanding, COP has taken part in training exchange students whether in their country, or in the University of Malaya. Currently, COP, with the assistance of BABSEA CLE, is training students from the Law Faculty, Prince of Songkla University, Thailand, and Faculty of Law, University of Pancasila, Indonesia. It is hoped that when students from the University of Malaya start their exchange program to these two universities, their COP/CLE programs will be underway, and Malaya students can join them in CLE activities in those countries.

With the success of COP, in 2008, the faculty introduced CLE as an accredited optional course for 2nd and 3rd year students. In introducing the course, a number of factors had to be taken into consideration. Firstly, as part of a faculty course, CLE has to be structured to comply with the LL.B program objectives. When the faculty was first introduced, it was autonomous and enjoyed the privilege of having its own law programs and curriculum, but since 2008, all programs must comply with the Malaysia Qualifying Framework (MQF) set out by the Malaysian Qualifying

³⁵ In Malaysia, 'juvenile' includes a child. Child is defined as someone under the age of 18 years, and in criminal proceedings, over 10 and under 18 years old. See s.2 Child Act 2001 (Act 611). Juveniles in prison are between 14 and 22 years old. In approved schools, they are under 18.

³⁶ A compulsory short thesis for 3rd year students.

³⁷ Section 302 Penal Code (Act 574) provides a

mandatory death penalty for the offence of murder. But section 97 Child Act 2001 (Act 611) provides that a child cannot be sentenced to death, in lieu, they are sent to prison 'at the pleasure of the ruler'.

³⁸ Case involving *PP v KK* [2007] 6 CLJ367.

³⁹ See court of Court of Appeal decision [2009] 1 LNS 292.

⁴⁰ See International students, www.edu.um.my

Agency (MQA) which accredits university programs in Malaysia. Programs in universities must also comply with the Ministry of Higher Education guidelines which underline government policies. With this in mind, CLE was introduced with the main objective to develop better-trained and more socially conscious lawyers. This is in line with three of the faculty's program objectives⁴¹ namely: (i) to demonstrate social skills and responsibility towards society and the legal program; (ii) to communicate in both local and English language as well as lead and work as a team; and (iii) to solve legal problems by applying relevant laws critically. Secondly, while an optional paper is usually taught by one member of academic staff, for the CLE course, at least three academic staff are needed to teach and assess students. For a faculty with limited academic staff⁴², a number of compromises needed to be made to convince the administration of the need for the course. Academic staff taking charge of the CLE course need to put in extra hours of teaching and assessment on top of their normal teaching hours. Due to the shortage of academic staff, there is a need for new appointments. To be appointed as a member of academic staff of the university, a person must acquire a Ph.D⁴³ or a Masters degree equivalent to a Ph.D. Due to the strict criteria for appointment, the faculty had to outsource and appoint part-timers and visiting academics. This is where BABSEA CLE was able to assist by sending part-time lecturers and visiting academics.

The CLE is a three-credit course and is based on a continuous assessment. The course is purely community based. Part of the course concentrates on the development of lesson plans, knowledge and skill. Students are assessed on their; (i) teaching performance, which includes teaching methodology, legal research and lesson content, lesson plan and creativity; (ii) clinical participation, which includes in-class participation, demonstration teaching and individual supervision; (iii) administration responsibility and their reflective journals. The course has a limit of 15 students. The course has run for two years since it was introduced, and although appointments of new academic staff are very slow, on the positive side, graduates of the faculty have come back to assist in the program this year. The program has also welcomed juveniles who were once clients, now released from prison and members and facilitators of COP University of Malaya.

Conclusion

Despite the many challenges it faces, CLE continues to move forward in Southeast Asia and Malaysia and is gaining greater acceptance.⁴⁴ The current developmental approach is a slow and sustained engagement between national and regional partners to develop networks of programs that can learn from both each other's successes and set-backs. All of the Southeast Asian clinical programs require further support—not simply financial, but, more significantly, technical and institutional—if they are to mature into fully accredited programs that are valued by university faculty, students, and community members alike.⁴⁵

⁴¹ The Faculty of Law has 8 program objectives. See www.um.edu.my

⁴² The Law Faculty has an intake of 100 undergraduates for one academic year with about 30 active academic staff. Intake for post-graduates is unlimited.

