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Articles

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Contributors' guide

Criteria for acceptance of a refereed article

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

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

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

Criteria for acceptance of an article for the Clinical Practice section

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

Form of manuscript

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Contents

Page

Foreword

Two recent publications:

Clinical legal education has a long history of self-examination, perhaps driven by the initial (and in many cases, continuing) scepticism of the "regular" academy. The danger with such self-examination is that while it drives the development of "clinic" as a teaching methodology, it can obscure the potential role for clinic as a significant element of the Law curriculum. I hope readers won't mind therefore if I draw their attention to two recent publications which examine that curriculum and ask how Law as a subject can be more effectively taught, so as to prepare students for ethical professional practice. Both books emanate from the United States of America – and there could therefore be a slight tendency for an international audience to discount their value, given the unique American legal education context. In my view, however, both books are models of wider thinking about how we can all, as legal educators, help our students to realise their individual potential, while entering in practice as effective professionals, serving clients and communities.

Roy Stuckey's long-awaited work, *Best Practices for Legal Education: a vision and a road map*[1], is an invaluable analysis of what constitutes best practice in law schools. The book is a model of clarity – setting out key principles for legal education, and then supporting each principle with copious reference to the relevant literature. The book thus serves not only as a "vision and a road map", but as a form of ultimate literature review of the various writings about different aspects of the provision of legal education.

Also out is the Carnegie Foundation's most recent review of legal education, *Educating Lawyers: Preparation for the Profession of Law*[2]. A very different type of work to Stuckey's analysis of best practices, the book identifies both the strengths and weaknesses of the dominant Socratic, case-method of teaching in US law schools, and argues for a bolder and more integrated approach to legal education – one that seeks to avoid some of the simplification and moral unconcern of the traditional discourse.

Both books should bring of enormous interest to clinicians in all jurisdictions. Both see clinic and experiential learning as being at the heart of legal education. Stuckey's chapter on experiential courses is a superb resource for clinicians, helping us to review the way in which we use experiential learning. The Carnegie authors look to clinic to help make good some of the deficits that exist in the law school classroom experience – and their recommendations for integrated teaching across an integrated academic and professional faculty will provide support for clinicians everywhere in seeking to establish clinic at the heart of the process of learning law.

In this edition

This final edition of the Journal for 2006 brings together three very different articles, which address the varying fields of clinical assessment practices, collaborative (cross-disciplinary) clinic, and virtual clinic – the planned provision of work-based learning through virtual learning environments.

1 *(2007) Clinical Legal Education Association, USA. Available for download from: http://www.cleaweb.org/documents/Best_Practices_For_Legal_Education_7_x_10_pg_10_pt.pdf*

2 *(2007), Sullivan and others. Published in the US by Jossey-Bass. For a summary of the recommendations and findings see: http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers_summary.pdf*

In the first of the articles, Ross Hyams draws on the Australian clinical experience to address the issue of whether American assessment practices are readily transferable to other jurisdictions. The article should, in my view, be seen as a companion piece to Roy Stuckey's article in the Summer 2006 edition of the Journal (*Can we assess what we purport to teach in clinical law courses?*). Hyams argues that the clinical assessment process cannot be seen as some form of normative measure based on objective standards, but instead should be seen as the assessment of the individual's own personal development. Particularly valuably Hyams addresses the real issues in attempting to assess reflective journals, an assessment vehicle which is widely used in clinical programmes. Hyams sees the issue of assessment within clinic as inextricably linked to the process of providing feedback – but argues that the pedagogy on clinical assessment in this field remains comparatively undeveloped.

Alan Lerner and Erin Talati provide a fascinating account of the development of a cross-disciplinary clinical model, bringing together lawyers, doctors and social workers. The article carefully tracks the arguments for interdisciplinary education – and is frank about the challenges involved. The authors identify the historic reluctance of legal educators to engage in cross-disciplinary collaborative ventures – but readers who look at the case study in the Appendix to the article will see immediately the huge value in such an approach, and the enormous opportunity for wider learning that is provided.

In a very different context, Melinda Shirley and her colleagues at Queensland University of Technology look at the challenges in providing work-based learning for students, and at the potential for the use of e-learning methodologies in this area. The article not only challenges some of our conceptions about how work-based learning can be utilised but addresses the issue of whether, as generations change, student abilities to work within virtual learning environments will present opportunities for experiential learning generally.

Finally, in this edition of the journal, I am delighted to include in the Clinical Practice section a short article from Maxim Tomoszek and his colleagues in the Law Faculty of Palacky University at Olomouc, in the Czech Republic. Based on a presentation at the Learning in Law conference at the United Kingdom Centre for Legal Education at Warwick University in January of this year, the article looks at some of the particular challenges in running clinical programmes in the civil law jurisidiction of the Czech Republic, and interestingly concludes that the cultural expectations as to education are more of an issue for new clinics than are the differences between civil law and common law jurisdictions.

Summer 2007 conference

This edition of the Journal goes to press (late – mea culpa) shortly before this summer's IJCLE conference, which is being held in collaboration with AULAI, in Johannesburg. It has been heartening to see the sheer number of papers submitted for the conference, and the huge range of jurisdictions that are now represented. I look forward very much to presenting at least some of these papers in the next edition of the Journal.

"Student assessment in the clinical environment – what can we learn from the US experience?"

*Ross Hyams**

INTRODUCTION

Clinical legal education has a relatively short history in Australia of some thirty years. By contrast, the US has a much longer and diverse history of clinical pedagogy and has been successfully teaching and assessing students in University legal clinics for over half a century. Traditional law school teaching methodology relies heavily on the Langdellian style of lectures, tutorials and then a form of summative evaluation. Clinical pedagogy is a radical departure from this style and as such assessment of clinical students necessitates a different approach. Clinicians have a duty to offer assessment regimes which complement the clinical technique of law teaching.

This paper proceeds from the fundamental premise that there is a distinct purpose in assessing clinical students. As clinic is often only offered in the latter years of a law degree, it is the culmination of a student's law school experience and thus seen by many students as the "testing ground" as to whether they can actually be a lawyer and what sort of lawyer they might be. The underlying objective of assessment in a clinical environment is to measure the development and progress of individual legal skills in each student enrolled in the clinic. This is not a normative measure and thus clinical assessment cannot be based upon objective standards. In this author's view, assessment in clinic is about the development of legal, personal and ethical skills which is distinctive to the individual student – progressing students in their own personal development track.

This paper investigates the issue of student assessment in the clinical environment and provides a comparative analysis of the US and Australian clinical assessment experience and the different assessment regimes currently being utilized in the clinical environment. It investigates whether the "younger" clinical programs in Australia can learn from the US experience. It considers what, if anything, might be adapted from that jurisdiction that would be relevant and appropriate for the Australian clinical environment.

A recent front page of The Australian, a nation-wide newspaper, states in a banner headline "Graduates 'lacking job skills'".[1] The article claims that the Business Council of Australia (BCA) has accused Australian Universities

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1 *"The Australian", 13 March 2006 at 1.*

of producing graduates without adequate problem-solving skills; that graduates have skills better suited to academic pursuits and that they lack creativity and oral communication skills. This, the BCA contends, is choking creativity and limiting Australia's competitiveness in the global market.[2] This phenomenon is exceptionally pertinent to Australian law schools and produces a knowing nod of agreement amongst legal clinicians who react with a resounding chorus of "I told you so!" directed at their faculty colleagues.

Arguably, though, the focus in Australian law schools has changed over the past two decades. Whereas, in the past, it was important to develop a body of knowledge of law, process and facts, we have now accepted that knowledge is useless without accompanying skills. Now, we expect law student to master a wide range of skills, including:

- Comprehension of a body of legal knowledge
- The ability to order that knowledge coherently
- Generic academic skills, such as reading for understanding
- Specific legal skills, such as negotiating, advocacy and client interviewing
- Professional, ethical and social skills
- Writing and communication skills
- Characteristics needed for lifelong learning – the ability to be self-motivated in learning, to recognise deficiencies in knowledge and/or skills and to be reflective and self aware of abilities and deficiencies.

This is not meant to be an exhaustive list, but simply indicative of our expectations on students. More specifically, our expectation by the end of the law degree is that students will be able to perform the following operations in their professional lives:

- Know the law,
- Be able to *comprehend it*
- Apply it to particular facts
- Break it down to its component parts
- Reorganise it and apply it for the client's interests
- Evaluate the strength of its authority and its possible impact upon clients

In my view, this is a large expectation, because our teaching methodologies do not go a long way in assisting this process – with the one major exception being clinic.

WHY IS CLINIC DIFFERENT?

What our graduates lack

In his article, "*Clinic in the classroom: A step toward Cooperation*", Elliot Burg, Associate Professor of Law at Vermont Law School, complains that:

> *"The vast majority of students I have supervised over the years have come to their clinical work with only the barest understanding of what lawyering entails, little inclination towards self –reflection, limited client-centred skills and a tendency to be overwhelmed by facts".*[3]

2 *Id.*

3 *Burg E, 'Clinic in the classroom: A step toward Cooperation' (1987) 37 Journal of Legal Education 232 at 248.*

Given that clinic usually occurs in the latter years of a law degree, this is particularly unflattering to both our students and our pedagogy. The Australian reality appears to be that students come to clinic with a very small bag of useful equipment for practice – if they have any practice implements at all. Traditional law teaching does little to equip them to "jump the chasm" between law and fact. They cannot understand why, in their clinical work, the law always appears reasonably clear and consistent, but the facts as presented to them by clients are a mishmash of events, recollections, half-truths and opinion all presented without chronology or, often, much coherence. Nothing they have learned in law school has equipped them to be fact-gatherers and to sort through this mass of information. Often they cannot even begin to conceive where information provided by a client fits into the knowledge they have acquired during their law studies.

Clinicians find themselves having to use a funnel approach – *"What unit of law that you have studied do you think this client's problem falls into?"* If a successful response is elicited, the clinician moves onto *"What part or topic in the unit do you think covers this problem?"* until, at least, the area of law is identified after much struggle and the problem solving can commence. However this is often an artificial exercise, as the client's problem may span a number of law subjects – a family law problem may stretch across criminal law (family violence), wills, property law, bankruptcy, taxation, alternative dispute resolution and other units of law study.

Action and reflection

Clinic, however, provides students with these necessary practice tools, but this is not the limit of the clinical method. It is so much more than this. Long ago, clinical teachers threw off the academically elitist accusations that they were teaching "Introduction to Form Filling". Clinic provides an excellent opportunity to offer the dual processes of action and reflection. "Action" in legal clinic in Australia does not mean just putting an uninitiated student into a room with a client and hoping for a good result. Our clinics are gradually becoming increasingly sophisticated and are supported by methodical, comprehensive and pedagogically sound skills-based teaching. As Nina Tarr, Associate Professor of Law and Clinical Director of Washburn School of Law, writing of the US clinical scene states:

> *"Skills training has developed far beyond the early days when students were thrown into situations and expected to learn by survival. Supervisors in most settings articulate expectations, theories, techniques, etc that they expect the students to incorporate".*[4]

In their seminal work *Organizational Psychology: An Experiential Approach to Organizational Psychology*,[5] David Kolb and Roger Fry set out their now celebrated learning hypothesis based on four stages of learning. This theory suggests that there are four stages which follow from each other: Concrete Experience is followed by reflection on that experience on a personal basis. This may then be followed by the derivation of general rules describing the experience, or the application of known theories to it (Abstract Conceptualisation), and hence to the construction of ways of modifying the next occurrence of the experience (Active Experimentation), leading in turn to the next concrete experience. All this may happen in a flash, or over days, weeks or months, depending on the topic, and there may be a "wheels within wheels" process at the same time.

Clinic is a wonderful environment for Kolb and Fry's learning theory to really be put to the test. Students

4 *Tarr N, 'The Skill of Evaluation as an Explicit Goal of Clinical Training' (1989–1990) 21 Pacific Law Journal 967 at 980 (quoting Barnhizer 'The Clinical Method of Legal Instruction: Its Theory and Implementation' (1979–80) 30 Journal of Legal Education 67 at 70.*

5 *Kolb D A and Fry R, 'Toward an applied theory of experiential learning', in C. Cooper (ed.) Theories of Group Process, (1975) London: John Wiley.*

have an opportunity, on a daily basis, to experience, reflect, conceptualise and experiment (within the boundaries set by their clinical supervisors). This "hands-on" approach provides direct transfer of knowledge from the immediate problem being faced by the client and the clinical student, to the next client that presents with a like problem.

Curiosity and Informal Learning Opportunities

Besides the urgent "need to know" factor, clinic encourages curiosity by its many processes and the informal discussions which occur between students and supervisors. It is much harder to engender this sort of curiosity in traditional law teaching with large lecture groups and the very public way in which questions must be asked and responded to by the lecturer. Curiosity and creativity are linked[6] and producing creative lawyers is a worthy objective of any law school. Clinic provides an intimate setting for students to ask an endless variety of what they might consider to be ignorant or obtuse questions. Provided that an atmosphere of learning is engendered within the clinic, students have the security to know that no question is ever deemed "stupid" and will be patiently answered by the clinical supervisor to the best of his/her ability.

Further, there are a great many opportunities in clinic for learning to take place outside of the formal student/teacher transactions[7] – for example, in informal discussions over lunch at the end of a client intake session or driving to or from court. It is in these situations that students feel relaxed and, it is hoped, secure enough in their relationship with their clinic supervisor to discuss issues that have been raised by the student's many and various client interactions. The chance to indulge in this kind of free ranging discussion is very rare in the classroom setting – firstly, because the sheer numbers of students in a traditional lecture setting inhibits one-on-one discussion of this sort and secondly, because the atmosphere is too formal and too rigid. Further, because lecturers usually have the specific objective of getting through a set amount of material in each lecture period, this discourages the relaxed and familiar environment which is a prerequisite for such interactions. In this author's experience, many academic colleagues have expressed the fervent conviction that they would thoroughly enjoy the prospect of this informal and fertile teaching environment and are quite envious of their clinical colleagues' ability to indulge in such a fulfilling form of pedagogy.

Clinic also differs markedly from lecture style in that clinicians are in the unique position to provide their students with one-to-one, detailed, timely and ongoing feedback as to their progress. Feedback in this context is distinct from assessment in that it is a powerful and effective vehicle for student learning. This is one area which sets clinical teaching entirely apart from the mainstream – students benefit enormously from immediate knowledge and insight as to their progress and such information greatly assists them in the "reflection" stage of Kolb and Fry's paradigm.[8] It then assists them to move forward with a sense of security and purpose to the abstract conceptualisation stage. For example, if a clinical student has dealt with a client and then has received an immediate and helpful critique from her supervisor, this will assist her to reflect on whether she has:

a) understood the client's problem and the legal, social and financial consequences which have arisen, and

b) how she has dealt with these issues in a caring and professional way.

6 *Batt C & Katz H, 'Confronting Students: Evaluation in the Process of Mentoring Student Professional Development' (2003–2004) 10 Clinical Law Review 581 at 597.*

7 *Chavkin D F, 'Matchmaker, Matchmaker: Student Collaboration in Clinical Programs' (1994–1995) 1 Clinical Law Review 199 at 230.*

8 *Supra note 5.*

The student is then in a position to use her insights to move from a personal reflection of her immediate dealing with this particular client to deriving more abstract rules from the experience. Further, she can apply principles of her doctrinal learning from law units that she has already studied to a more general understanding of the type of problem this client has presented with. Basically, she is able to move from the concrete to the abstract, having the benefit of knowing that she is on safe ground in that progression, as her supervisor has assisted to "ground" her reflections which are derived from the immediate client interaction. Without the benefit of the supervisor's immediate feedback, her move to the abstract stage would be insecure and halting.

Thus, clinical students have the huge advantage of testing their insights against the hard rock of their supervisor's knowledge and experience. The feedback which the supervisor provides does not always have to be positive. Negative feedback as to a student's performance with their client can also be hugely productive as long as it is given in a fashion which is designed to assist the student in future transactions. It should be noted that feedback in clinic is not at all related to assessment – clinic has the unique opportunity to use feedback as a way of centring and cementing student learning. It is an essential tool of the clinician in the "reflection" aspect of clinic's dual objectives of "action and reflection".

A discussion of how clinicians might better use this tool is presented below in the section relating to how we can enhance the clinical feedback process in the future.

The Medical Paradigm

It should be noted that clinical methodology is certainly not limited to law schools. The benefit of skills development for students, rather than the process of simple accretion of knowledge, is being acknowledged in various disciplines. Mark Barrow from the UNITEC Institute of Technology in Auckland, New Zealand states this of higher education across all fields of learning –

> *"There has been a reduction in the value of 'knowing that something is the case' and an increase in the value of 'knowing how', placing greater emphasis on the development of skills, attitudes and values appropriate to the discipline being studies or the profession being prepared for."*[9]

Legal clinicians can learn from the medical paradigm. For obvious reasons, clinical methodology in medical training has been used successfully for a great many years. Amy Ziegler, Assistant Adjunct Clinical Professor of Law at Saint Louis University argues that the evaluative model role of the medical clinical supervisor[10] is directly analogous to that of the legal clinical supervisor. She refers to clinical teaching in medical literature[11] which sets out the medical clinician's role as having three major activities associated with it:

1. Structuring the work and learning environments
2. Promoting problem solving and critical appraisal skills
3. Observing student performance and offering constructive feedback[12]

9 *Barrow M, 'Student Assessment and knowing in contemporary Western societies' in 'Transforming knowledge into wisdom: Holistic Approaches to Teaching and learning: Proceedings of the 2004 Annual International Conference of Higher Education Research and Development society of Australasia (HERDSA)' 4–7 July 2005, Miri, Sarawak, Ed. Sheehy. F & Stauble B, pp 42–49, Milperra, NSW (HERDSA) at 43, quoting Peters, M, Marshall. J., & Fitzsimmons P 'Poststructuralism and Curriculum Theory: Neo-Liberalism, the Information Economy and the Crisis of Cultural Authority' (1999) Journal of Curriculum Theorizing, Summer, 111.*

10 *Ziegler A, 'Developing a System of Evaluation in Clinical Legal Education' (1992) 42 Journal of Legal Education 575 at 583.*

11 *Pratt D & Magill M, 'Educational Contracts: A Basis for Effective Clinical Teaching' (1983) 58 Journal of Medical Education 462.*

12 *Supra note 10 at 584.*

Clinical supervision precisely mirrors these activities. Clinic is essentially about the process of resolving problems, not the answers themselves[13] and these three activities provide an excellent structure for thinking about the function of clinical supervision. The beauty of this model is that it can be individualised for each student's particular learning needs, whilst still retaining its basic construction. Thus, Ziegler suggests, a clinician can vary the teaching approach, contingent upon the teaching task at hand, as that of:

- Expert
- Model, or
- Facilitator

Ziegler states:

"As expert, the clinical supervisor gives students authoritative information without necessarily demonstrating the thought process or skills used to obtain them. As 'model', the teacher demonstrates the skills and thought processes of a good clinician providing an 'open book' that learners may watch and imitate. As a 'facilitator', the teacher guides the student in doing the actual work while focusing on helping the student acquire and analyse information."[15]

This sort of flexibility is simply not available in traditional lecture-style teaching and thus this demonstrates the paucity of this "one size fits all" teaching methodology, compared to the range of teaching implements available to the clinician.