⁴³ See recruitment, www.um.edu.my

⁴⁴ Bruce A. Lasky and M. R. K. Prasad, *The Clinical Movement in Southeast Asia and India, A Comparative Perspective and Lessons to be Learned*, p. 44 of *The Global Clinical Movement Educating Lawyers for Social Justice*, Oxford University Press (2011).

⁴⁵ *Ibid* note xxxiv

As clinical education progresses in Southeast Asia, the clinical movement will undoubtedly look to other countries' experiences for lessons and examples. Other nations, especially those from civil codes countries can all provide the Southeast Asian clinical movement with examples of how best to proceed with developing such an important part of formal legal education.

‘Bridging the Academic/Vocational Divide: the Creation of a Law Clinic in an Academic Law School’

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Legal Advice Centre

In January 2009 I joined the Law School at the University of Hull. My main responsibility has been the establishment and development of a public serving Law Clinic providing free, confidential and independent legal advice to the local community. Clinic became operational from January 2010 and will be offered as an assessed module as part of the LLB degree, from September 2010.

Hull is a traditional ‘red brick’ University. It has a highly rated research profile in such areas as International Law, European Public Law, Commercial Law, Maritime Law, and Restorative Justice. It possesses an enviable reputation in the sphere of socio-legal, and politico - legal issues.

It does not have a tradition of professional legal education, and as such is still relatively unusual in deciding to establish a Law Clinic. The purpose of this paper is to discuss the academic context of the new clinic, its social importance to the wider Hull community, and how this relates to its aims and its relationship with the Law School.

The advantages to the Law School which are presented by the Clinic project are clear. Students are able to apply knowledge gained on the law programme, to practical situations. It enables the development of research and drafting skills. There is contact with real people involved with real cases. The students have front line responsibilities for a live client, this inevitably means that students will gain experience of ethical issues, such as; professional conduct, confidentiality and conflicts of interest.

Law Clinic has undoubtedly raised the profile of the University and the Law School within the City of Hull and the wider area. It meets the University’s commitment to community engagement. It makes the University part of the community in a very real sense. The public benefit takes the form of the advice and assistance given to disadvantaged groups in society. It facilitates

empowerment on the basis that the better informed people are, then the better able they are to manage their own affairs. This is in line with the Government cohesion agenda and its policies to promote social inclusion.

Our activities should be seen against the background of changes to the provision of free legal advice in Hull which took place in 2008. The ending of local authority funding, £700,000, to the CAB(Citizens Advice Bureau) was contentious. A CLAC(Community Legal Advice Centre) came into operation in October 2008. It functions as part of a tri-partite arrangement between the Council, A4E(Action for Employment, a social enterprise organisation) and Howells Solicitors from Sheffield. By the end of this year a CLAN, (Community Legal Advice Network) will be up and running in the East Riding of Yorkshire (ERYC) council area. The CLAN will also provide One Stop generalist help, with specialist issues referred to legal aid franchise solicitors.

The location of the CLAC in the centre of Hull means that bus fares have been identified as an issue for some people. The CLAC, and the CLAN, will inevitably be target driven which is obviously not a priority with the service which the Law School provides. Advice at the CLAC is time limited and a number of opinion leaders identified a lack of generalist advice as a problem. The specialist legal advice offered is that which is available through an ordinary legal aid franchisee. It has been suggested that the intention is to deliver the CLAC through Council Customer Care Centres. This could potentially compromise the independent character of the CLAC in that the Council could be the source of some of the complaints. There does appear to be a gap in provision which was previously met by the now closed, Humberside Law Centre.

The developments however presented Clinic with a number of opportunities. CAB is a strong brand name, and was keen to work as one of our partners, in the referral of their clients to Clinic. Similarly both CLAC and CLAN are useful in that we have tentatively explored the possibility of them providing work based placements as part of our curriculum. This is something that can be further pursued with the Legal Services departments of both Hull, and ERYC. Alignment with CLAC/CLAN could enable marketing as part of wider advice services in the Hull area. Our hope is to be seen as established advice providers. Ongoing discussions take place with both the CLAC and the CAB about a collaborative approach.

The Clinic gives students the opportunity to develop transferable skills. It provides for an integrated approach to study, combining formal knowledge with the experience of practice. Students will be able to utilise legal knowledge and disseminate this in a practical situation. The learning process is largely experiential. It will marry the theory and the legal rules which have been learned, with the development of interpersonal skills. It will seek to improve students' capabilities.

The Law is a social function and its practice is a social practice. It has got to be seen in its social and economic context. Places of legal education cannot be isolated from the practical world of work and life. Nor can law students. They have to be connected closely to the real world. Law students may well be exposed to a variety of issues that impinge disproportionately on poorer members of society, such as poor housing, benefit dependency and socio-economic disparities. These may well be pronounced given the widening gap between rich and poor as well as the array of social problems which beset society.

Students will learn how the law operates and how it can solve problems. They will learn how to relate to clients, how to listen and extract legally relevant information. They will be given the opportunity to translate their complex knowledge into advice which is simple and understandable.

They will have the chance to gain a deeper understanding of their community and the kind of problems or issues which are important to people with whom they may not ordinarily come into contact. Not only will they learn the importance of basic practical skills such as recording and storing information. They will be able to reap the rewards of voluntary work and the satisfaction of giving something back to their community. At a higher level the students are involved in a process of participation and democracy.

Other requirements will prepare the students for the world of work in any setting. The need for punctuality, for appropriate dress, for observation of rules about confidentiality, discretion and politeness. Collaborative work based learning enhances employability.

One of the aims of legal education should be the laudable one of helping to create a 'better society' (Johnstone 1999). It is probably not going too far to say that there is a 'moral dimension' to disseminating an understanding of law and its functions to a wider social audience (Economides 1998).

The Social benefits are that Clinic makes legal advice accessible to those to whom it might not otherwise be available, often due to lack of means. These could include the following groups:

The unemployed and people on low incomes

People with long term illness or disability

Young people, including those leaving care

Older people

Gypsy/ traveller communities and migrant workers

People with problems relating to accommodation (including those in temporary accommodation)

Victims of violence, including domestic violence

Single parents

Hull undoubtedly suffers above average levels of urban deprivation. In 2008 it saw the highest increase of any UK city in the number of people claiming Jobseekers' Allowance.

A Centre for Cities report in January 2009, identified long term problems of high employment and large numbers of people with no qualifications. Hull has been revealed to be the British city with the highest rate of youth unemployment, with 9.85% of under 25s claiming jobless benefits in May 2009. One other striking statistic is that 34% of Hull's workforce actually lives in the neighbouring East Riding of Yorkshire local authority area.

In addition to providing a service for clients, the Law Clinic has a number of other social objectives. In addition to informing people of their rights and providing an opportunity to resolve legal disputes, it may be able to prevent legal problems from arising by identifying and addressing issues that repeatedly cause problems for clients. Clinic also provides a referral process ensuring wherever possible that clients receive necessary advice from whatever sector that might be. In a society which has become significantly less socialised, it is not too lofty a social ambition for the establishment of a Law Clinic to be seen as partly about the engendering of a spirit of Civic Virtue.

Our Approach

Areas of advice

After taking up my post early in January I had meetings with various local representatives, MPs, prospective MPs, councillors of all parties, CAB, officers of the CLAC and the CLAN, Hull Civic Society, the Head Civic Engagement at Hull City Council, and community leaders in various parts of Hull.