Thus, clinical methodology provides opportunities for learning much more than just technical skills or a body of knowledge. It enables clinicians to mentor students in all aspects "what makes a good lawyer (or doctor)" relevant to the needs and abilities of that particular student.

Legal clinics teach much more than traditional legal skills and the focus of what is being learnt is very different to traditional legal pedagogy. Thus, the assessment regimes that we develop need to take into account all aspects of what is being taught – over and above the traditionally "measurable" basic legal skills – and find relevant and creative methods of measuring what our students are learning. These assessment methodologies need to be flexible enough to take into account our students' individual learning needs and yet also be even-handed and pedagogically defensible.

WHY IS ASSESSMENT IN CLINIC DIFFERENT?

The focus of assessment in clinic must be distinct from traditional assessment methods because the teaching methodologies being used are distinct. The clinician, in teaching process rather than knowledge, obviously must therefore assess process and not knowledge. Because clinic focuses on qualities such as practical skills, creativity, enthusiasm and effort these are the areas that must be suitably assessed. Generally, clinic is not focussed upon teaching a body of knowledge, or even "traditional" law school skills like research and legal writing and thus it is not appropriate to attempt to assess these features.

Students, do, however, learn a body of "knowledge" in the traditional sense whilst working in clinic. They come out of clinic often with a new set of skills and a wider knowledge base, not only of the law itself, but its processes, abilities and (more often than not) its disabilities. Clinical pedagogy does not derive its knowledge base from appellate decisions and thus students learn knowledge by involvement in particular legal situations from which they can enhance and deepen their knowledge and insights into legal doctrine. This is learning the law in a totally different way than they have been exposed to in academia. Anthony

13 *Ibid at 587.*
14 *Ibid at 585.*
15 *Id.*

Amsterdam, Professor of Law at New York University Law School sums this up as follows –

"The academic teacher seeks to enrich understanding of the general by deriving abstract principles from the particular; the clinician seeks to enrich understanding of the general by refining a capacity to discern the full context of the particular."[16]

The Skills of Self-Reflection and evaluation

Apart from learning a knowledge base and a set of practical skills, students also have the ability in clinic to fully immerse themselves in the skill of self-reflection. I believe Australian law school are only just now on the cusp of fully drawing out the potential that self-reflective skills can provide to students' legal learning. Self-reflection is a large part of the focus of clinical pedagogy in the U.S and is a key aspect of the teaching in various US clinics. Self-reflection provides students with insights into their own professional and ethical behaviour and enables them to pause and consider the way they are interacting with their supervisors, colleagues, legal clinic staff and, most importantly, their clients. The skill of self-reflection is often implicit in clinic work and is used by clinicians to assist students with their metacognitive abilities. By asking a student: "How would you go about finding the resolution to this dispute? What might be the appropriate approach?" and "How would you do this differently next time?" we are achieving a dual purpose:

1. Modelling a lawyering practice which is careful and reflective, and
2. Providing tools for improving metacognition (that is, problem solving) skills.

Thus, we are able to provide guideposts for the students to use in creating a plan of action to resolve a client's problem, to then monitor that plan as it unfolds, and to finally evaluate it in terms of effectiveness in order to determine how to amend the plan when a similar problem is presented in the future.

Ziegler describes "evaluation methodology" as a process of ongoing dialogue with students, directed by the clinical supervisor.[17] It is a skill for which clinic provides a perfect environment, because there are myriad opportunities for students to practise and the close presence of the clinical supervisor to guide the process. Ziegler defines the process as follows:

"Evaluation means helping students uncover assumptions, querying the purposes and source of their beliefs and providing opportunities for discussion about legal policy questions which arise from the client's problem."[18]

It is my submission that "evaluation methodology" has an even wider focus than that described by Professor Ziegler. It is not only a lifelong *professional* skill, but a *life* skill in itself which can assist students in all aspects of their life, both professional and personal. In this way, clinic may have a much broader benefit to its students – not only are we providing students with professional skills, but with basic life survival skills. This appears to be a considerable assertion to make about just one unit of study in our students' academic careers. However, there are many aspects of clinic in which students are confronted with unique and challenging experiences which, anecdotally, have a significant impact on their outlook and thought processes. The ability for students to learn a methodology of reflection and self evaluation is often just one of the many benefits a student acquires from the clinical experience.

The teaching of ethics is also implicit in this form of pedagogy. When we model, teach and assess reflective skills, we are demonstrating a powerful message to students about the sort of legal professionals we want them to be. We are demanding that they must factor in the full consequences of their legal advice and

16 *Amsterdam A A, 'Telling Stories and Stories about them' (1994) 1 Clinical Law Review 9 at 39.*

17 *Supra note 10 at 575.*

18 *Ibid at 570.*

their professional behaviour and not just react to situations by attempting to utilize a "quick fix" or a "one size fits all" philosophy. In this regard, clinic isn't teaching ethics, but "doing" them and this ethical message is being provided to students in the way we expect them to behave in their interactions with clients, other legal professionals and their clinic colleagues., Nina Tarr believes that academic law teaching by comparison actually discourages the self-evaluative process by our insistence on always being the expert and handing down our evaluations, rather than encouraging students to do it themselves.[19]

Reflective Journals

A number of law schools around Australia have embraced the concept of a "reflective journal" being a compulsory element in the assessment of clinic. For example, Flinders University in Adelaide, South Australia provides a course known as "Community Legal Practice" in which 30% of the clinical assessment is for the professional journal students must write.[20] This aspect of the course requires the students' observations and insights and is based on the belief that the students' ability to take control of their professional development in an essential part of any professional's learning process.[21] The requirement is that the journal is maintained on a weekly basis. Thus, at this Flinders University School of Law clinic, the students are not evaluated on their skill level, but on their *""initiative, involvement, perception and understanding of the broader issues elicited from the activities they are involved in."*[22]

Similarly, Sydney's Macquarie University Department of Law offers the Macquarie Legal Centre Legal Program. The students undertaking this course are required to write a reflective journal of up to 500 words per session day (the students must attend 9 out of 10 session days to pass the course), covering such issues as the lawyer/client relationship, client communication, access to legal advice and gaps or anomalies in law and legal procedure. The journal forms part of each student's required "Placement report" which is worth 50% of the final assessment in the subject.[23]

James Cook University in North Queensland, in its clinic based at the Townsville Community Legal Service, provides 20% of its unit assessment for a reflective journal, requiring critical analysis of

- Social justice issues
- The role of law in society
- Advantages and pitfalls of skill based learning
- Self reflection of interview performance
- Areas in which community legal services could be improved[24]

Finally, Monash University Law Faculty (the first in Australia to offer clinical legal education)[25] has offered its students the option of writing a reflective journal in place of the 20% assignment portion of the clinical unit for the first time in first semester 2006. At this stage, students are being asked to pose the following questions as part of the reflective process:

- How and why does the client find him/herself in this situation?

19 *Supra note 4 at 971.*

20 *Flinders University Topic Guide for "Community Legal Practice" Semester 1, 2006 at 5.*

21 *Ibid at 6.*

22 *Id.*

23 *Macquarie University Division of Law Study Guide – "Law 443 Macquarie Legal Centre Clinical Program Semester 1, 2006" at 4.*

24 *Email from Bill Mitchell Townsville Community Legal Centre, 15 February 2006*

25 *Clinic commenced in 1975 as a joint venture between the then Springvale Legal Service (now Springvale Monash Legal Service) and the Law Faculty.*

- What is the policy rationale for this that might explain it?
- How can the effects be mitigated?
- What can I do to ensure that the injustice does not happen again?
- From whose perspective is it unjust?
- How and why did this affect me so much? (Or why didn't it affect me at all?)

Students are required to submit journal entries to their clinical supervisors on a fortnightly basis, and generally the issues that they are asked to reflect upon will arise in the course of their client interviewing session. The students are advised to spend some time after each session thinking about issues which the clients raised and questions arising therefrom and then writing them down in a structured and coherent manner.

Students are instructed that they must be prepared to bring their latest journal entry with them in order to discuss it at their weekly file review with their supervisor. They are expected to write approximately a half to one page of the journal per entry.

How this is to be assessed is still a matter of some concern and the debate continues. The main problem is how to assess insight. Many clinics simply use the "hurdle requirement" method of assessment for journals – that is, if a student has submitted the correct number of journal entries during the semester, this will satisfy that aspect of the unit and the actual content of the entries themselves is not graded. It is submitted, however, that a graded assessment must be provided for this aspect of the students' clinic work for them to take it seriously. The US experience can be of direct benefit in this regard. As one US clinician reports:

"…the externship was pass/fail and I had little leverage to force a higher level of work. The students correctly guessed that I would not flunk someone for failing to be conscientious about their journal.[26]

This venture into the concept of reflective journals by clinics in Australian law schools is, arguably, still somewhat unsophisticated in the pedagogy of student self-evaluation and we have much further to go to develop and enhance this unique area to its full potential. Tarr has argued that historically, clinical teachers are just too busy with high file loads to take time to examine their teaching methodologies and develop theories about effective teaching and assessing models[27] – this comment is apposite for Australian legal clinics today.

However, this is where we can learn from the US in its more developed treatment of student self-evaluation and most importantly, the way this facet is assessed. The problem that we face is that we are still trying to asses students in clinic in a similar way to other academic units. This is unfair as it does not meet with our "process" and self-evaluative focus. How we can ameliorate this situation is tackled in the next section of this paper.

26 *Supra note 4 at 992.*

27 *Supra Note 4 at 977.*

WHAT IS THE BEST WAY TO ASSESS STUDENTS IN CLINIC?

An Individualistic Assessment Regime

The first matter to deal with in determining the optimal way to approach clinical assessment is resolving the ways that we cannot assess students. It is impracticable to grade clinic in relation to the completion by students of standardized tasks (like writing a letter of advice, or a plea in mitigation of sentence) because clinics simply do not have typical or set tasks.[28] Thus, if we are assessing things like self-reflection, ethical awareness, process, technique, problem solving and professional responsibility we need to find creative ways to do this. To a certain extent, this requires participation in an individualistic assessment regime. This means that we can, and should, have the flexibility to create an assessment design that can be individually tailored for each one of our clinical students. This does not require us to re-invent the assessment regime for each student that enters the clinic, but it does mean that our assessment methodology should be flexible enough to cater for, and measure, a diverse range of students' skills and abilities.

The US literature is quite rich and diverse on the subject of assessment relationships in legal clinics. The experience in the US has been one of very individualistic grading practices amongst clinicians and there is little to suggest that a systematic methodology for grading clinical work has emerged. There also appears to be a feeling that many of the skills that we value in clinic are exceptionally hard to monitor and grade. For example, the concept of "professional responsibility" may be defined in various ways by different clinical supervisors. This is graded at one of the clinics in Cleveland State University and is defined as "*The ability to recognise the ethical considerations in a situation, analyse and evaluate their implications for present and future actions, and behave in a manner that facilitates timely assertion of rights.*"[29] However, this is just one clinic's opinion as to what the concept means. It is also pointed out by clinicians that, once a definition has been agreed upon for a particular skill or ability we wish to cultivate in our clinical students, it is difficult to assess given the limited time available to supervisors to observe individual students.[30]

Thus, most clinics that provide their students with a final grade do so on the basis of detailed and itemised grading sheets which provides a wide opportunity for students to show prowess in a broad range of areas instead of being limited to proving their "worth" within a limited range of set criteria. For example, the "Families and the Law" clinic of the Catholic University of America Columbus School of Law has a grading criteria which encompasses 44 different assessment criteria, grouped under six different classifications of skills.[31] Similarly, Pace Law School in White Plains, New York provides 61 items of assessment criteria, grouped under eight main skills area and four further "sub-skills" with a further section for the supervisor to make additional observations.[32] These sub-skills include such items as *"Awareness of psychosocial/economic/scientific, etc. factors in legal situation"* and *"Nonverbal communication, 'body language,' professional presentation of self"*.[33] This is a good example of a clinic's ability to teach and subsequently assess important skills for lawyering which do not fall within the tradition enquiry of "Can the student undertake research or write pleadings?"

In this way, assessment is highly particularized to the individual and students are able to accumulate marks

28 *Cort R, 'A.A.L.S. Clinical Legal Education Panel: Evaluation and Assessment of Student Performance in A Clinical Setting' (1980) 29 Cleveland State Law Review 603 at 604.*

29 *Ibid at 622.*

30 *Supra note 6 at 605.*

31 *Brustin S & Chavkin D, 'Testing the grades: Evaluating Grading Models in Clinical Legal Education' (1997) 3 Clinical Law Review 299 at 313.*

32 *Pace Law School – John Jay Legal Services "Evaluation of Student Work" found at*

33 *Id*

in various areas where their talents are to be found. If we are committed to providing grades in clinic, rather than simply a pass/fail assessment (this debate is covered later in this paper) then the lesson to be learnt here is that we must recognise individual student strengths in our assessment by providing a multifaceted and detailed marking regime that allows students to learn and to be assessed in individual ways. If we pride ourselves on the fact that we do not subscribe to a "one size fits all" teaching methodology, we cannot have a standardised appraisal scheme.

Of course, the drawback of such an individual method of assessment is the huge resource issue in terms of staff/student ratios and the sheer time required to observe, analyse and keep adequate records of each student's particular progress in the clinic. There is also the fact that clinic is generally a continuous assessment regime. This is very positive for students, as this provides formative assessment throughout the course of the clinical unit – however, it does place clinicians on a *"constant treadmill of assessment."*[34]

Whilst acknowledging these issues, it should be remembered that resourcing is not a new issue to clinical programs. Clinics are always expensive to establish and financially difficult to maintain. The upside is that they are usually staffed by a tremendously dedicated and committed team that is prepared to take on the extra assessment load required if it means getting it "right".

The pass/fail v grading debate

In a 1994 Journal of Legal Education survey of grading in clinics, 120 universities in the US were surveyed and the following results were discovered:[35]

1. 37% of clinical courses used a fully graded model
2. 39% graded students on a pass/fail basis
3. 19% utilised both a pass/fail and graded method
4. 1% gave no credit at all.
5. 3% did not respond

It seems that, at least amongst the law schools that responded to this survey in the US, the clinical grading debate is almost equally divided. Anecdotal evidence from clinicians in Australian law schools suggests that there is a similar division in this country.

Stacy Brustin and David Chavkin both of Catholic University of America Columbus School of Law, in their article '*Testing the grades: Evaluating Grading Models in Clinical Legal Education*' ask a series of essential questions about the value of grading in clinic, specifically:[36]

- What does grading achieve in clinic?
- Does it encourage students to be more professional?
- Should marks be given to students who perform best, or to students who improve the most?
- Is grading necessary for academic credibility?
- How do you grade a student who works hard but whose performance is not very good?

34 *Johnstone R & Vignaendra S, 'Learning Outcomes and Curriculum Development in Law' (2003) Report to the Australian Universities Teaching Committee of the Department of Education at 367.*

35 *Kaufman N A Survey of Law School Grading Practices 44 Journal of legal Education 415 (1994) at 417.*

36 *Supra Note 31 at 301.*

Answers to these questions are fundamental to the underlying pedagogical aims of every legal clinic. The answers do not have to be identical in every clinic, as diversity of aims and pedagogical aspirations are certainly to be encouraged – however, it is vital that these issues, and others relating to assessment, are tackled by clinicians

It is interesting to note that, despite the divided views amongst clinical teachers, when clinic students were given a choice as to whether they wanted to be graded, 84% went for the graded option.[37] This does not necessarily mean, however, that grading in clinic is in students' best learning interests.

It is submitted that in a graded clinical environment, a tension exists between the community service goals of the clinic and the students' endeavours to achieve grades. This can be a positive tension, and, arguably, can result in a better educational process and consequentially a higher level of client service delivery.[38] Further, the students having to determine for themselves the issue of what is the focus of their involvement in the clinic – their grades or community service – is in itself an fertile area of discussion clinical supervisors can enter into with their students. The downside of this tension is that the poorer students can be induced by the absence of an exam to treat clinic as having less academic credibility. The consequence of this outlook is that their standard of work suffers and much more critically, their clients' interests are not taken care of adequately.

It has also been argued that clinics are intended to be safe environments for students to experiment, satisfy curiosity and explore their own values, assumptions and motivations.[39] Grading students may interfere with the non-judgemental environment,[40] inhibiting students' desire to explore and test themselves for fear of "getting it wrong" and consequently losing marks. Further, it may be an additional source of stress and preoccupation for students in an already stressful environment.[41]

Alternatively, grading may have the opposite effect on students – it can have a motivational effect and lead to a higher level of professionalism.[42] Grades also provide the opportunity to acknowledge the time, effort and labour that students contribute to their clinical work. Finally, there is always the "external" issue of the academic credibility of the clinic. Grading makes a statement to both the students and the faculty that clinic has as much academic rigour as other "black letter law" units and students will be subjected to the same exacting regime as their other units of study.[43]

Brustin and Chavkin's rigourous investigation[44] led them to conclude that there are "tangible benefits" to grade students in clinical courses which, they believed, may improve the pedagogical process and augment service delivery to clients.[45] Despite this study, the "to grade or not to grade?" debate is far from over in legal clinics and is unlikely to be resolved. It is a healthy and necessary issue to deliberate upon and keeps clinicians focussed on their pedagogical aims, despite the fact that a consensus may never be reached amongst, or indeed within, law schools

If clinics do choose to grade their students, it is essential for the grading criteria to be detailed, systematic and transparent. It is also submitted that, if a law school runs more than one clinic, for example a general law and a specialist clinic, that there be universality of assessment methodology between both. Despite the fact that the subject matter or the legal foci are different between the clinics, the same skills and professional processes are being learnt, and thus the assessment regime should reflect this.

37 *Ibid at 302.*

38 *Ibid at 307.*

39 *Schrag P, 'Constructing a Clinic' (1997) 3 Clinical Law Review 175 at 202.*

40 *Id.*

41 *Supra Note 33 at 306.*

42 *Id.*

43 *Ibid at 307.*

44 *Id.*

45 *Ibid at 308.*

Student Teaming

Student collaboration and the formation of student "teams" in clinical work is an issue which has elicited some discussion on the US clinical literature.[46] This appears to be an under-utilised aspect of clinical pedagogy in Australia and the question arises as to whether the US experience can be valuable for Australian clinics. Certainly, the issue of students working in clinical collaboration is a relevant issue in that it reflects the reality of participation in teamwork which will be required of them later in professional life.

In *Learning Outcomes and Curriculum Development in Law*, a report to the Australian Universities Teaching Committee of the Department of Education in 2003, Richard Johnstone and Sumittra Vignaendra of the University of New South Wales found that compelling students into teamwork has been a matter of some difficulty in Australian law schools. As one academic comments:

"One thing which is very difficult – to have all these incredibly independent and personally motivated students, and they never want to do things together in groups. You tell them that in real life when they go to work, everyone works together with others in groups – you don't have to like them, but you have to learn to work together. We start them off in first year doing little things in groups, such as presenting in class, and they loathe it…they sit in class and won't put up a hand or answer in case they are wrong. It is an incredibly selfish approach to learning. They think 'I got here, I got a high [university entrance score], I am not going to give away anything, this is about me and my achievement'. This is one of the biggest challenges in teaching."[47]

However, some US clinicians have argued that the major benefit of requiring students to collaborate in a clinical setting is bringing together the practical resources of students who have different skills and knowledge bases. Ideally, each student benefits from the other and the client benefits from both. Further, any conflict between the students can be resolved in a positive and beneficial way for both of them. Student collaboration can teach students professional autonomy as they learn to make decisions jointly,[48] without resorting to a dependence on a hierarchy to impose decisions upon them. Because students have diverse life experiences, not only can they develop an insight into their clinical colleague's motivations and reasoning processes, the ability of the student pair or team to understand and appreciate the client's experience may also be enhanced.[49] Finally, having the support of another student may assist in reducing a student's anxiety and self doubt in the challenging clinical environment.[50]

The drawbacks of student teaming must also be investigated. Principally, there is the issue of the diminished client service that can be provided – the simple arithmetic is that requiring students to work in pairs will reduce by half the number of clients that can be seen in a given period. This comes back to the tension between client service delivery and the pedagogical focus, the resolution of which will depend very strongly on how the clinic perceives its role in the community as opposed to its function as a University teaching facility.

The other question which must be posed is whether student teams actually collaborate at all. Chavkin reports that he discovered much evidence of parallel work practices occurring in student teams. In many cases the students did not attempt to pool resources, but simply divided up responsibilities into discrete

46 *See especially Bryant S, 'Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession' (1993)17 Vermont Law Review 459; Chavkin D F, 'Matchmaker, Matchmaker: Student Collaboration in Clinical Programs' (1994–1995) 1 Clinical Law Review 199.*

47 *Supra note 33 at 373.*

48 *Bryant S, 'Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession'(1993)17 Vermont Law Review 459 at 460.*

49 *Chavkin D.F "Matchmaker, Matchmaker: Student Collaboration in Clinical Programs" 1 Clinical Law Review 199 (1994–1995) at 213.*

50 *Ibid at 215.*

sections and worked on them unaccompanied by their partner or other team members.[51] In these situations, there is no need for consensus between students for decision making, or necessity to exercise negotiation or interaction skills as part of a joint venture – the team association is simply ignored. Further, when students do make a genuine attempt to work in collaboration, one must speculate if consensus about decision making or direction of casework actually takes place at all, or whether one or more members of the group are just giving in to the majority or the strongest personality. Finally, there is worrying evidence that less responsible decisions are actually made by groups,[52] a phenomenon expressed as "groupthink"[53] in which the ethical standards of a team are reduced by the anonymity of mass responsibility

In addition to the issue of the pedagogical value of student teaming in a clinical environment is the more pertinent issue of how the clinician assesses them. Chavkin points this out as one of the most common problems noted by clinicians who supervise student teams.[54] For the clinician, there are a range of problems associated with how to correlate client outcomes with group participation and how to attribute marks to members of the group who are variously lazy, domineering, less intelligent than other members, inhibited or apathetic.

It is my submission that, however difficult one perceives individual clinical assessment to be, if clinicians are attempting to be even-handed in their marking, group clinical assessment is even more arduous. This does not mean that student teaming it is not appropriate to the clinical environment. It does mean, however, in clinics where teaming is enforced, that students are told candidly and unambiguously at the commencement of the clinical experience that a genuine collaboration with their team members is expected. It also means that if students' ability to work in teams is being assessed, that this fact is explicit and that students are provided with details of how these marks are assigned. Further, it requires a thorough understanding of the pedagogical aims of student teaming amongst the clinical supervisors and a commitment to fairness to individual students, which is not blurred by the complications of team interactions.

Feedback

Law teachers report a consistent criticism from students that the students do not receive enough feedback from teachers on their general progress, and on the performance in assessment tasks.[55]

Clinicians are in the unique position to provide their students with timely, one-to-one feedback. However, clinicians are often justifiably criticized for squandering this constructive pedagogical tool because they don't approach the critique of students in a systematic or productive fashion.

Accordingly, it is submitted that there are some basic approaches that supervisors in clinical programs should take in order to maximize the way positive criticism can be provided to students. In this way, feedback can become a useful pedagogical tool and an agent for further and deeper learning in the student:

- *Praise should be given in public and criticism in private.* It is never appropriate to belittle a student in front of others. This serves absolutely no purpose and just denigrates the student concerned. Negative feedback must be given in private. Students have the right to keep their mistakes private from their peers. Praise in public, however, is the corollary of this rule. A word or two of praise in front of other students will always be appropriate,

51 *Ibid.*

52 *Ibid at 223.*

53 *Janis I, Groupthink: Psychological Studies of Policy Decisions and Fiascos 1982, Houghton Mifflin, Boston.*

54 *Supra Note 47 at 227,*

55 *Supra note 46 at 379.*

however – as long as such public praise is divided equally amongst students.

- *Criticism sessions should end positively.* There are always encouraging things to say to a student no matter how much they are struggling and no matter how far they have to go to develop skills. If a supervisor has spent time being critical, they should always try to find at least one affirmative comment and make this the last part of any criticism. It does not have to be a substantive piece of praise, as long as it is an encouraging observation which can leave the student feeling that there are aspects of their work or the effort they are making that are appreciated.
- *Students should be asked for feedback on themselves before the supervisor provides it.* Students are often remarkably good at self-evaluation and usually will pick the item/s that requires discussion with them in a formal self-assessment session. If an official feedback sheet is provided for a more formal or methodical feedback session, this should include a section in which the student could provide a self-assessment. If the student correctly identifies the area/s of weakness, it softens the feelings of criticism, as the supervisor can commence observations along the lines of "*I'm glad you pointed that out, as that's the very thing I wanted to discuss with you…*", thus leading neatly into the critique. Conversely, students will sometimes point out an area as a strength which the supervisor wishes to discuss as a weakness or a matter for further improvement. This need not be an insurmountable issue and can have its pedagogical value. For example, a student may like their own formal or officious communication tone which they have adopted in their letters to clients, and the supervisor may wish them to adopt a more approachable, plain-English style. They would have identified their letter writing as a strength, because to them it sounds more professional and "lawyer like". The supervisor may feel that such a style acts as a barrier to communication. In such a situation, the supervisor could commence a discussion with the student about the appropriate function as lawyers in the communication process and potential role in de-mystifying the law for clients by use of language. Thus, despite the fact that the student had measured themselves in this area completely in opposition to the supervisor's assessment, a useful, and it is hoped, positive dialogue can ensue.
- *Feedback should be requested on the supervisor's performance.* This is simply providing students with a right of reply and an opportunity to also provide a critique. They are usually very reluctant to do so, but will sometimes open up if convinced that it cannot affect their final grade in any way. If they do take up the challenge and provide a critique of the supervisor's teaching, supervision or legal work, it is incumbent on the clinician to model appropriate behaviour and not get angry with their criticisms or make excuses. The critique must be taken in the open environment that it is given; remembering the very distinct power imbalance that always exists between teacher and student, despite the fact that it is less obvious in the clinical setting. For most students, it will take an act of courage to appraise their supervisor directly to his/her face, but if clinicians are sincere in their desire for a student to do so, they should be rewarded for it by mature and insightful responses from their supervisor.
- *Supervisors must be forthright.* Evaluations should be obvious and clear. Criticisms and future expectation for improvement should be as clear as possible. Colloquial "asides" that are meant to be humorous should be avoided as they are often not taken as so. Clinicians need to take into account that law students often have large egos, but they

also deflate very easily. Students will often remember one flippant or negative aside that is made in clinic for years afterwards and retain unnecessary bitterness against their supervisor based on a simple miscommunication. This is not to say that clinicians should be in fear of students not valuing the critiques made of them – part of being courageous and straightforward with students is an acknowledgment that they will not like what is said to them and therefore may not like their supervisor. Clinical supervisors should be able to live with this (as should all teachers) – but this aversion by the student of a critical analysis of their clinical work should not be based on a misapprehension of what was actually said – that is, it should not be based on a lack of ability to communicate a clear message.

- A *written summary of the discussion should be provided.* If a student is a possibility of failing or doing very badly in the clinical unit, feedback discussions should be summarised in writing and a copy provided to the student. Any expectations enunciated in such a document should be very clear and obvious, with deadlines provided for achieving certain tasks, if appropriate. In this way, the fact that it is in writing makes it exceedingly obvious that the supervisor is very serious about expectations. Further, if the student fails to satisfy the criteria set out in the letter, a supervisor cannot be accused later of being unclear in their expectations when the student ultimately fails the unit or does poorly.
- *Formal feedback must have the same structure for all students.* Clinical units afford the distinctive opportunity for supervisors to engage in one-to-one teaching. This is obviously a pedagogical strength, but an assessment weakness. The most prevalent accusation which is levelled at assessment in clinical programs is that of subjectivity. As such, clinicians are under an obligation to ensure that assessment of students is always completely above reproach. Accordingly, a particular structure for prescribed feedback sessions should be settled upon and then not varied by individual supervisors within the clinic. Students always compare what is said to each other, so each student should be provided with the same structure. If not, certain individuals will feel they are being victimized, or that others are being favoured.
- *Supervisors should not wait for a formal feedback session.* Critiques should be given in an ongoing fashion to ensure students have time to improve performance. There is no purpose in a supervisor being unsatisfied with students' work, and not telling them. Criticism should not be stored up for one big session, as this may have damaging consequences on a student and be more of a setback in their performance than a constructive experience. Instead, well-timed and minor criticisms should be provided. Of course, supervisors must also be careful of constant nagging in which particular students are always being criticized– an attempt should be made to achieve a balance with positive comments if at all possible
- *Transparency.* This is essential. Clear, concise, thorough and non-defamatory records of students' progress throughout their work period at the clinic must be kept. Students should be advised of their ability to have a copy of all written comments and a complete breakdown of their marks when the course is completed. Notes should always be thoroughly professional – with no personal asides or irrelevant comments not associated with work performance. Written records should also all be of one nature – the same comment structure or marking sheet format should be used for all students with notes written about all students at the same time, if possible. Again, the fundamental basis of

this is being systematic in the approach to assessing students in the clinic and providing feedback in a clear, even-handed and impartial way to all students.

- *Students carry emotional baggage.* Students all have different and varied circumstances that impinge on the quality of their work in the clinic and their commitment to the unit and their clinic clients. In many law schools, clinic is but one unit of study in a busy law course and must be juggled with the students' social and work life. Taking this balance into account at all times should make supervisors hesitate before verbally attacking a student with harsh comments about things like punctuality and responsibility if, for example, a student has let their clinical colleagues down or missed an appointment. Students should always receive the benefit of the doubt – something appalling may have happened in their lives which made them unable to perform a work task or be on time and, as such, matters would need to be approached in an empathetic and compassionate manner – thus modelling the way clinicians would want their students to interact with their own clients.

Providing feedback to students in a clinical setting should never be considered a chore. It has vast pedagogical implications and can be a powerful educative tool. Clinicians cannot afford to deal with the giving of feedback in a piecemeal fashion – it should not be approached in a half-hearted or unprofessional manner, especially considering the denunciation that clinicians are often subjected to of clinical units being not subjected to the same academic rigour of other, more "mainstream" units of legal academic study. If legal clinics are to continue to win the academic credibility battle within their own law schools, clinicians must approach student assessment and feedback in a prescribed, thorough and meticulous manner.

The clinical teaching style can, however, stay open, friendly and supportive – the learning atmosphere of a clinic is often the reason students thrive so well. However, underlying the clinical teaching style should be an approach to feedback that is consistent amongst all supervisors in the clinic and which cannot be questioned for lack of diligence or attention to detail. In this way, students can receive a supportive and benevolent working environment where they will feel comfortable to take learning risks and expose themselves to the full learning experience which legal clinic can provide.

Feedback, however, is not a formal assessment tool. As Cynthia Batt and Harriet Katz put it, it is "part of a larger evaluative process assessing a student's overall attitude, work habits, and approach to lawyering."[56] Thus, there are often matters raised in feedback sessions with students which clinicians do not specifically measure in their summative assessment – discussion about students' attitude and behaviour towards administrative staff in the clinic is an example of an issue which is often raised in feedback sessions, but is usually not formally assessed. However, students' responses to feedback and their progress after the provision of feedback are measurable items and therefore assessable. Thus, although feedback does not form an immediately assessable aspect of students' clinical work, it is an integral part of the process which leads to formal assessment.

56 *Supra note 6 at 584*

PREDICTIONS FOR THE FUTURE?

Batt and Katz in *Confronting Students: Evaluation in the Process of Mentoring Student Professional Development*[57] set out a number of issues that are essential for mentoring and evaluating the professional development of students in clinical courses:

1. Professional development must be understood to form a substantial aspect of the clinical curriculum.
2. There must be appropriate goal setting between the supervisor and the student at the outset of the clinical experience. The students have to know the supervisor's professional development goals or priorities
3. We need to develop a systematic pedagogy in order to teach professional development which incorporates precise, specific language. This pedagogy must include the engagement and reflection of students.
4. We need to use performance specific feedback as a vehicle for on-going assessment of professional development issues.
5. We need to evaluate student progress on a periodic basis

In my opinion, Australian legal clinics need to take up the challenges offered in this inventory of issues. Our pedagogy is still "fuzzy" and requires a much stronger focus. Currently, we are squandering opportunities to develop a consistent and lucid learning theory that we can be comfortable with – a bedrock upon which we can build our assessment methodologies.

Our goal-setting and assessment processes need to be constantly under the microscope and not something that we take on occasionally, in a sporadic way[58] or as a reaction to a student complaint or the threat of a faculty review.

In the past decades, there has been a steady growth in the number of legal clinics being developed around Australia. The programs being offered are diverse and creative and offer exceptional learning opportunities for law students. Australian legal education is slowly moving towards the US paradigm of a clinic or more in every law school. This growth posits a number of issues which require dialogue, such as:

1. What does the growth of clinics and their increasing centrality in the law school curriculum mean for grading generally?
2. In the light of clinics' increasing role in legal education, how can clinicians ensure that clinics retain their focus, whatever they believe that to be?
3. What are clinicians devoted to inculcate law students with – technical skills, ethics, self reflective processes, ability for adult life long learning? Which of these are important and how will clinical grading systems reflect clinicians' perception of these skills or abilities?

These are the sort of issues that Australian law clinicians need to be grappling with. They are no longer "experimental" or pilot programs and thus cannot afford to be devoting themselves to the technical or practical "here and now" issues. The focus needs to shift from immediate survival to the development of a long term and pedagogically sound vision for the role of legal clinics in the development of ethical, self-reflective and competent lawyers.

57 *Supra note 6 at 607–609.*

58 *O'Leary K, 'Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics' (2004–2005) 11 Clinical Law Review 335 at 339.*

CONCLUSION

Historically, Australian legal clinicians have been so busy struggling for basics like accommodation, funding and academic recognition that they have not had the time or energy to create a systematic pedagogy or assessment philosophy. It is certainly an exceptionally under discussed and little published area of clinical practice which requires further examination. Clinicians have relied, to a large extent, on the positive student experience in clinics and the resultant lack of criticism of the grading processes. However, the good grace of students does not replace a sound educative theory. Much of the past assessment practices have been based on clinicians' instincts as lawyers and educators on what is individually believed to be important. The non-static aspects of clinic need to be recalled – to a certain extent clinical teaching is a "movement' and thus needs to continue to develop if it is to stay relevant and appropriate.

Individualism in legal clinics around Australia currently appears to work in reverse – supervisors expect students to fall into particular grading categories and comply with grading curves appropriate to other law units, whilst allowing themselves individualism in their understanding and observance of assessment processes, focus and outcomes. By comparison, US clinics have instigated assessment regimes which are very individualistic in their treatment of students and their different learning styles. There is an acknowledgment (missing in Australian clinics) of the "personalisation" of the clinical experience for students – each student's experience in clinic is different by the very nature of what a clinic is and the assessment methodology is flexible enough for the students to benefit from these individual experiences. Supervisors in US clinics, however, are focussed, in agreement and have a sound understanding of their grading practices and the rationales which underpin them. This is not because US clinics are better – it is a result of the fertile discussion, dialogue and debate which has been able to flourish once clinics became an integral part of the US legal education landscape.

Legal clinicians in Australia, having fought and won the battle of credibility, now have the opportunity to engage in that level of discourse. In my opinion, the discussion can now move forward to deal with the complex issue of assessment in legal clinics in order for us to develop what is yet in its infancy in Australian legal clinics – a robust, articulate and focussed pedagogy.