In seeking to determine areas of law where we should offer advice, and trying to identify gaps in existing provision, certain topics perhaps not surprisingly recurred;

Welfare Benefits

Re-Possessions

Landlord and Tenant

Redundancy

Debt Management

These areas are roughly in line with the LSC Social Welfare categories;

Debt, Employment, Housing, Welfare Benefits, Community Care

We discounted the possibility of dealing with Family cases which can be difficult and emotional, and because often the outcome of such cases can lead to recriminations. Likewise we decided not to offer immigration advice, in the short term at least. Notwithstanding we are able to refer such cases where Clinic is unable to deliver advice in a category of law, to other legal advice providers or appropriate practitioners. Where there is a problem of a non legal nature, information is given to a client on the best place to go to resolve their issue (signposting).

There needs to be an overlap between the service which we provide and areas of staff expertise. In other words we play to our strengths. We are fortunate to have expertise in areas such as Consumer, Housing, Mortgages and Employment.

Type of Service

Types of service can be broken down into 3 main activities, Advice, Casework, Representation. We do not intend to offer representation, at least not in the short term. We do not want to bite off more than we can chew. The standard of service is essential. Quality must be good. We should start small, develop an expertise and gain a reputation for providing a reliable service for free, confidential, independent legal advice; before considering expansion into other areas of law or greater levels of service. We should aim to provide advice in the following areas;

Welfare Benefits, Housing (Landlord and Tenant, Re-possession), Consumer, Employment, Generalist Civil.

The general level advice that will be provided will include:

1. Provision of information and initial advice
2. Provision of options available to the client

3. Identification of further action the client can take
4. Assistance filling in forms eg. Council Tax benefit, Job Seekers Allowance
5. Helping to draft letters
6. Making enquiries on behalf of client eg. with the Benefits Agency

There was considerable support for this venture from the Faculty and the Law School, particularly from the Head of School. We have been well served by being fortunate enough to have the assistance of a part time member of staff who has extensive contacts within the Hull legal community. His knowledge and first hand experience has been invaluable, in gaining access to the local profession and establishing communication links which have proved useful.

We have recruited a member of the local Bar to our advisory panel, along with local solicitors. A prominent local firm of solicitors has participated in terms of student training and supervision on a Pro Bono basis. We have been offered a reciprocal arrangement with a firm of solicitors, which has proposed a possible referral fee for taking cases to them.

Our overall strategy was to inform the likely interested parties of what we were about, what we intended to achieve and to explain how we wanted to work in partnership and collaboration with other like minded individuals and bodies.

Training

I met twice with Prof. Richard Grimes, a rightly respected expert in the area of CLE, which I found highly instructive. He provided training sessions for staff and students. Participating students underwent extensive training. We worked closely with the College of Law at York, which ran taster sessions on Legal Advice Clinics for us.

Location

We confined our activities to the City of Hull at least in the first instance. In addition to holding Advice Clinics on campus, on a regular basis, we intend to provide Clinic on an outreach basis at various locations in the community. These will be run at community centres which serve large housing estates. It has been suggested that we 'piggy back' Clinic on to other ongoing activities, for example running Clinics at Sure Start bases.

Health and Safety

Meetings were held with the University's Health and Safety Officer to prepare a risk assessment in terms of staff and student involvement both on campus and for outreach work.

Insurance

Enquiries with the University Insurance Officer identified no problems. Clinic activity is covered as part of the curricular education provided in our role as a higher education institution.

Resource Requirements

The following space provision was allocated:

Waiting Area

Interview Room

Student Base/ Admin Office

Other Costs

Computers

Telephone

Practitioner Texts eg. Welfare Benefits Law, Housing Law

Guides from Legal Action Group, Shelter

Organisation

24 students organised in 'firms' of 6

Fitting in to the Formal Curriculum

Clinic to be incorporated as a long, thin elective module in Year 3, starting October 2010. Before that we plan to have a pilot scheme which is extra curricular but which ran for 4 months as a dress rehearsal.

Selection Procedure

The module was over subscribed.

At some universities an essay is required from each prospective participant. At others only those students who list the module as their first choice, are first considered for the module. Priority was given to students who demonstrated a commitment by participation on a voluntary basis and who took part in training sessions. We also looked at participation in the various competitions, eg. Mooting, Negotiation etc.

Assessment

1. By way of Reflective Log and Project Review of a student's experiences whilst taking the module. This will be based on contributions evidenced by the student file, attendance and participation in 'Firm' meetings. 50% of marks.
2. Case study including a critical analysis of legal issues raised by the particular case. 50% of marks.

Publicity

One of the challenges of a new initiative in a large organization like a university is ensuring public and institutional awareness of the service while not inappropriately raising expectations. We managed to produce some of our own marketing material but also relied on a range of free publicity which was available due to the level of interest in a new pro bono legal service. The outlets we used eventually included:

'Hull Daily Mail', the leading regional newspaper

Weekly Advertisers, local free papers

BBC Radio Humberside, the local radio station

BBC 'Look North', regional news programme

Posters

Flyers

Other Activities

We have a successful Street Law project which has seen student groups visiting schools and HMP Hull to do presentations. The prison recently opened a family centre where a number of different organizations operate, eg PCT, Alcohol Awareness etc. The family centre is keen for LAC to become part of the services which they offer.

It is still the intention that once LAC is firmly established as an on campus provision, that progress is made to deliver the advice function on an outreach basis.

Key Characteristics of the Law School Advice Clinic

The Clinic was established for sound educational reasons but the process of development has thrown up some key service issues which are starting to shape the nature of the clinic and how it may develop in the future.

1. Quality of service to be provided: staff expertise, supplemented by support of other stakeholders; other advice providers, partner law firms.
2. Accessibility, in particular with hard to reach groups
3. Impartiality in terms of not being part of the local authority or being in receipt of financial support from a government department; being strictly independent.

To conclude, the establishment of a Law Clinic will fulfil two key objectives. Not only is it socially desirable that all members of society have access to justice but Clinic will provide an opportunity for students to think about the practical aspects of the provision of legal services to those who cannot pay for them. It will allow practical knowledge in social perspectives and therefore enhance academic understanding. Active practical work will have the benefit of making students into better academics.

What Happened in Practice ?

Who Needs Jack Straw Anyway

Despite our best efforts to have the then Justice Secretary / Lord Chancellor perform the official opening of the Legal Advice Centre, it was not possible for him to attend. However, we were fortunate in that one of our local MP's was also a prominent member of the Cabinet, and was able to be present.

The Legal Advice Centre was officially launched on Friday 19th Feb by the Home Secretary, Rt. Hon. Alan Johnson MP, in the presence of the Lord Mayor and the Vice Chancellor. By common consensus the event was a resounding success, attended by a large number of representatives of the various statutory and voluntary agencies in Hull. The Chief Crown Prosecutor, representatives of the Probation Service, HMP Hull and both Hull City Council and the East Riding of Yorkshire Council were there. The CAB and Martin Curtis from Law Works were also present. Members of the local legal profession, many with links to the Law School, were also represented. Much positive publicity both for the Legal Advice Centre and the Law School in general, was generated.

The Centre opened for business on Wednesday 24th Feb. We dealt with 11 cases in that first afternoon, it was a busy first session but a successful one. The students who dealt with a wide variety of types of case responded well and conducted themselves in a professional way. The Centre was certainly a hive of activity.

The Pilot

Extensive training was provided for students, on a compulsory basis, for those participating in the Legal Advice Centre. Sessions were provided by members of the Law School staff dealing with areas of specialism e.g. mortgages, landlord and tenant, and consumer. The CAB provided training on debt and the local council about welfare benefits. Local practitioners, in this case Hull graduates, ran sessions on Client Care. A full day session was facilitated by Prof. Richard Grimes.