Teaching Law And Educating Lawyers: Closing The Gap Through Multidisciplinary Experiential Learning

***Alan M. Lerner*† *and Erin Talati*‡**

Summary

Interdisciplinary legal education found its roots nearly a century ago, but recently there has been a renewed trend both in the literature and in practice to increase interdisciplinary opportunities in clinical and scholarly activities. In the classroom, proponents have argued that interdisciplinary education is essential to understanding the cultural and social contexts in which legal conflicts arise. Additionally, scholars praise the interdisciplinary model – in both teaching and practice – for its tendency to generate a higher level of thinking from those considering problems from diverse viewpoints. The use of interdisciplinary models also promotes mutual respect between professionals from different disciplines, a working knowledge of the domain of another discipline, enhanced communication through learning both the mechanisms and vocabulary of other professions, and increased understanding another discipline's "rules, beliefs, and ethical principles." Finally, creating an interdisciplinary framework can enhance the efficacy of the lawyer's problem solving efforts through providing a means by which goals, strategies, and unique insights of different "helping professions" can be united in pursuit of a common purpose.

The value that interdisciplinary approaches offer is often sharply countered by the challenges it creates. The most common challenges are those created by perceived or actual role boundaries within individual professions and the process of professional socialization that occurs during traditional legal training. Although this first criticism is challenging, it is not impossible to overcome. The second barrier to productive interdisciplinary work is also mutable, and reversing a socialization process that disfavors interdisciplinary experiences should therefore be a primary focus of legal educators. This paper proposes that

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‡ *MD/JD, University of Pennsylvania, 2007*

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interdisciplinary advocacy for children involved in the child welfare system provides an intense experiential learning process, which engages students in a mutually dependent relationship with students from other disciplines and promotes long-term appreciation and facility for interdisciplinary work. It describes this experience in the context of one such clinic, providing a model for the development of future interdisciplinary endeavors.

INTRODUCTION

> When I enrolled in the child advocacy clinic, I knew that it would present a wholly different experience than the ones to which I had become accustomed. Although I have been acutely and vocally aware of some of the constraints of the law school curriculum, the one thing you can say of introductory law school courses is that they are emotionally safe. As far as I am aware, no one has experienced any emotional damage from reading the *Erie* decision in a basic civil procedure course. Of course, that may be due to the simple fact that no one has ever experienced *any emotion at all* during that kind of experience.[1]

Traditionally, legal educators – almost exclusively professors trained in law – have focused their students' learning on the theory and doctrine of "the law," the structure of the legal system and its institutions, and the profession's analytical and problem solving processes. In law and most other schools for professional training, professional education also means focusing, with laser-like singularity of purpose, on the students' cognitive powers to the exclusion of their values and emotional systems. That focus, intended to teach law students "to think like lawyers," has produced, we believe, a narrowing of the students' vision about themselves as professionals.[2] Lawyers learn that they work in legal environments with other lawyers, judges, or related legal actors, analyzing legal problems using legal materials and legal analysis, and that, at least by implication, with the exception of occasional reference to "expert witnesses" there is little need or space to collaborate with persons trained in other disciplines, let alone non-professionals.

We agree that being a lawyer requires those analytical skills. However, being a lawyer, as opposed to a scholar-teacher of law, means providing services to individual and institutional clients, often in extremely trying, high stakes circumstances in which other disciplines may be of critical importance to achieving the client's goals. Being a lawyer means facing ethical choices daily. And when collaborating with professionals from other disciplines, looming ethical issues may require harmonizing conflicting ethical mandates. Furthermore, being a lawyer means participating in a self-regulating profession that possesses a virtual monopoly on the critical positions in the formal legal system that administers justice for the entirety of society, and has special training, and therefore special position and power in the legislative and executive branches of the government at all levels.

In such circumstances, collaboration is essential if lawyers are to advance their clients' best interests, fulfill the promise of their profession, and assure that the machinery of government in general, and of justice in

1 *Clinical Law Student (2003) (journal entry, on file with author). The interdisciplinary clinic discussed in this paper uses journaling as an educational tool to reflect on the implications of students' daily experiences, and as a means for clinic students to process much of the intense emotion that results from their casework. Throughout this paper, a number of student journal entries, with the author's identification removed, will be featured. For further discussion of journaling see infra Part II.B.4.b (discussing journaling as a tool for managing reactions to work).*

2 *WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Jossey-Bass 2007) [hereinafter Carnegie Report].*

particular, functions in a legally and morally appropriate manner.[3] Yet, as a consequence of the narrowness of their training lawyers may not even realize the breadth and variety of their roles, the importance of other disciplines in carrying them out, or their own limitations as lawyers in fulfilling them.

This paper will argue that effective education of lawyers must, and can, prepare them to collaborate with other professionals in both fully understanding, and achieving their clients' goals, and in fulfilling the lawyers' roles as members of the legal profession and participants in the democratic system of governance. Part I of the discussion examines the principles underlying traditional legal education and provides a basis for encouraging change. Part II discusses generally the history of collaboration within the legal profession, and specifically a collaboration within the Interdisciplinary Child Advocacy Clinic at the University of Pennsylvania Law School. Part III considers potential barriers to collaborative work but concludes that planning and commitment can overcome these obstacles and permit the benefits of interdisciplinary collaboration to be recognized.

I. TRADITIONAL LEGAL EDUCATION

A. A Bit of History

The study of law is ancient, and it is fair to assume that as long as there has been legal discourse, there have been scholars and teachers of the law. Since at least the time of the Enlightenment, the great universities throughout the world have been developing similar models of pedagogy for teaching post-secondary students: lectures, seminars, and tutorials taught by established scholars in the particular discipline. But advanced education was. until modern times, the exclusive province of those who were wealthy, powerful, or committed to organized religions.

Despite the long history of the study of law, lawyers as we know them today – advocates for clients, available to a broad swath of the citizenry regardless of class – are a relatively recent phenomenon. The education of lawyers in a university setting is even more recent. Although Sir William Blackstone began delivering his lectures on English law in the mid 18th century, the primary training model for British lawyers from the middle ages through the mid 20th century has been apprenticeship, centered in Inns of Court.[4] Similarly, although the United States Constitution is the product of the work of, among others, famous lawyers including Thomas Jefferson, John Adams, and James Monroe, none of the founding fathers, and none of the country's first generations of lawyers – including Jefferson, John Adams, John Quincy Adams, Andrew Hamilton, Patrick Henry, James Monroe, John Marshall and even Joseph Storey and Abraham Lincoln for

3 *Legal academic literature contains a rich history of thoughtful analysis and recommendations to make the education of lawyers better suited to the needs of lawyers, the profession, and the clients they serve. See, e.g., Jerome Frank, Why Not a Clinical Lawyer-School?, 81 U. PA. L. REV. AND LAW REGISTER 907 (1933); Anthony G. Amsterdam, Clinical Legal Education – A 21st Century Perspective, 34 J. LEGAL EDUC. 612 (1984); Report of the Task Force on Law Schools and the Profession: Legal Education and Profession Development – An Educational Continuum, 1992 A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR; Phillip Areeda, Always a Borrower: Law and Other Disciplines, 1988 DUKE L.J. 1029 (1988); Carnegie Report, supra note 2, at 45. ("The Challenge is to align the practices of teaching and learning within the professional school so that they introduce students to the full range of the domain of professional practice while forming habits of mind and character that support the students' lifelong growth into mature knowledge and skill.").*

4 *See RAYMOND COCKS, FOUNDATIONS OF THE MODERN BAR (Sweet & Maxwell 1983) [hereinafter Cocks, FOUNDATIONS]; RAYMOND COCKS, SIR HENRY MAINE: A STUDY IN VICTORIAN JURISPRUDENCE (Cambridge Univ. Press 1988) [hereinafter Cocks, VICTORIAN JURISPRUDENCE].*

that matter – earned university degrees in law.[5] They and their contemporaries learned their profession as apprentices.[6]

Although there have long been appointed lecturers in law at a number of colleges and universities, the modern American law school can be traced to the efforts of Joseph Storey at Harvard in the early 19th century, as well as those of Harvard President Charles Eliot and his selection as the dean of the law school, Christopher Columbus Langdell, after the Civil War.[7] From that point on the post-baccalaureate professional school model steadily squeezed out the apprenticeship model of legal education in the United States until, by the late 20th century, apprenticeship as a means of becoming a lawyer had all but disappeared. Langdell's theory and methodology reflected that used to teach post-secondary school philosophy, history, mathematics, biology, etc. It assumed that law is a science and should be taught from original documents – statutes, and, given the fact that ours was a common law jurisdiction, the decisions of appellate courts. In this model, individuals steeped in the knowledge base, structures, procedures, and values of the particular discipline lecture to students or guide them using reading and writing assignments, Socratic dialogue, large classes, smaller seminars, and individual tutorials, towards the goal of the students learning the theory, principles, and doctrine comprising the body of knowledge of the discipline. In law, that body consists of legal rules organized into a variety of legal "cubbyholes," e.g., contacts, torts, criminal law, civil procedure, etc., the structure of the legal systems in which they operate, and a system of critical analysis used by legal academics, lawyers and judges (i.e., "thinking like a lawyer"), taught through the "Socratic Dialogue".[8]

In the prevailing systems throughout the world, the basic model for teaching law is housed in universities alongside departments devoted to teaching other disciplines in similar pedagogic models, and law graduates receive the same undergraduate degrees (e.g., B.A. or B.S.) with their major field of study being "Law."[9] In the United States, and a few other jurisdictions, the teaching of law is housed in post-university level colleges of law which offer the degree of Juris Doctor (J.D.). In all of these systems, however, law students study law with other law students under the tutelage of law-trained professors using the same basic teaching methods and materials as the professors used when they studied law.[10] While the theory and pedagogy begat through the lineage of Storey and Langdell and the post-middle ages European universities does an excellent job of teaching the theory and doctrine of "the law" and formal legal analysis, it has not succeeded in teaching the craft of "lawyering," nor the roles of advocate and counselor for clients, member of the

5 *Daniel R. Coquillette, The Legal Education of a Patriot: Josiah Quincy Jr.'s LAW COMMONPLACE (1763), ARIZ. ST. L.J. (forthcoming summer 2007), available at http://ssrn.com/abstract=949331 (manuscript at 4) (discussing the rigor of much of the legal apprenticeship training in the United States in the 18th and 19th centuries).*

6 *Id.*

7 *Id., see also Carnegie Report, supra note 2, at 4–6 (discussing the evolution of the modern model of legal education in the United States from the divergent paths of European universities and British apprenticeships).*

8 *See Coquillette, supra note 5, at 7–9 (describing Eliot and Langdell's distillation of law into science at Harvard Law and the profound change it wrought in popular conceptions of the law); Carnegie Report supra note 2, at 4–6 (discussing the theory of legal education espoused by Joseph Storey and Christopher Columbus Langdell).*

9 *The J Doctor degree is actually a recent creation. Around 1970, American law schools began to replace the Bachelor of Laws degree, the L.L.B., with the Juris Doctor degree. See, e.g. J.D.s Now Available for Alumni, N.C. L. Rec. 1, 5 (UNC Law School Student Bar Association, Chapel Hill, N.C.) (Jan 1970).*

10 *Up until the late 19th century, most legal education in the United States was in the form of apprenticeship with licensed practitioners. Following on the teachings of Harvard professor Christopher Columbus Langdell, who taught that law is a science and that its study should parallel that of other arts and sciences, legal education in the United States moved from apprenticeship to its present form in law departments and schools either free-standing or as part of a college or university. Jack M. Balkin and Sanford Levinson, Law and the Humanities: An Uneasy Relationship, 18 YALE J.L. & HUMAN. 155, 159 (2006) ("Langdell's avowed mission was to transform American legal education into 'scientific analysis' . . . .").*

profession, or public citizen.[11] At least in part this can be traced to the fact that law teachers are, for the very most part, professors with little or no experience practicing law, and their experience and interest is in legal theory and doctrine, not in the roles and work of the practicing lawyer.[12]

Over the centuries, this system has produced many brilliant scholars of the law. Continued progress, however, may require change.[13]

B. Preliminary Assumptions: The Legal Academy's "Articles of faith"

For many years, law schools around the world – both undergraduate and graduate – have shared several of what might be called "articles of faith" about legal education:

1. In law school we teach students to think like lawyers.
2. The cornerstone of thinking like a lawyer is abstract critical analysis, or critical thinking.
3. The process that we call critical analysis or critical thinking is the same in all contexts.
4. Lawyers work in legal environments with other lawyers, judges, or related legal actors.
5. With the exception of "expert witnesses" there is little need or space to collaborate with persons trained in other disciplines, let alone with non-professionals.
6. Lawyers, as representatives of their clients, are bound by a "role morality" such that their individual values are either irrelevant, or at most subservient to the goals of the client, and the standards of professional responsibility imposed by local laws and practice.
7. The emotions of the lawyer are irrelevant except insofar as they might get in the way of critical legal thinking, and thus should be actively repressed.
8. Justice is a "legal" concept, defined, structured and achieved by lawyers for their clients, and relates, essentially, to achieving for one's client whatever the law provides for her in a given situation.

If these shared articles of faith were true, it would not be a great challenge to train lawyers to do estimable work for their clients, the profession and the community. Students could be taught the relevant theoretical and doctrinal principles, applicable legal systems, procedures, and sources of law, and to apply their classical critical legal analysis to whatever legal problem came their way. And, Voila! Lawyers!

11 *Carnegie Report, supra note 2, at 4–6, 19, 26–30 (indicating that the effective practice of law is actually three different, though related and integrated, activities including analysis of legal and related materials, being an advocate and counselor for clients, and participation in the profession as a member and as a public citizen, and arguing that reducing law to science permits the effective teaching of theory, doctrine and analysis but fails to teach how to understand and execute the other two roles of the professional.); Alan M. Lerner, Using Our Brains: What Cognitive Science and Social Psychology Teach Us about Teaching Law Students to Make Ethical, Professionally Responsible Choices, 23 QUINNIPIAC L. REV. 643 (2004) [Hereinafter Lerner, Using Our Brains] (arguing that developing the critical elements of "role" and lawyering skills essential to the effective practice of law requires experiential teaching and learning); Paul Brest, The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers, 58 LAW & CONTEMP. PROBS. 5, 6 (1995) (criticizing law schools' failure to adequately to prepare students in skills beyond doctrine and legal analysis).*

12 *Carnegie Report, supra note 2, at 4–6 (arguing that the triumph of the Storey/Langdell approach to legal education necessarily replaced apprentice masters, who had been drawn from the ranks of experienced practitioners, with "scholar-teachers").*

13 *See Carnegie Report, supra note 2, at 12 ("[Law schools face an] increasingly urgent need to bridge the gap between analytical and practical knowledge.")*

C. Teaching Law versus Educating Lawyers – The Three-Pillared Apprenticeship

Modern legal education is, however, or should be, different from the education appropriate in the arts and sciences for at least two reasons. First, the subject matter – law – differs in at least one critical facet from the "sciences": law reflects human choices to govern our behavior based upon our values, and thus can validly differ significantly from jurisdiction to jurisdiction in ways not applicable to the sciences.[14] Additionally, legal education differs critically in its role in society from education in other of the arts and sciences taught at the post-secondary school level. In every discipline from African History through Zoology, graduates who remain in the discipline generally pursue careers based upon their studies in that discipline by further research and scholarship limited to that discipline. Their hard work and creativity expand the knowledge base in that discipline, which they, in turn, teach to each new crop of students. Not so in law. True, some law graduates pursue careers in the legal academy using essentially the same analytical and research tools they learned in law school. Yet the vast majority leave the academy to become practicing lawyers responsible not to advance the knowledge base of the law and teach it to others, but rather to serve the expressed goals and needs of their clients, and to contribute to the development of the legal rules and systems which govern our society.[15]

Clients, as any practicing lawyer knows, are complex creatures, constrained by the contexts of their lives and communities, with a plethora of goals, concerns, needs, and desires, and are frequently faced with other persons or entities seeking contrary or inconsistent goals. The legal problems that most clients present to their lawyers represent only a small piece of their lives, inextricably intertwined with other important issues they face. Knowing the law and being able to analyze legal theory and doctrine are necessary to assist clients to solve their problems – whether those problems arise under the rubric of litigation, transactions or personal planning – but they are not sufficient. The skills and craft of the professional must be brought to bear as well.[16] At the same time, the fundamental and pervasive role that law, and thus lawyers and the legal profession, plays in the maintenance of a free society suggests that attempting to abstract legal analysis from values may be at the least undesirable, and perhaps impossible. Those considerations should move us to re-examine the "articles of faith".[17] Doing so, we submit, should lead the legal academy to significantly change how it prepares law students to be effective, responsible lawyers for their clients, and important contributors to the system of law that governs our lives. How to do that?

14 *Consider merely the significant structural and procedural differences between systems based upon the common law (i.e., the Anglo-American model) and those based upon a code (i.e., the Continental model); or between an inquisitorial and adversarial model of the law's response to crime.*

15 *Thus, while lawyers' activities do contribute to the development of the law, particularly in common law jurisdictions, that development is driven not so much by their personal values, but rather by the goals and values of their clients, which may be quite different. See MODEL RULES OF PROFL CONDUCT R. 1.2(b) ("A lawyer's representation of a client … does not constitute an endorsement of the client's political, economic, social, or moral views or activities.").*

16 *Some in the legal academy suggest that teaching the roles and craft of the lawyer beyond teaching students "to think like lawyers" is properly left to the profession after the students graduate from law school. We would respectfully disagree for two reasons. First, although some law graduates secure employment in institutions (e.g., law firms, large corporate or governmental law departments), many go directly from law school to the bar examination to practicing law as sole practitioners, or in settings not equipped to provide that post-law school "apprenticeship," and the profession has no mechanisms for providing it. Second, if all that law school is about is the teaching of legal analysis, legal theory and doctrine, perhaps it should be located in the undergraduate university, as it is in most of the world, leaving for the post-graduate teaching the other roles and skills of the modern lawyer.*

17 *See Carnegie Report, supra note 2, at 26–28 (learning through apprenticeship with experts teaches not only the subject matter, but also its application according to the norms of the profession); Lerner, Using Our Brains, supra note 11, at 661 (suggesting that if our goal is to prepare our students to become practicing lawyers in the highest sense of that term, our knowledge of cognitive development suggests a different kind of learning in law school); Howard Lesnick, Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School, 37 UCLA L. REV. 1157, 1158 (1990) [Hereinafter Lesnick, Infinity in a Grain of Sand] (indicating a need for re-examination of our implicit teaching).*

It is now widely understood that the apprenticeship model is extraordinarily effective in teaching students the "how" and "why" of a discipline, and the role of the members of that discipline in a community of fellow practitioners, as well as their role in the larger community.[18] The Carnegie Report took a close look at the teaching of law students "to think like lawyers," and concluded that this process is well taught in the current model, with experienced and knowledgeable practitioners of that process guiding them through their reading and understanding of legal theory and doctrine as they develop their analytical skills. However, those same professors do not seek to teach the other two apprenticeships: the craft of being a practicing lawyer for clients, and the role of a member of the self-regulating profession holding special responsibility for the law, legal system and administration of justice throughout society. This paper challenges the notion that law schools need only teach legal analysis from legal materials, arguing that to do so produces lawyers who are not adequately equipped to serve their clients' needs, even their identified "legal needs" or the needs of their profession or communities. While it makes reference to a variety of other disciplines with which collaboration is critical for lawyers, especially lawyers for the poor and disenfranchised, it focuses primarily on the work of lawyers for children and parents in so-called "child welfare" or "child protection" cases because for the past five years the first author has been teaching and supervising students in an Interdisciplinary Child Advocacy Clinic, and has come to experience, firsthand, the critical relationship between meeting the goals of our clients and collaboration between and among several disciplines.[19] In that context it seeks to demonstrate how all three apprenticeship pillars can be combined effectively in a single, multi-disciplinary apprenticeship experience – and contribute to the effective education of lawyers.

II. LAWYERING FOR REAL CLIENTS – COLLABORATION IN CHILD ADVOCACY

Every year, between 3000 and 4000 new child dependency cases are filed in the Family Court Division of the Court of Common Pleas of Philadelphia County.[20] These cases involve children who, it is alleged, have been abandoned, abused or neglected, or are otherwise without proper parental care or supervision.[21] Virtually all of these children come from the poorest of the poor families in our community. They and their families usually have multiple needs including those medical, psychological, educational and economic, and frequently are also dealing with issues of substance abuse. Too often, the various public and private providers of the services required to assure the safety and well being of these children are under-resourced and unable to coordinate their services in the particular manner that each child needs. Moreover, in many cases the

18 *See Lerner, Using Our Brains, supra note 17 at 705 (arguing that pervading early law school courses with ethical examples is the best way to teach responsiveness to them); Carnegie Report, supra note 2, at 27–29 (incorporating apprenticeships into education allows students to synthesize what they have learned and use it professionally); Coquillette, supra note 5, at 6(explaining that "elite legal apprenticeship" was actually a highly organized procedure that produced very capable lawyers).*

19 *For a demonstration of the clinic's multidisciplinary approach to addressing client goals, see Appendix A (detailing a case study adapted from an actual case handled by the University of Pennsylvania Law School Interdisciplinary Child Advocacy Clinic).*

20 *Every state in the United States has statutes that purport to protect children from abuse and neglect and authorize the state to intervene, ultimately through the courts, to provide protective services. See generally Keeping Children and Families Safe Act of 2003, Pub. L. No. 108–36 (2003) (amending the Child Abuse Prevention and Treatment Act, which mandates a minimum federal definition of abuse and neglect and provides funding for state programs addressing child welfare). These services include, but are not limited to, services to the children and the family with which the child lives, removal from the home and placement in foster care, escalating in some cases to termination of parental rights and adoption. Each state has its own terminology for the proceedings, the state agency and the particular courts in which these proceedings originate. Throughout this article we will use the terms applicable in Pennsylvania, generally, and Philadelphia in particular, unless otherwise noted.*

21 *42 Pa. C.S.A. § 6302 (providing a definition for a finding of dependency).*

role of advocate for children has become distinctly anti-parent, exacerbating rather than reducing the tension between parent and child – both of whom need assistance from the state.[22] In creating an Interdisciplinary Child Advocacy Clinic, we strove to build a model that would demonstrate a route to overcoming this dysfunctional disorganization and conflict.

A. Appreciating Multidisciplinary Collaboration

We envisioned a clinical model that sought integration over fragmentation, and collaboration wherever appropriate rather than a purely adversarial stance – a model that enveloped the children and families the clinic serves in comprehensive services, which eventually would lead towards safe and timely reunification. Collaboration works. The concept of collaboration, now motivating building designers to rethink spatial design in workplaces,[23] enjoys unique benefits in the legal profession. Yet, consistent with conventional models of legal thought and education, legal scholars traditionally do not collaborate,[24] either with other lawyers or with individuals outside of the profession of law, despite the intrinsic scholarly, educational, and client-centered service benefits inherent to the practice of collaboration.

1. From Intradisciplinary to Interdisciplinary Collaboration

Compared to other academic disciplines, historically, the legal academy has not been considered the collaborative type. Looking at instances of co-authorship in law journals reveals a much lower rate of collaboration between lawyers than between professionals in the social sciences. For example, between 1970 and 1999 the rate of intradisciplinary collaboration between legal professionals was only fifteen percent.[25] During that same period, collaboration among professionals in the social sciences reached sixty percent.[26] Moreover, the influence of early legal collaborations on the development of legal thought seems small compared to the influence of non-collaborative works.[27] Despite the discouraging trend with respect to collaboration in legal ventures, indicators suggest that productive collaboration is on the rise.[28] Younger scholars participate in more collaborative ventures than their more senior colleagues, suggesting that, within the discipline of law and legal scholarship, there is an emerging readiness to recognize the value of collaboration.[29] Similarly, scholars perceive recent collaborations to be more influential than earlier collaborations.[30]

22 *See, e.g., MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 213–306 (Harvard University Press 2005) [Hereinafter Guggenheim,Children's Rights]; Martin Guggenheim, How Children's Lawyers Serve State Interests, 6 NEV. L. J. 805 (2006) [Hereinafter Guggenheim, Children's Lawyers] (Guggenheim argues that under the Constitution, and historical and biological reality, parents have rights and children have needs. Giving children legally enforceable rights as opposed to the rights of their parents, he argues, serves other adults' interests, including those of the state actors wishing to interfere with the family in regulatory and punitive ways, but does not serve the needs of either the children or their families).*

23 *See Eils Lotozo, Tearing down the walls: Think outside the cubicle: Workplace redesigned with interaction in mind, THE PHILADELPHIA INQUIRER, Sept. 1, 2006 ("The new trend in workplace design . . . focuses on how people collaborate and get things done.").*

24 *See supra Part I.B. (outlining the conventional model as a set of legal "articles of faith").*

25 *See Tracey E. George & Chris Guthrie, Joining Forces: The Role of Collaboration in the Development of Legal Thought, 52 J. LEGAL EDUC. 559, 562 (2002) (investigating the role of collaboration in legal scholarship compared to other disciplines).*

26 *See id. at 568 ("During the last three decades of the twentieth century . . . [s]ix out of every ten social science articles were the product of collaboration.").*

27 *See id. at 569 (measuring influence by the number of times an article has been cited).*

28 *See id. at 572–73 (describing factors creating an increase in collaborative endeavors and their influence).*

29 *See id. at 576 ("Collaboration is even more common among prominent younger scholars. . . .").*

30 *See id. at 572 (commenting that the rate of citation for coauthored pieces is higher for more recent articles); see also Ian Ayres and Frederick E. Vars, Determinants of Citations to Articles in Elite Law Reviews, 29 J. LEGAL STUD. 427, 439 (2000) (finding that "[c]oauthored articles were cited more frequently than single-author pieces").*

The increase in intradisciplinary collaboration offers the potential to recognize the important benefits of joint effort. Intradisciplinary collaboration adds critical skills and thought processes to legal education and promotes the early professional development of emerging legal thinkers.[31] Collaboration can also present opportunities to reinforce faculty relationships with other legal faculty.[32] Additionally, collaboration with practitioners provides an occasion to bridge theory and practice.[33] "Finally, legal scholarship is becoming increasingly interdisciplinary. . . . Collaboration with academics from other disciplines brings nonlegal scholars' ideas and methodologies into legal scholarship, increases the likelihood that law faculty will produce empirical, interdisciplinary work, and improves the standing of legal academia in the broader academic community."[34] The increase in intradisciplinary collaboration indicates the beginning of a shift in the legal climate from the legal academic as sole actor to the legal academic as team player. This shift alone has produced benefits within the legal academy and the practice of law generally. Notwithstanding the benefits attributable to the movement towards intradisciplinary collaboration within the legal academy, lawyers and legal academics have much to gain from working with professionals outside of their discipline. Still, translating interdisciplinary scholarship into experiential interdisciplinary collaboration for law students has yet to take hold.[35]

2. Interdisciplinary Collaboration

> Whatever the power – even the necessity – of the disciplines . . . in the end, questions never stop at the boundaries of a discipline. Efforts to develop decisive and personal ideas of the true, the beautiful, and the good necessarily take us beyond specific disciplines and invite syntheses.[36]

This reality and its realization form the essence of this discussion. For the lawyer, answering the question, remedying the problem, and finding the solution are the essential ends. But the most successful lawyers will reach beyond the legal question posed by the client to more fully understand the nature and context of the problem, because doing so is essential to finding the most effective means to achieve the client's goals. In so doing, the lawyer may have to consult and collaborate with clients and constituents, organizers and advocates, indeed, with anyone who can offer a unique and relevant perspective. Assessing the effectiveness of such interdisciplinary collaboration for law students can be approached using the same metrics applied to collaborative efforts between legal professionals, by examining the impact of the collaboration on four aspects of the legal profession: the practice of the profession,[37] enhancing professionalism and preparing future leaders,[38] furthering legal scholarship,[39] and educating future professionals.[40] We submit that

31 *See George and Guthrie, supra note 26, at 579 ("Collaboration with students provides uncommon pedagogical benefits and may spawn promising academic careers.").*

32 *See id. at 579 ("Collaboration with other law teachers strengthens relationships within and between law faculties.").*

33 *See id. at 579("Collaboration with judges, practicing lawyers, and other nonacademics produces scholarship that reflects both theoretical and real-world insights.").*

34 *Id. at 578–79.*

35 *There is an important distinction between interdisciplinary scholarship, cross-disciplinary course registration, and multidisciplinary collaboration. This distinction exists, in part, because most academic work in law and other disciplines in which law students take courses assesses students based upon performance on written examinations and/or research papers – activities in which experiential collaboration of the sort described here is generally prohibited.*

36 *HOWARD GARDNER, THE DISCIPLINED MIND: WHAT ALL STUDENTS SHOULD UNDERSTAND 147 (1999).*

37 *See infra Part II.A.2.a (considering interdisciplinary work as a vehicle to promote client goals).*

38 *See infra Part II.A.2.b (discussing interdisciplinary collaboration in the context of professional development).*

39 *See infra Part II.A.2.c (exploring the influence of interdisciplinary collaboration on legal scholarship).*

40 *See infra Part II.A.2.c (acknowledging the value of interdisciplinary work in legal education).*

examining these domains will demonstrate that while there are challenges to such engagements,[41] the advantages attributable to interdisciplinary work support increasing the practice, particularly in the context of clinical legal education.

a. Collaboration Facilitates "Whole Client"-Centered Service

> Reflecting on this semester's experience as a part of the Child Advocacy Clinic, there is one lesson I have learned that stands out in importance and meaningfulness. The role of the child advocacy team and each of its disciplines is to ensure that children in the child welfare system are not forgotten by society and the system itself. Advocating for their best interests in safety, academics, physical and mental health, and overall well-being is our mission, and as I have learned over and over, it is a critical one.[42]

Clients, as the recipients of services provided by professionals, are situated to most clearly reap the benefits of interdisciplinary collaboration. This discussion has already alluded to a number of client benefits, but their importance warrants explicit consideration. Collaboration first can enable a broader understanding of a client's problem by clarifying the social, economic, familial, and cultural frameworks in which legal conflicts arise.[43] But collaboration helps throughout the entire process of representation. Despite a client's framing of her issue in legal terms when she brings it to her attorney, many client problems involve multiple dimensions.[44] Collaboration provides all participants with a working knowledge of another discipline. It also sensitizes each to be alert for evidence that there are issues, or potential solutions, with respect to which another discipline might have valuable insights. This recognition of the role and potential contribution that other disciplines might make supports all members of a collaborative team to identify those aspects of a client's situation that benefit from the involvement of another professional. By understanding the various ways in which a client's problem may be framed through interaction with professionals who may encounter the problem in different contexts, the lawyer is better able to provide service to her client. Moreover, collaboration serves to enhance communication between professionals in various disciplines, facilitating the provision of services to the client. This communication is critical to effectively serving a client because no lawyer can learn all of the extra-disciplinary knowledge necessary to find the most appropriate outcome for her client.[45] Learning how to communicate with the professionals who can help the client to obtain her goals, may additionally increase a client's satisfaction with the services she receives.

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41 *See infra Part III (addressing the challenges of multidisciplinary collaborative work).*

42 *Clinic Social Work Student (2006) (journal entry, on file with author)*

43 *See Anita Weinberg and Carol Harding, Interdisciplinary Teaching and Collaboration in Higher Education: A Concept Whose Time Has Come, 14 WASH. U. J.L. & POL'Y 15, 19 (2004) (explaining that this factor motivated early collaborations between philosophers, economists, and lawyers). See also, DAVID A. BINDER, PAUL BERGMAN, SUSAN C. PRICE AND PAUL R. TREMBLAY, LAWYERS AS COUNSELORS 2–13 (Thompson West, 2004) (advocating "client-centered" lawyering because the clients both "own" and thus live with their problems and attempted solutions, and also because clients know so much more about the larger context of their lives in which the particular problem has arisen).*

44 *See Janet Weinstein, Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice, 74 WASH. L. REV. 319, 319 (1999) ("Courses in client counseling and mediation have long recognized that people are not one-dimensional and neither are their problems.").*

45 *Id. at 320 ("[Society] can expect lawyers to know how to work with people who together have the knowledge and skills required to assist a client in [a multi-dimensional] way."). Motivated by physicians who recognized that even the best medical science cannot alone provide healthy outcomes for patients, Boston Medical Center now employs lawyers as advocates for patients and as partners for medical professionals in their advocacy. Boston Medical Center Launches National Medical Legal Partnership for Children, BUSINESS WIRE (Apr. 10, 2006), available at http://www.csrwire.com/PressRelease.php?id=5368 (last accessed Feb. 11, 2007) [Hereinafter "Zuckerman"] (recognizing that "lawyers and healthcare professionals working together can often prevent illness and can give sick kids a better shot at recovery").*

b. Collaboration Develops Professionalism

The appeal of interdisciplinary work largely results from the idea that individuals trained within different academic frameworks each bring something unique to a multitude of problems that transcend disciplinary boundaries. In addition to client gains, from collaboration between and among professional service providers,[46] the professionals within interdisciplinary engagements often benefit from each other's knowledge, and experience.

i. Interdisciplinary Collaboration Facilitates the Professional Development of Lawyers

In the clinic . . . I learned how important it really is to rely on and work with other people. All of our clients had problems that one lawyer, no matter how gifted, could never solve alone. It took working with professionals in other fields and with each other in order to become helpful.[47]

Lawyers see themselves as helpers much like professionals in the other traditional helping professions.[48] However, the ability of the lawyer to help her client relies directly on her ability fully and correctly to define and to understand the problems of her client. "Only by working with professionals from other disciplines can [she] actually begin to see all the puzzle pieces that make up the complex picture of a problem."[49] Lawyers can not practice in a vacuum.[50]

Recognizing the need for lawyers to work with other professionals in order to address client needs leads to opportunities for professional development of the lawyer. Lawyers trained in interdisciplinary environments learn to seek and to implement non-traditional solutions to the "legal" problems presented by their clients.[51] Similarly, they learn to understand and to coordinate the efforts of multiple professionals in understanding problems and reaching such solutions.[52] The lawyer working on such a team learns not to view the issue and its solution only through the lens of the law, but rather, to understand the value of the contributions from other disciplines.[53] Throughout, the lawyer must respect the boundaries of other professions and

46 *See infra Part II.A.2.a (noting the impact on clients).*

47 *Clinic Law Student (2006) (journal entry, on file with author).*

48 *See Weinstein, supra note 45, at 306 ("Law, along with medicine and the clergy, should be considered and practiced as the healing professions [sic]."); see also Weinstein, supra note 45 at 324 ("The law is a 'helping' profession.").*

49 *Id. at 324 (citing James M. Cooper, Towards a New Architecture: Creative Problem Solving and the Evolution of Law, 34 CAL. W. L. REV. 297, 298 (1998)).*

50 *See Cooper, supra note 50, at 307 ("Law can no longer be practiced in a vacuum.").*

51 *Particularly in the context of family law, the traditional adversarial system may be detrimental to a client's interests. See, e.g., Clare Huntington, Rights Myopia in Child Welfare Law, 53 UCLA L. REV. 637 (2006).*

52 *See Weinstein, supra note 45, at 325 ("Lawyers will need to learn to be professionals at organizing, leading, coordinating, inspiring, participating in, and facilitating teams of helpers trained to approach clients' problems from a variety of disciplinary perspectives."); Zuckerman, supra note 46 (describing collaboration as joint effort, not parallel play).*

53 *See Weinstein, supra note 45, at 327 ("The [traditional lawyer] sees the client's needs as legal needs and then draws upon the expertise of others to the extent required to achieve the legal goal."). Weinstein also writes, "The difference between what frequently occurs now under the name of collaboration and collaboration as viewed by experts on the group process is the teamwork spirit – it is the understanding that no one discipline has the knowledge or skills to provide single-handedly the most effective assistance to the client." Id. at 327–28.*

understand that these may sometimes conflict with the boundaries of legal practice.[54] By understanding the unique boundaries and contributions of various stakeholders addressing the same problem, the lawyer comes closer to achieving her "helping role," for her own client when united with others who share a common purpose.[55]

ii. Collaboration Engages Professionals in Broader Societal Issues that Prepare Lawyers for Leadership

Democracy assumes that the variety of voices and perspectives of our community add to the polity's perspectives, knowledge, and understanding, and thus to the quality of its decision-making and potential for growth. Conversely, isolation and unfamiliarity tend to lead to one-dimensional thinking and stagnation. Lawyers, who make up the majority of the members of Congress and virtually the entire judiciary, are nationally engaged. To be effective, however, legislators, regulators and judges must engage in issues in a multitude of disciplines, including social services, health services, science, economics, engineering, public policy, and others. Exposure to the perspectives, knowledge base, values and strategies of the other disciplines must be considered to improve the quality of their decision making process at every level.