24 students have been involved in the LAC, divided into 'firms' of 6. I have fulfilled the role of supervising solicitor, ably assisted by a part-time member of staff who is a well known Hull solicitor. We have also been served by one of our Post Graduate students, who has a number of years PQE as a solicitor. Furthermore 2 other students worked as volunteers.

The students response has so far been excellent, with commendable levels of enthusiasm (which sometimes has had to be curbed a little), and commitment. The feedback from service users has also been favourable.

Since the Legal Advice Centre opened to the public it has dealt with over 70 cases. These have involved a wide range of legal issues about which we were asked to advise. Under the Social Welfare categories used by the Legal Services Commission the numbers in respect of the various categories are as follows:

- Debt – 3 cases
- Housing – 19 cases
- Welfare Benefits – 2 cases

- Employment – 5 cases
- Community Care – 1 case

Other cases not covered by the LSC classifications include:

- Consumers – 15 cases
- Family & Matrimonial (including CSA) – 17 Cases
- Criminal – 2 cases
- Personal Injury – 7 cases
- Environmental – 1 case
- Immigration – 1 case
- Disability Discrimination – 2 cases

The Module

We have obtained approval to run Clinic as a module from September 2010, with a first cohort of 24, final year students. Assessment will be based on student attendance and participation, the maintenance of a learning log/journal, and the submission at the end of the module of a written piece of work in the form of the case study of a legal issue encountered whilst participating in the LAC. Training in anticipation of the module has been organised, supplemented by sessions from the local Trading Standards Dept. and from a Welfare Rights practitioner specialising in CSA cases.

Lessons Learned

1. We operated an appointment system but also had a drop in facility. This proved difficult to manage and at times we were somewhat overstretched, given the number of clients with which we had to deal. It has been decided to restrict our service to appointment only, so as to be better able to both plan ahead and manage demand.
2. The value of using local media was shown by the positive effect of the coverage which we received about the opening of the LAC. Pieces were done for local commercial radio stations and an on air interview for BBC Radio Humberside's afternoon drive-time programme, on the day of the opening. LAC was also featured on BBC tv 'Look North'. The 'Hull Daily Mail' was also a useful outlet. In addition to coverage of the official opening, a follow up feature 'Behind the Headlines' stimulated interest and generated more LAC clients.
3. The LAC has succeeded in developing mutually advantageous relationships with existing advice providers in Hull and the surrounding area. The CAB as well as being the main provider of advice services in Hull, has been awarded the contract to run the Community Legal Advice Network (CLAN) in the Beverley based, East Riding Council area. Both the CAB and Hull's Community Legal Advice Centre (CLAC) have assisted with the training of students in preparation for the commencement of LAC operations. The CLAC have offered the use of an office at their headquarters in Hull City Centre for use by our students as part of any future outreach work we may undertake. Likewise HMP Hull have offered accommodation at their recently opened Family Centre for advice surgeries to be run. These opportunities, together with similar requests for clinics to be run at various community centres, may allow for expansion of our activities in the future.

4. The CLAC is to make their staff training sessions available to our students. We already have access to their Benefit Hotline in terms of obtaining information for benefit claimants in need of urgent help. The LAC has become a partner organisation of the DWP sponsored Financial Inclusion Initiative, which has the objective of promoting the use of Credit Unions. We have also joined the Humberside Civil Justice Forum which is headed by Hull's designated Civil Justice Judge. This multi agency, cross disciplinary partnership approach recently enabled the Law School to place one of our students, a participant in the LAC; on an HEFC funded internship scheme, with the Legal Services Dept at Hull City Council. The LAC has made a good start, so far so good. We intend to build slowly but surely to become a recognised part of the undergraduate education, as well as making local impact.

Post Script

Hull University Legal Advice Centre has been shortlisted in the annual LawWorks Attorney Generals Pro bono Awards 2011 for best contribution by a law school.

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