Even outside of law-making activities, all lawyers play a unique role in a society that aims to be governed by a system of just laws that assure everyone of liberty, due process, and equal justice under law, and that support a range of other shared values. Those values also are at the heart of the legal profession[56] and thus must be part of the socialization that takes place in law school.[57] We submit that cross-disciplinary experiences in law school, exposing the students to knowledge, perspectives, values, and problem solving approaches of non-lawyers, will, in a sense, both contextualize and "democratize" their understanding of law, the legal process and legal consequences, and so enhance their socialization to the core values of the profession.

iii. Collaboration Offers Reciprocal Value to Other Participants

The most rewarding aspect of the course from my perspective was being able to use the medical knowledge I had gained to aid children outside of a clinic setting. In theory, I had always known I could eventually apply my knowledge to other fields. Now that I have had the chance to do so, I feel I am better prepared for my future profession as a pediatrician.[58]

When the lawyer aligns herself with others who share her purpose, these other participants in the collaborative process receive reciprocal benefits for their involvement. All participants benefit from learning about different perspectives and varied approaches to a problem that each might individually encounter

54 *See id. at 327 ("Collaborative work involves more, including communication skills; knowledge about other disciplines, including their range of coverage and limitations; understanding group process and team-building; self- and other- awareness, including the effects of one's behavior on others; and leadership skills."); see also Dale L. Moore, An Interdisciplinary Seminar on Legal Issues in Medicine, 39 J. LEGAL EDUC. 113, 115–16 (1989) (stating that joint efforts promote understanding of another discipline's "rules, beliefs and ethical principles"); Jane Aiken and Stephen Wizner, Promoting Justice Through Interdisciplinary Teaching, Practice and Scholarship, 11 WASH U. J.L. & POL'Y 63, 66–67 (2003) (arguing that lawyers, especially those working for low-income clients, can learn from the professional skills of social workers); infra Part III (addressing challenges to collaborative arrangements).*

55 *See Karen L. Tokarz, Introduction, Justice, Ethics, and Interdisciplinary Teaching and Practice, 14 WASH. U. J.L. & POL'Y 1, 6 (2004) (recognizing the role of interdisciplinary collaboration in bringing together individuals who share the same goals).*

56 *The American Bar Association defines itself as an organization that is "the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence, and respect for the law." See American Bar Association, ABA Mission and Association Goals, www.abanet.org/about/goals.html (describing the organization's missions and goals).*

57 *See Carnegie Report, supra note 2, at 11.*

58 *Clinic Medical Student (2005) (journal entry, on file with author).*

within her profession.[59] Beyond these advantages, however, the legal profession can offer insight that allows professionals practicing in other disciplines to better meet their professional obligations.[60] Individuals from a variety of professions will inevitably interface with the legal system at some point during their careers. Interdisciplinary collaborations provide a unique – often the only – opportunity for them to learn about important facets of that system.[61] Such relationships situate other professionals to provide the best service to their clients by applying the knowledge they are able to absorb from their interaction with other disciplinary practices. The ability of the professional to perform her helping role thus undoubtedly benefits the professional, independently of the benefits it provides to her clients.

c. Exposure to Additional Disciplines During Legal Training Fosters Important Cross-Disciplinary Scholarship

As academics in legal and other professions collaborate in practice, interdisciplinary scholarship follows. Effective scholarship results from interdisciplinary collaboration that notices existing ties between the law and other disciplines. A growing body of legal literature examining connections between law and psychology seeks to capitalize on unique insights that can be drawn by coupling academics performing the empirical research traditionally reserved to the social sciences with legal theorists who respect the real influence of behavior and emotion on their legal practice.[62] The growth of empirical research in the legal literature suggests a rising acceptance of this form of scholarship within the legal profession. Moreover, there appears to be a corresponding increase in legal academics conducting empirical work. At the foundation of these scholarly undertakings are relationships. "Some might claim that the only way to actually understand [another discipline] is to do it. . . . Another way is to work closely with a colleague who has been trained in [that] discipline."[63] Growth therefore remains possible with continued collaboration between groups of

59 *See supra notes 42–46, and accompanying text (pp. 9–10) (recognizing the value of involving multiple disciplines in solving complex problems).*

60 *See, e.g., Nancy J. Moore, What Doctors Can Learn from Lawyers About Conflicts of Interest, 81 B. U. L. REV. 445, 451 (suggesting the lawyers are more apt at handling narrow conflicts of interest in practice because they have historically had more experience in managing conflicts); see also Paula Allen-Meares, The Interdisciplinary Movement, 34(1) J. SOC. WORK ED. 2, 3 (1998) ("If social workers lack knowledge on the workings of the legal system, they cannot advocate [sic] effectively on a client's behalf, and they may unintentionally promote an adverse outcome."); Zuckerman supra note 46 (explaining that lawyers have necessary and unique skills that can help patients recover). But see infra Part III.B. (commenting that collaborative relationships themselves can also create a source of conflict of interest).*

61 *See Allen-Meares, supra note 601 (remarking that social workers will almost always have some contact with the legal system during their careers). Allen-Meares also notes the need for increased education on particular aspects of the legal profession, including:*

> *providing information regarding privileged communication; confidentiality and the duty to warn; client access to records; the relationship between legal and ethical issues; practice regulation, malpractice and agency and worker liability; common legal issues arising in practice; the legal rights of various client groups; areas where rights are frequently in conflict; preparation for court appearances of various kinds; and legal advocacy for nonlawyers.*
>
> *Id. at 3 (quoting Rufus Lynch and Edward Brawley, Social Workers and the Judicial System: Looking for a Better Fit, 10 J. TEACHING IN SOCIAL WORK 77 (1994). Our clinic attempts to address many of these needs in an interdisciplinary setting.*

62 *See Jeremy A. Blumenthal, Law and Social Science in the Twenty-First Century, 12 S. CAL. INTERDISC. L.J. 1, 6 (2002) ("I focus on two areas in particular: the increased use of research in cognitive psychology on biases and heuristics in decision-making by practitioners of 'behavioral law and economics,' and an increased focus by legal scholars on the role of emotions."). The author notes that this trend generates some controversy. Importantly, however, the author posits that fostering information flow between the professions will resolve much of the disagreement. See id. at 34 ("[W]hat can be done to increase communication, to get the best data and theories in both law and psychology journals into the courtroom, and into policy? At least two suggestions seem helpful. The first, mirroring the interdisciplinary nature of the research undertaken, is to make the researchers' backgrounds and perspectives more strongly interdisciplinary.").*

63 *Shari Seidman Diamond, Empirical Marine Life in Legal Waters: Clams, Dolphins, and Plankton, 2002 U. ILL. L. REV. 803, 818 (2002).*

thinkers.[64] Training offers ideal opportunities for exchange of ideas across disciplines; these opportunities create relationships that can form the basis of later collaborative scholarship.

d. Legal Education Offers the Best Opportunity to Create Lawyers Who Collaborate

In most classes, working together is either forbidden or it is just not done because students are competing with one another for a top spot in the curve. . . . The clinic was undoubtedly my most difficult and most rewarding experience in law school. It was completely different than any other class. The clinic was collaborative where other classes promote individual competition. The child advocacy work also placed a premium on emotional intelligence that would be inappropriate in other coursework. These differences with the rest of my law school experience made the clinic an invaluable experience for me as a person and as an attorney.[65]

The benefits attaining to interdisciplinary collaboration argue for its increased use in the course of client representation. Nevertheless, professional culture can erect a powerful barrier to effective interdisciplinary collaboration. In addition to concerns about professional boundaries,[66] socialization within a professional culture can significantly hinder a professional's readiness to collaborate. Only when an individual can remove the narrowing professional lens through which the law school teaches her to view the world to critically evaluate her contribution to a client can she genuinely recognize that a client's problem extends beyond the domain of her profession.[67] Yet, challenging subjective notions of what one's profession is and is not creates uneasiness.

The beginnings of a sense of professional culture occur during legal training. Throughout this experience, students develop perceptions about the legal profession and expectations regarding appropriate responses to issues framed as legal problems.[68] These habits of mind are learned implicitly, rather than by overt teaching and learning; yet, they are learned with great power.[69] When later faced with a difficult situation, these former students, who are now lawyers, will naturally revert to learned perceptions and expectations to predict outcomes and make choices about potential solutions to the situation.[70] Because "students learn, implicitly, and with powerful emotional stakes, not to ask for support [from] others in solving legal problems,"[71] students have traditionally become practicing lawyers without learning how to collaborate.[72]

64 *See id. at 817 ("It is no accident that many of the traditionally trained legal academics who have contributed most heavily to the empirical literature have done so through collaboration.")*

65 *Clinic Law Student (2006) (journal entry, on file with author).*

66 *See infra Part III (dealing with challenges to multidisciplinary arrangements).*

67 *See Weinberg and Harding, supra note 44, at 29–34.*

68 *See Alan M. Lerner, Law & Lawyering in the Workplace: Building Better Lawyers By Teaching Students To Exercise Critical Judgment as Creative Problem Solvers, 32 AKRON L. REV. 107, 123–25 (1999) (Hereinafter "Lerner, Law & Lawyering in the Workplace") (describing a problem-solving course given as a first year elective, in which, after only one semester of law school, every student in the class, when faced with the earliest identification of a potential claim by one person, assumed that the case was already in litigation).*

69 *Id..; see also Lerner, Using Our Brains, supra note 11, at 679 (arguing that learned mental habits have an enduring effect); Lesnick, Infinity in a Grain of Sand, supra note 16, at 1158 ("[M]uch of what we teach is taught implicitly."); Carnegie Report, supra note 2, at 5 ("The process of enabling students to 'think like lawyers' takes place not only in a compressed period of time but primarily through the medium of a single form of teaching: the case-dialogue method. . . . The consequence is a striking conformity in outlook and habits of thought among legal graduates.").*

70 *See Lerner, Using Our Brains, supra note 11, at 679 (advancing the idea that law students and lawyers will "downshift" and revert to "tried and true", but often incomplete, approaches to problems under stress).*

71 *Id. at 698___.*

72 *Id. at 698 ("Most law students learn the skills of group process and collaboration only by chance.").*

To create lawyers who are ready for interdisciplinary collaboration, exposure to collaboration must begin during legal training. During law school, students form the foundation of their view of their profession and themselves as professionals. Throughout the law school experience, these future lawyers become emotionally committed to what they believe necessary to becoming lawyers. Therefore, law students are most ready and best suited to adapt their behaviors towards the legal profession as well as other professions with which they might collaborate.

Accepting that collaboration must be taught during professional training, the next logical question is how collaboration should be taught and learned. There are many ways to structure an interdisciplinary experience that may create more or less uneasiness among participants. Advocating also for a greater emphasis on interdisciplinary learning, Weinberg and Harding posit three general models for interdisciplinary education: (1) the 'one discipline studying another discipline model,'[73] (2) the 'representative model'; and (3) the 'team model.'[74] In the 'one discipline' model, law students learn about another discipline by studying that discipline in their traditional "home" environment and using their traditional methods of study. In the 'representative model,' mixing occurs at the supervisory level, with professionals from an unrelated discipline sharing their knowledge and experience with another discipline, for example a law professor and an economics professor jointly teaching antitrust law. Finally, in the 'team' model, mixing of disciplines occurs at the level of supervisors and students with a course enrolling students from various disciplines to learn from the knowledge and expertise of faculty from various disciplines. Weinberg and Harding describe this model as "interdisciplinary teams of faculty from diverse disciplines planning and teaching a course enrolled in by students from diverse disciplines and professions,"[75] for example a law professor and a psychologist jointly teaching mental health law in a course in which both law and psychology students are enrolled. We take the team model one step further to an 'experientially integrated team' approach. The integration of planning and practice horizontally between clinic participants, as well as vertically between clinic faculty and students, adds a critical layer of implicit learning for students to the more traditional, but solely vertical, interdisciplinary learning approach which occurs in the 'team model'.

We think that this integrated team model permits students to more fully learn both the substantive area of their clinical practice and the process of cross-disciplinary collaboration. Effective educational models for collaboration will address key elements of multidisciplinary collaboration–understanding professionalism, creating opportunities to provide whole client centered services, and engaging students of the various professions in educational endeavors that compel them to recognize the scholarly contributions of another discipline. Clinical law programs are ideally situated to accomplish each goal, and are therefore understandably a common forum for interdisciplinary training in law school.[76]

B. Designing an Effective Clinical Curriculum

Since 2002, The University of Pennsylvania Law School has included among its live-client clinical offerings an Interdisciplinary Child Advocacy Clinic, in which the first author has been the Law School's faculty, and

73 *Within our institution, the 'one discipline studying another discipline' model is the closest that most students get to an interdisciplinary education. Students may take law school courses taught by an instructor from a different discipline, or may take courses outside of their primary school, which are taught by instructors in whatever school the course is in. Still, in either approach, the student generally studies one discipline; we propose a model that differs from this approach.*

74 *See Weinberg and Harding, supra note 44, at 37–39.*

75 *Id. at 37*

76 *Amsterdam, supra note 3, at 612.*

during one semester of which the second author was a student. We do not argue that this is the only model for interdisciplinary professional education, or that it is, necessarily, the best. For the reasons set forth below, however, we believe that it works well, and satisfies all of the criteria for effective collaboration across disciplines in law, medical, and social work professional education.

1 Establishing a Child Advocacy Focus

> [E]xperiences in the clinic [] can be summed up in one word – teamwork. . . . Working on a team in this context is not only helpful, but almost necessary, and this is for two reasons. First of all, it is incredibly helpful to have more than one person available to assist in the investigation portion of the case . . . . There is another reason why working on a team in this context is so effective, besides the almost inherent efficiency and helpfulness of having more than one person focused on the case. The reason is that, in a situation such as this, where the stakes are so high and the clients are so vulnerable, it is better for everyone involved if the members of the team focus on the aspect of the case where they are the strongest.[77]

From antitrust law to workers compensation law, almost every problem a lawyer encounters includes a dimension that extends beyond the boundaries of the legal profession.[78] In fact, the need to understand subject matter outside of the strict interpretation of the law drives most lawyers towards specialization. While new lawyers may sample from a variety of legal specialties, seasoned practitioners know that it is more efficient to specialize. Why is this so? Because for the client and the lawyer, law does not exist in a vacuum. In every legal problem a lawyer approaches she learns how the law applies to a specific set of facts arising out of the particular client's context; to do so effectively, she must understand those facts, and their relationships to each other, to the clients, and to the context in which they arise. Traditionally, lawyers learn such factual context and relationships from contacts with their clients and with experts in the relevant fields. The lawyer's investment of time and energy in gaining facility with a practice area, and the various players within that practice area, creates an incentive for her to continue practicing within that area. At the same time, the lawyer must and does work with experts from disciplines outside the law such as medicine, social work, economics, mental health, finance, environmental science, etc. Yet, even with the need to rely on the expertise of non-lawyer professionals in practice, most lawyers do not frequently collaborate in the most valuable sense of the word – they see little need, and they have never been taught how to really collaborate. Instead, they alone choose when, how and to what extent to communicate with non-lawyer experts.

Legal clinics in a variety of disciplines are poised to teach collaboration. Law schools throughout the United States house multidisciplinary clinics in environmental law,[79] estate law,[80] disability law,[81] mental health

77 *Clinic Law Student (2006) (journal entry, on file with author).*

78 *See generally Areeda, supra note 3 (acknowledging the prevalence of thought about interdisciplinary work in the 1980s and earlier).*

79 *See, e.g., Washington University Law Interdisciplinary Environmental Clinic, http://law.wustl.edu/intenv/ (partnering "student attorneys" with "student consultants" in several graduate studies to provide assistance on environmental and community health concerns) (last visited Jan. 28, 2007).*

80 *See, e.g., The Camp Center for Estate Planning, University of Florida Law School, http://www.law.ufl.edu/centers/ (offering estate planning services in conjunction with "the Graduate Tax Program and the UF Institute for Learning in Retirement") (last visited Jan. 28, 2007).*

81 *See, e.g., Disability Rights Law Clinic, American Washington College of Law at American University, http://www.wcl.american.edu/clinical/disability.cfm (representing clients with mental and physical disabilities) (last visited Jan. 28, 2007).*

law,[82] education law,[83] and beyond. Among these options, our choice to create an interdisciplinary child advocacy clinic as the locus of teaching collaboration was guided by several principles:

(1) Law school clinical education offers a unique opportunity to perform a public service;

(2) The stakes in child advocacy cases are tremendously high and demand a rigorous commitment to the whole client, with students engaging both cognitively and emotionally in their work;

(3) Emotional and cognitive engagement fosters habits that can help future lawyers manage the complicated ethical and tactical decisions expected of them in practice;[84]

(4) Although engaged in a litigation context, the child advocate spends the majority of her time planning for a child's future; and

(5) Lawyers involved in planning for their clients' future have a greater need for, and are therefore more likely to engage in, collaboration than lawyers who litigate past matters.[85]

Starting from these principles, we decided to focus on the representation of children involved in the dependency system in Philadelphia. There are, of course, countless worthy endeavors that benefit the public interest, and a number of them specifically involve advocacy for children. Still, it is undeniable that advocacy for abused and neglected children is one of the areas of greatest need. It is also undeniable that even in such clearly legal proceedings, interdisciplinary involvement is critical.[86]

2. Who to Involve: Identifying Key Players in Child Advocacy

The first step in creating an effective interdisciplinary collaboration is to identify the interested parties. In the child advocate's ideal world, she would have countless resources available to help her client – lawyers, social workers, educators, mental health professionals, pediatricians, and policy makers all in some way influence the care and disposition of children in the dependency system. Aspiring to truly serve "the best interests of the child" might require the involvement of professionals in each of these disciplines to

82 *See, e.g., Mental Health Law Clinic, University of Virginia School of Law, http://www.law.virginia.edu/html/academics/clinics.htm#11 (permitting students to gain experience representing mentally ill or mentally disabled clients in negotiations, administrative hearings and court proceedings) (last visited Jan. 28, 2007).*

83 *See e.g., Children's Education Law Clinic, Duke Law School, http://www.law.duke.edu/magazine/2006spring/features/educationlawclinic.html (focusing law students on advocacy in school-related special education and disciplinary matters) (last visited Jan. 28, 2007).*

84 *See supra notes 11 and 17 and accompanying text (describing the importance of considering how the brain processes and implements new information when designing educational programs).*

85 *Winning an adversarial encounter for a client concerning a fact pattern that happened in the past, and the legal implications of these facts, may, but need not, require consideration of the longer-term implications for the client in non-legal areas. Whenever planning for the future is at issue, however, the client's relationships with others are relevant, perhaps critical. But the process for building and maintaining relationships is not necessarily taught or learned in traditional legal curricula.*

86 *See, e.g., PEW COMMISSION ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE: SAFETY, PERMANENCE AND WELL-BEING FOR CHILDREN IN FOSTER CARE, 17–18, 40–41 (2004) (recommending that judges and attorneys who are involved in child welfare cases receive interdisciplinary training in order to be able to understand and effectively respond to issues of child abuse and neglect). Child welfare systems are beginning to recognize the value of interdisciplinary work. For example, as a result of the consent decree in Kenny A. v. Purdue, No. 1:02 CV 1686 – MHS (ND Ga. 2005), the Fulton Workload Study asked our clinic to review the ABA/NACC Standards for attorneys representing children in Juvenile Court, which are the established standards for the Office of Child Advocate created pursuant to the consent decree, and identifying where and how social work partners for the lawyers can improve the quality of legal representation assigned to lawyers for children. The review was conducted by the first author and our clinic Social Work Supervisor, Diane Smith-Hoban, MSW. Other areas that demand interdisciplinary attention include domestic violence, disability law, elder law, environmental law, housing, Indian land claims, mental health law, etc.*

effectively advocate for a child. But this aspirational world is different from the one in which we – as lawyers, social workers, educators, mental health professionals, pediatricians, and policy makers – individually conduct our every day practices for the benefit of children.

As an initial matter, resource limitations, both financial and otherwise, inevitably force choices about who to include when designing a clinic with an interdisciplinary focus. Financial considerations will undoubtedly limit the number of professionals a single clinical program can include. Beyond this, however, as clinical educators, we ought to consider the pedagogical value that additional faculty will offer. We built a clinical model that was useful, manageable for both faculty and students, and that would not interfere with providing very high quality services to the clients. Our goal was to include a faculty diverse enough that students could benefit from learning about the ways that different professionals think about the problems faced by their clients. However, we also wanted to create consistency in teaching, such that students learned enough from a core faculty member in their respective fields to understand how they as professional students could begin to work effectively for their clients. Additionally, as a practical matter, with the addition of each faculty member, we would decrease the possibility that all of the faculty would be present at a given seminar. This cross-disciplinary interaction and discussion is precisely what we sought for clinic students. Because students would be the "front line" service providers, we had to avoid so inundating them with material from outside their home discipline that they would be unable to integrate it into a case plan and execute that plan in the time frames provided by the cases and the academic calendar. The combination of faculty members we arrived at has facilitated these goals.

We ultimately designed a clinic supervised by a lawyer, a pediatrician with expertise in medical issues of child maltreatment, and a social worker with extensive experience working with children and families in the child welfare system. This combination ensured that our students would have access to professionals who had encountered and cared for children with issues similar to those encountered by our clients. Through the combined experience of these supervisors, our students are able to discern and respond to legal, medical, educational, and social concerns in their client's cases. Concurrently, we use consultation with other professions both in the seminar and as needed in case work to ensure that we can address the full spectrum of our client's needs.[87]

Students in the clinic gain more than exposure to interdisciplinary teachers. We envisioned a clinical model that would promote collaboration at every level. Law students are joined by a social work student and a medical student to create child advocacy teams for each case. At every step of the way, then, students are able to discuss, plan, challenge, and create solutions with other students who bring their distinct educational training and perspective to bear on a case. While the students each come with a different approach to clients or patients, in another sense they are all "naïve," at least in the other disciplines, and this facilitates tremendous learning opportunities. The cases belong to each of the students; each student's input guides the planning and execution of each intervention. They need each other. At a fundamental level, this need and availability encourages learning the essential skills of collaboration by doing.[88]

87 *Consultation and teaching by additional professionals who play a role in the advocacy for children in the dependency system, including mental health professionals and educators, provides us with more detailed knowledge of issues that are detected by our law, social work and medical students and confirmed by our attorney, social work, and pediatric faculty who provide ongoing supervision of students. See infra Part II.C (outlining the didactic portion of the seminar); see also Weinberg and Harding, supra note 44, and accompanying text (referring to this type of cross-disciplinary instruction as the representative model).*

88 *See Lerner, Using Our Brains, supra note 11, at 665 (learning that has a strong emotional content creates strong neural connections and sources for recall, thus making it lastingly effective and useful).*

3. What to Teach

While the primary mechanism through which students in the clinic gain experience is fieldwork,[89] students also meet for didactic seminars twice weekly. Through these sessions, students learn the value of involving numerous disciplines while planning for their clients. The seminar component integrates three distinct modes of instruction: specific subject-matter expertise, skills-based teaching, and personal and professional reflection. All clinic faculty and students attend each seminar meeting and participate both in the teaching and discussion on each topic.[90] Thus, students regularly receive instruction in the knowledge base, strategies and values of three professions: social work, law, and medicine, focused on their application within the child welfare system. Additionally, we invite guest speakers with particular expertise in mental health, adolescent health, and early childhood development and intervention to supplement the more generalized knowledge and experience of the core faculty. The variety of instructors ensures that students receive exposure to various ways in which the same problem might be addressed depending on where a client or patient first interfaces with a professional working in the child welfare system. It also ensures that law students at least implicitly recognize that their client's "legal" problem can present in a variety of settings, and benefit from a variety of approaches.

a. Keeping your eye on the ball: Expanding perspectives, understanding oneself, limiting judgment of others.

Child advocacy readily lends itself to strong emotions, and to making harsh judgments about parents, child protection workers, service providers, other advocates, and "the system," as well. After all, these are innocent children; we are their advocates and protectors, and they need us because the other adults and the system have failed to provide what our clients need! We do not seek to prevent or eliminate this emotional identification with our clients. However, we do work hard to keep our students focused on the goals for the clients, and to understand that all of those other folks, beginning with our clients' parents, are more likely to provide the short-term and long-term needs of our clients that we are. Indeed, an essential aspect of our work is to get those others to do theirs. Important as they are, the only services that we can provide for our clients are counseling and advocacy. We know, and our students need to learn, that although we need to be ready, willing and able to employ our most effective litigation tools, cooperation may be more likely to get the services our clients need in the short run, while retaining the relationships they need in the long run, than will a purely adversarial stance.

At the same time, especially with children of middle school and high school age, counseling them about their situation, their goals, their options, the relationship between their present choices and behaviors and their future, etc., is a critical aspect of our work as their advocates. Counseling a disappointed, sad, frustrated, victimized, angry, often troubled youth is an emotionally challenging experience, especially for students. Often they have had experiences in their own lives that are returned to consciousness when they are engrossed in their clients' situations. Alternatively, they might find that their clients' experiences seem completely foreign and beyond their comprehension. In either case, emotions run high and strongly impact their role as counselors and advocates.

This emotional "heat" and tension provides both the necessity and the opportunity to begin teaching our students about the role that their own values and emotions play in their perception and response to

89 *See infra II.B.4 (describing the clinic fieldwork component).*

90 *Our clinic is fortunate to have all participating schools located in close proximity. While all campuses will not have this arrangement, the possibility for interdisciplinary learning and collaboration remains. See generally, e.g., Paula E. Berg, Using Distance Learning to Enhance Cross-Listed Interdisciplinary Law School Courses, 29 RUTGERS COMPUTER & TECH. L.J. 33 (2003) (suggesting alternative mechanisms by which cross-disciplinary training might be accomplished).*

situations which arise in their cases, and in counseling our clients.[91] We address these issues beginning with the first class, and incorporate them pervasively throughout the semester in both didactic classes and in case discussions, culminating in a class on counseling alternatively known as "Self Awareness In Advocacy." Because this topic is so foreign to traditional legal education,[92] and yet so important, we try to mix the serious discussion with exercises that are fun for the students to assure maximum engagement.

b. Broad-based Subject Matter Knowledge

Students begin their experience in the seminar component by directly confronting the potential overlap of various disciplines which plan for the future of children in the dependency system. In the first class, before any statutes or cases are assigned, we ask them to read material that both discusses the nature and harm to children resulting from abuse and neglect,[93] and critiques of the child welfare system.[94] We then give them problems taken from actual cases to discuss whether they think there has been abuse or neglect, and what, if anything, the state should do in response. They explore specifically how differences in the legal and medical definitions of abuse and neglect affect how these professionals perceive and respond to the problem. By framing the class in this way, students learn at the start to think about the fact that they come to the issues with values and expectations, not as blank tablets, and that they need to consider these "legal problems" as "medical problems," "social problems" or even through other lenses. Through this discussion, students also start to gain the substantive knowledge they will apply to their cases. In the remaining seminar sessions, students gain exposure to several aspects of the dependency system, including the process for reporting and responding to allegations of abuse and neglect, the legal framework affecting children who are involved in the welfare system, interventions available to assist children and families in the welfare system, and the interplay between the rights of children and parents in dependency proceedings. This somewhat in-depth instruction in child welfare law prepares students to competently represent their clients. Students additionally receive substantive instruction from professionals involved in providing non-legal services to their clients. For example, clinic students spend one session with the clinic social worker to discuss generally the wide range of community resources applicable to children and families in the child welfare system, and the case-specific indicators for different services. A child development expert describes early childhood development and discusses early intervention programs available to children at high risk for future developmental delays. A mental health professional provides insight into the assessment and evaluation of mental health issues in students' cases.

c. Skills-Based Instruction

A skills-based component complements the substantive child welfare topics and includes sessions dedicated to skills traditionally required of advocates within the legal system. The skills sessions begin with general case planning considerations and then move to a more detailed examination of individual skills essential to successful case management. Students first learn the basics of legal interviewing; these skills are then refined through sessions specifically addressing developmentally appropriate techniques for communicating with child victims of physical and sexual abuse. The experience of a specialist in adolescent medicine contributes to a separate session considering communication with adolescent clients. Students learn further about preparing cases and examining witnesses through a simulation in which law students represent either

91 *See Lerner, , supra, note 11, at 665 (discussing how our emotions and values affect our perceptions and judgments).*

92 *See discussion at pp. 7–12, supra.*

93 *Vincent J. Felitti, et al, Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults, 14 AM. J. PREV. MED. 245 (1998).*

94 *DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (Basic Civitas Books, 2001).*

the parent or the state in a proceeding in which a parent, opposed by the state, seeks to have her name removed from the state registry of care givers who have abused or neglected children in their care.[95] Each student conducts a direct and a cross examination of an expert medical witness and social worker fact witness. The experience provides students with an opportunity to distinguish the types of inquiries that can be directed at these two types of witnesses. It also encourages law students to think about how best to formulate questions that will help experts communicate technical information in a manner understandable to those who must rely on it for judicial decision making. The social work and medical students who serve as witnesses also gain insight from the experience. They spend time with the law students prior to testifying and learn how to effectively communicate their knowledge to a judge and jury. As preparation for this experience, students spend time in seminar sessions thinking about the differences in language and communication techniques that different professionals bring to a courtroom. These sessions highlight the crucial importance for the lawyer to learn effective ways to communicate with professionals from various disciplines in order to carry out even one of the most basic courtroom lawyering tasks.[96]

d. Personal and Professional Reflection: from Micro to Macro

The bridge connecting the case work experience and the subject matter seminars is personal and professional reflection. Throughout the semester, all students reflect on their personal involvement in their cases through weekly case rounds. These rounds, fashioned similarly to the rounds one might encounter on a hospital floor, require students to present a case and then invite discussion among all of the clinic participants in resolving difficult situations. Students sometimes face insurmountable challenges in their cases; however, the most rewarding successes often come from suggestions raised in the cross-disciplinary discussion that occurs during case rounds. Here, there are two levels of collaboration at play, that between and among student members of each advocacy team, and that between and among the faculty members from the various disciplines. The combination of the experience of the faculty and the capacity for interdisciplinary work within individual teams provides for unique and effective solutions for clients. While each student is assigned only two or three cases, their opportunity to consider and reflect on the variety of challenges faced by children and families caught up in the child welfare system is multiplied by the shared experiences of their colleagues in these case rounds and in daily conversations in the student work rooms.[97]

The focus on the students' fieldwork in terms of providing service for their individual clients/patients is critical for the students' learning. However, towards the end of the semester all students are asked to take a step back from the "firing line," put their professional experiences and role into a larger context, and to consider their efforts in terms of policy proposals that address how to change system-wide problems they encounter in their casework. This exposure encourages reflection about how the work of different disciplines comes together at many levels to create the environment in which each professional practices.

95 *We include the simulation in the course to ensure that all law students learn the skills of preparing and examining both fact and expert witnesses, and to ensure that medical students and social work students involved in the clinic understand their potential influence when called to act as a witness in their professional capacity. Some students will gain this experience through their case work. However, because cases will inconsistently require expert testimony, the simulation guarantees exposure for all students.*

96 *We employ a variety of media to introduce potential communication problems between lawyers and witnesses. Students observe video of lawyers conducting interviews of expert witnesses. They also participate in a exercise using children's building blocks in which one student (the "witness") constructs a structure and another student (the "lawyer") must then lead a third party who cannot see it (the "fact finder") to recreate the structure from information obtained through questioning by the "lawyer" of the "witness". The exercise demonstrates in a tangible way that only by effective communication can the information in one person's mind transfer an accurate picture of a set of facts into another person's mind.*

97 *In addition, the students have opportunities for reflection through weekly meetings with their supervisors, and journaling. See parts 4. b and c., infra, pp. 23–24.*

At the same time, it highlights the complexity of the "system" and the breadth of cross-disciplinary considerations that need to be addressed in forging lasting improvement.

4. A Cross-Disciplinary Fieldwork Experience

Case rounds are in a sense the bridge between the didactic and experiential components of the child advocacy clinic. Outside of the seminar sessions, students spend the majority of their time involved in direct case work for their clients. This fieldwork component creates the greatest opportunity for collaborative work.

Our clinic receives case appointments through the Family Division of the Philadelphia Court of Common Pleas, the court of general jurisdiction of first instance in Pennsylvania. We receive our appointment at the time a dependency petition is filed, or when a hearing on an emergency restraining order is about to be heard.[98] Although we recognize that cases vary in their complexity,[99] the focus of our clinic remains on teaching the process of case planning and management, creative problem solving for our clients, and collaboration skills; we believe every case provides challenges in each of these areas. Because we expect all students to complete a full-case work up whenever they receive a case in preparation for their client's court hearing, we do not restrict the type of cases we are assigned. Once accepted, each case is assigned to a student team.

Student teams are comprised of a law student, a social work student and a medical student. Each law student is assigned a caseload of two or three cases, permitting her to represent on average two to four children in dependency proceedings. Most cases involve social work and medical issues. One social work student and usually one medical student handle these issues on cases. All aspects of case management are carried out using the team approach. Students therefore gain an interdisciplinary experience most directly through their case work. Journaling and cross-disciplinary supervision reinforces the lessons learned through fieldwork.[100]

a. Case Investigation and Management Draws on the Various Professions

Students begin their casework with a multidisciplinary framework in mind. Understanding that they need information from a variety of individuals involved in their client's lives in order to provide the most effective client representation, students begin by information-gathering. During the initial stages of this process, client-teams will make visits to a client's home and, if applicable, to a client's school. Consider one law student's impression of her first home visit.

> *The visit that scares me is the visit to Mom's home. For some reason, I have a picture of the place in my head that I can't seem to get rid of, and the thought of going there is slightly terrifying. Not to sound like I*

98 *When a dependency petition is filed in the court, a hearing will follow within ten days to determine whether the child is dependent, and if so, whether supervision in the home or removal and placement is necessary to assure the child's health, safety and well-being. Experience has demonstrated that the allegations of the petition are frequently incomplete or inaccurate. Therefore, assignment of a case calls on the advocacy team to investigate and develop a preliminary case plan and hearing plan within a relatively short time. Thus, every dependency petition will create opportunities for a case investigation and court exposure for students.*

99 *The only conditions we place on cases that we will accept are: (1) timing: we prefer to have no case go to a hearing during the first two weeks of the semester, and to have all of the cases assigned before the mid-point of the semester so that the students have ample opportunity to work on them. (2) We prefer to have cases with three or fewer children because we want each law student to handle two cases as the only law student on the case and we have found that for inexperienced students, families with more than three children involved are so complex as to jeopardize their ability to provide high-quality representation. The level of complexity and propensity for future learning associated with cases does factor into our decision-making regarding case retention at the end of the semester. See infra II.B.4.a (outlining how students make decisions regarding end-of-semester case disposition).*

100 *See discussion infra, pp. 37–40.*

> *believe in auras and vibes and other new-age ridiculousness, but I think I'm scared of the house. I think it was [someone] saying that the walls of the home are punched out that did it. Because I couldn't think about the walls being punched out without imagining what would have happened that would result in the walls being punched out. And now I have this scene in my head that involves a very angry person yelling and punching out walls and generally being out of control. And the fact that I know that there are two young kids in this house right this second as I type this bothers me to no end.*[101]

While the law student has an appropriate visceral reaction to the situation she encountered – one of many situations that can make us painfully aware of the vulnerability of our young clients – this initial emotional reaction sets up a unique opportunity to learn. Her powerful response stimulates a strong emotional memory for this occurrence.[102] Although the law student may have felt slightly overwhelmed by her own reaction to the situation in her client's life, and as a result, unable to completely evaluate the home situation, the social worker's experience in communication and assessment of family dynamics makes possible a more complete and informed evaluation of the child's living and school situations.[103] When she later recalls this experience, she will be more likely to remember how the interdisciplinary framework provided strong support to ensure that she was able to perform at a high level for her client. Thus, while the law student may specifically learn from this experience the importance of collaborative work, our client's needs are also fully met by utilizing the social worker's particular readiness to assess and respond to the situation appropriately.[104]

In addition to conducting home visits, our students obtain and review the file from the child protective services agency, and our client's school and medical records. Our social worker again plays an important role by following up on deficiencies noted in the school record and helping students better understand the agency records. The role of the medical student-law student collaboration, however, becomes particularly relevant at this stage. The medical student facilitates a basic understanding of the client's medical, developmental and mental health record, but perhaps more importantly in the cases we face, where neglect is common, the medical student's knowledge of appropriate preventive and reactive care helps them to determine whether the child has had appropriate health care, and, if not, what is needed and with what level of urgency to ensure the child's well-being. This knowledge directly impacts the law student's assessment of the adequacy of parenting in making a disposition recommendation at a court hearing; it also

101 Clinic Law Student (2003) (journal entry, on file with author).

102 See Lerner, Using Our Brains, supra note 11, at 665 (describing how the brain creates memories, from patterns of neuronal connections comprised of all of the elements of the experience, and that the emotional aspect is a particularly powerful facet of most experiences).

103 Students have directly acknowledged the necessity of a multidisciplinary approach to gathering information. One law student commented:

> *When we visited [our clients] at their schools, I had no idea how to explain to them what was going on, how to introduce myself, or even so much how to relate to them on each of their levels. Thankfully, I was accompanied by [our social work student], whose training in social work has included a good deal of direct contact with children of various ages who are in unstable home environments.*
>
> *Clinic Law Student (2005) (journal entry, on file with author).*

104 Students are always accompanied on home visits by at least one supervisor.

aids the student in making requests for the court to order needed interventions.[105]

The knowledge that a medical student or social worker is able to obtain can significantly impact the direction and management of a case. In some cases, the medical student becomes instrumental in formulating a plan for our client after a decision regarding adjudication has been made.[106] Clients who are adjudicated dependent secondary to neglect often have a number of medical problems that require attention.[107] However, our law students consistently report difficulty in communicating with professionals who are unaccustomed to, or fearful of talking with lawyers. One student questioned why this is so: "Why is it so hard to schedule doctor's appointments? Why is it so hard to get people to help you? Why, only after [our medical student] said she had a pager, did we get anywhere?"[108] The answer lies in one of the original motivations for designing our clinic. Because doctors and lawyers are educated in a manner which tends to isolate them from the other profession, neither learns how to trust or communicate comfortably with members of the other discipline – and so they don't. Our clinic addresses that divide by putting the students together in close, mutually dependent, but safe environments with experienced supervisors and, only in that context, making available to our clients the resources of both disciplines.

Although the cases themselves may continue well beyond a year or even two years,[109] the educational value of these cases is not linear. The majority of the planning and decision making done by advocates in child welfare cases takes place either in the first six months after the case comes to court, or much later when decisions with respect to reunification or perhaps termination of parental rights must be made during permanency planning. To enable us to take new cases at the beginning of each semester for our new students, we arranged, with the court's permission, to transfer some or all of our cases to a local non profit child advocacy

105 *The legal determination of dependency rests at least partially on whether the child's health is at risk as a result of a parent's action or inaction. See 42 Pa. C.S.A. § 6302 (defining a dependent child as one who "(1) is without proper parental care or control . . . A determination that there is lack of proper parental care or control may be based upon evidence of conduct by the parent . . . that places the health, safety or welfare of the child at risk . . . .") (emphasis added). The medical student's knowledge permits her to assess not only problems documented in the medical record, but additionally, to know what should be but is not in the record, which a law student or lawyer alone would not be able to discern. Because the law defines dependency in this way, this kind of determination is necessary in all cases in which a dependency petition has been filed. The consideration that all cases will require some medical assessment regarding the health of the child plays a role in the decision that an effective collaboration in this area will involve a medical professional. See supra Part II.B (discussing the factors prompting a choice of which professionals to involve in a collaboration). We discussed at length above that lawyers may want to involve other professionals in their work with their clients because the problem itself may be only partially legal in nature, but also a social problem, medical problem, etc. When designing a collaboration in any field of law, considerable attention should arguably also be paid to whether the legal aspects of the case itself require the expertise of another profession.*

106 *Our clinic handled one case in which children were temporarily removed from their mother's care because her noncompliance with ordered medication for a communicable disease put her children at risk for acquiring that disease. The medical student's ability to understand the significance of apparently conflicting medical reports and obtain the cooperation of a doctor from the Department of Public Health made a critical difference in the outcome of the case, and in the health of the children (case details on file with author).*

107 *Even where the primary dependency issue is physical abuse, truancy, or sexual abuse, a large percentage of the cases involve some medical issue. Numerous studies have documented the significantly disproportionate health care needs of children entering foster care or already in foster care. See, e.g., R. Chernoff et. al. Assessing the Health Status of Children Entering Foster Care, 93 PEDIATRICS 594 (1994).*

108 *Clinic Law Student (2006) (journal entry, on file with author).*

109 *The Adoption and Safe Families Act (ASFA), passed in 1997, requires that all children in care have a permanency plan in place within twelve months of placement. When the plan is reunification and a child has been in care consecutively for fifteen of the past twenty-two months, ASFA requires that the case goal change from reunification to termination of parental rights and adoption unless one of several discrete exceptions is met. The change in policy reflects recognition that for a child in care, long-term stability requires a permanent living situation. See Adoption and Safe Families Act, Pub. L. 105–89 (1997).*

organization at the end of each school term.[110] This process itself provides yet another educational opportunity. As each semester draws to a close, the clinic must decide which cases to retain for the following semester and which to transfer to the outside agency. All students prepare memoranda detailing their perspective on whether to keep their cases. During an extended case rounds session,[111] each student is required to recommend whether we should retain the case or transfer it to The Support Center, and then defend that recommendation. Factors in each discipline play a role in the final decision. As educators, we pay attention to the educational value of keeping the case. We also, however, take into account any pressing legal, social, or medical issues. To the extent that our relationship with the client will facilitate addressing any of these needs, we will consider keeping the case. Especially when the clients are pre-teen or adolescents with whom we have developed close relationships, that relationship, set against the background of the client's maltreatment history, requires that we consider the possible impact of seeming to abandon the child at the semester's end. This exercise permits students to consider their duties of loyalty and competence to their clients, taking into account the particular expertise afforded by the clinic's multidisciplinary resources. When the client is one with whom the student has developed a strong bond, or the client has suffered particularly severe maltreatment, it is common for the student to want us to keep the case so that she can feel comfortable with the quality of advocacy that "her" client will get. These expressions of students' connections with, loyalty to and responsibility for clients demonstrate as little else can the emotional power of the student's experience, and show that they have begun to internalize the highest meaning of being a zealous advocate for one's client.

b. Journaling Reinforces the Multidisciplinary Experience

> *Especially in work that is regularly intellectually challenging and emotionally draining, it is important to be able to identify and to accommodate our reactions. . . . Doing this is easier because, in the midst of a professional educational culture that prizes individual accomplishment, in the context of our casework, we don't have to do it alone .*[112]

Throughout their fieldwork, students comment on their reactions to their cases in weekly journals. Journaling serves two primary purposes. First, journaling creates a unique opportunity for students to manage reactions to the work that they are doing – work which is highly stressful, time demanding, mentally challenging, and emotionally draining.[113] Describing these very powerful emotions through writing permits students to better contemplate their feelings and responses. These emotional reactions, so often overlooked in traditional teaching models, in fact help to solidify the "habits of mind" that these to-be lawyers will revert to in their future practice.[114] Students review their journals, and therefore their reactions, with clinic faculty during weekly supervisory meetings. This review provides another opportunity for learning from the experience and reinforces the student's impression of the experience.[115]

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110 The agency – The Support Center for Child Advocates – has been in business for thirty years and is very highly respected for the quality of its advocacy for children.

111 See supra Part II.B.3 (outlining the case rounds component of the seminar).

112 Clinic Law Student (2006) (journal entry, on file with author).

113 Journaling has been described as an important tool in professional development. See, e.g., JOHN C. BEAN, ENGAGING IDEAS: THE PROFESSOR'S GUIDE TO INTEGRATING WRITING CRITICAL THINKING, AND ACTIVE LEARNING IN THE CLASSROOM 106–109 (2001); James R. Elkins, Writing Our Lives: Making Introspective Writing a Part of Legal Education, 29 WILLAMETTE L. REV. 45 (1993).

114 See Lerner, Using our Brains, supra note 11, at 655, 671 (noting the importance of emotional thought in forming habits of mind).

115 Originally, faculty included journaling as a tool for the faculty to be able to assess whether students were having difficulty with the emotional experiences of their casework and intervene where necessary. That has happened a number of times. Yet, it appears the journaling itself frequently provides the students with an opportunity to both express and engage their emotions in constructive ways. See text accompanying note 113, supra.

Second, journaling motivates students to reflect systematically on their casework. Student journals detail the most complicated aspects of cases and outline potential approaches to resolving these problems. Often, we find students commenting on the importance of involving multiple players in these approaches. Students consistently reveal a deep appreciation for the interdisciplinary nature of their fieldwork in their writings.

> *One of the greatest benefits of collaborative work is that it allows us to be able to need and give different things at different times, without sacrificing the needs of our clients. The different knowledge and skills that the various professionals bring to the clinic . . . first helps us all to be able to better deal with the sometimes emotionally challenging aspects of our cases, by creating an internal support network. . . . Equally important, however, is that the client benefits from having more than one person fully aware of the status of their case, and ready to step into the role of supporting the client whenever necessary.*[116]

Through these statements, students recognize the implicit barriers to more productive cross-disciplinary collaborations and how the interdisciplinary approach begins to overcome these barriers. Moreover, students from the various disciplines note the same advantages to the interdisciplinary structure; almost all of these entries focus on the discrete benefits this structure affords to our clients.[117] The exercise of putting their thoughts into writing ensures that students give explicit attention to the importance of the collaborative effort, further raising students' acknowledgement of this idea from subconscious to conscious awareness.

c. Cross-Disciplinary Supervision Balances Student Autonomy to Ensure Multidisciplinary Thought

Supervision is the final mechanism through which the clinic creates a multidisciplinary experience. All clinic students have weekly supervisory meetings with a member of the clinic faculty. In addition to these meetings, any significant case development usually motivates an interim meeting convening clinic faculty and students involved in the particular case. During these issue-focused meetings, like case rounds, clinic faculty first ask each student to rehearse the problem as they see it, then to suggest potential solutions. Early in the semester, most students articulate a problem and propose a solution from the experience of their home discipline.[118] Thus, a law student is most likely to suggest a legal solution, a social work student a social one, and so on. Because the different disciplines are brought together in these meetings, the

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116 Clinic Law Student (2006) (journal entry, on file with author).

117 One medical student commented on the considerable influence her expertise played in making legal determinations about a case.

> *Although I often am involved in a lot of "behind the scenes" work in many of these cases, I felt that my participation in the pre-hearing conference actually made a difference. . . . I just wanted everyone to hear the medical truth according to the children's physician. When I was finally able to speak, I was so emotional. . . . I couldn't bear to imagine these children sick and wasting away because of their mother's inability to adhere to medical recommendations. . . . [T]his was also a prime example of the true interdisciplinary nature of this clinic. I was able to obtain medical information that may have been more difficult to "digest" for those not involved in the health professions. [Our law student] was able to focus on the legal guidelines, the theory of the case, and our argument. [Our social worker] did her part to contact teachers, social workers, and other people involved in the case, carefully documenting her findings. It was satisfying to know that our work made a difference in children's lives.*

Clinic Medical Student (2005) (journal entry, on file with author)

118 See Lerner, Using Our Brains, supra note 11, at 679 (describing this "downshifting" effect as common during periods of stress); Clinic Medical Student (2005) (journal entry, on file with author) (commenting on the struggle to approach a case problem from her medical background). The student wrote:

> *At the same time, however, I was struggling with a competing issue separate from the legal argument. Legally speaking, there was no evidence that the [parent's alleged behavior] had ever placed [our client] in danger. Medically speaking, my as of yet immature medical instinct told me that living with [this parent would not be] an ideal situation for a child. I could also venture to guess that there exists research data on the risk of child abuse by the presence of [such a parent] in the home. Yet, I had to remember that we were in a legal forum abiding by legal procedures and available evidence. . . . Had I been on the other side of the argument, I may have pursued the corroborating medical evidence.*

perspectives of the various disciplines are brought to bear on the case through this approach. Students listen to concrete and often widely different suggestions from other clinic students, and we find consistently that as the semester moves on each student is more likely to approach a problem already contemplating issues which earlier would have been raised only by a team member from another discipline. Teaching this habit of mind through "real-life" concrete problems in cases relevant to the students involved provides the best opportunity for long-term retention.[119] Faculty members from the various disciplines, however,closely supervise these meetings to make certain that client interests are consistently met.

5. Promoting Collaborative Scholarship

The interdisciplinary nature of the clinic encourages rich scholarly collaborations, both in studying the impact of our clinical design, as well as in substantive issues in child welfare law. Since the clinic began operating, collaboration with the School of Social Policy and Practice has made possible two evaluations of the clinic's impact in providing service, and on the professional development of attorneys who complete the clinic during their legal training.[120] This arrangement capitalizes on the social science research capabilities inherent to social work training, permitting the clinic to objectively evaluate its operation in terms of the empirical findings shown in this research.[121] The study also created a methodology for evaluating the work of child advocacy programs outside of our individual clinic, establishing a basis for evaluation and improvement on child advocacy work in general.[122] In addition to these activities, faculty and students in the clinic have been involved in other scholarly work. Scholarly endeavors between clinic students and faculty members of the same profession provide examples of intradisciplinary collaboration; faculty arrangements with members outside of the legal discipline demonstrate interdisciplinary approaches. Examples of scholarship which have emerged from this clinic include an analysis of the clinic's cases presently underway to ascertain whether there are early case indicators of long-term problems in neglect cases, a study of the legal standards and procedures for permitting proper investigation of reports of child maltreatment in the face of uncooperative caregivers, proposals for a national study of the administration of psychotropic medication to children in foster care, and a study of the quality of child advocacy in dependency cases in Pennsylvania. Already completed are studies of the efficacy of pre-hearing conferences with trained mediators in dependency court, performed at the request of the Administrative Judge of Family Court, and an analysis of the Pennsylvania law and practice with regard to mandating mental health evaluations for caregivers in dependency cases, performed at the request of the Family Court's Court Improvement Project.[123]

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119 See Lerner, Using Our Brains, supra note 11, at 695 (concluding that problem-based learning based upon real-life situations is particularly effective in creating retained and re-usable knowledge).

120 See Robin M. Mekonnen and Melissa E. Dichter, Evaluation of an Interdisciplinary Child Advocacy Clinic (unpublished paper/publication forthcoming, draft on file with author) (evaluating the clinic's ability to create positive outcomes for clients, develop students academically and professionally, and generate positive responses from other key stakeholders in child welfare proceedings); see also Celina A. Wollak, Penn Law School Child Advocacy Clinic: Evaluating the Impact of Participation on the Professional Lives of Former Law Students, University of Pennsylvania School of Social Policy and Practice (Apr. 28, 2006) (on file with authors).

121 See supra note 14 and accompanying text (recognizing the benefit of using non-legal ideas and methodologies to influence legal scholarship).

122 See generally Mekonnen and Dichter supra note 121 (discussing future directions for building upon their initial study).

123 Material relating to each collaboration is on file with the authors. See also supra note 121(discussing an additional clinic-related collaboration).

III. CHALLENGES TO DEVELOPING MULTIDISCIPLINARY TEACHING AND PRACTICE

Despite the tremendous benefits that accompany interdisciplinary collaboration, participants in the collaboration face unique challenges. Careful planning and commitment by complementary professionals, who are respectful of their partners and their partners' professions, are essential to success.

A Choosing Partners

1. Disciplines that are Complementary.

When we started to think about creating an interdisciplinary clinic, our first thought was to ask with whom we might collaborate. The decision required some preliminary understanding of what our subject matter and practice strengths and weaknesses were. As an experienced litigator, the first author knew that, because lawyers are always learning new legal subject matters in order to litigate a particular case, merely not having expertise in a particular litigation-based area did not preclude collaborating in that subject matter area.[124]

In fact, our first effort was to develop collaboration around legal issues related to domestic violence with a friend who is a physician on the faculty of the University of Pennsylvania's School of Medicine and runs a clinic for abused women. The law and practice relevant to domestic violence seemed learnable. As it turned out, that collaboration lacked the joint-institutional support that is requisite to a successful collaboration[125] and, therefore, did not work out. Child advocacy, to which we next turned, was also an area in which the first author had no prior experience. However, the lawyering skills and values that had been critical to other forms of litigation and that would have been brought to collaboration in domestic violence work are equally appropriate to advocating for children. A year's preparation time was adequate for an experienced lawyer and teacher to develop the competence to teach and supervise in this area.

Another consideration in choosing a partner for a law school-based collaboration is how it will work for the students. In teaching in our Civil Practice Clinic – a general litigation and legal services model clinic – the first author had seen, time and again, that students asked whether the tasks that they were called on to undertake were really tasks done by lawyers, or "merely" social work.[126] Too often, law students saw their relationship to social work students as hierarchical, with the law students on top. We were concerned that if we partnered only with social work students and supervisors, too much time and energy would be spent on simply addressing that issue, to the detriment of many others, and might create resentment that would actually hamper the students' learning to collaborate across disciplines. Moreover, that hierarchical attitude could get in the way of seeing their clients, and their clients' families, as equals – something that is critical to being open to accepting them as they are, and providing the holistic service that is at the heart of effective lawyering. The solution that we reached was to build a collaboration including medical professionals as well as social workers from the start. We believed that medical students would not "take

124 While the first author was in practice, almost all of his practice – employment discrimination law – was not an area that he had studied in law school. Indeed, in the firm in which he had practiced for many years, all of the practice group chairs spent most of their time working in subspecialty areas that they had not studied in law school either. For example, although the real estate group dealt with the law of property, its most challenging and important work was in designing and negotiating financial arrangements among participants to a transaction. That is in large measure due to the fact that the law, and thus the practice of law, evolves over time, and lawyers must evolve with it if they are to serve their clients effectively.

125 See infra Part III.C (discussing institutional and administrative challenges to collaboration).

126 See Jane Aiken and Stephen Wizner, Law as Social Work, 11 WASH. U. J.L. & POL'Y 63, 63 (2003) (arguing that the lawyer's defensive response to the idea that the work they do is "social work" is troublesome).

orders" from law students, and that law students would not attempt to "assign" things to the medical students. Rather, they would start out seeing each other as equals, and proceed from that point to learn how to collaborate.

In practice, it has become clear that some of these initial concerns were overblown. While there have been occasions on which law students have attempted to pass off certain tasks on the social work students, or complained of having to do what they deemed to be social work, for the most part that has not happened. When it has, the social work students, sometimes after requesting support from supervisors, have had little problem in engaging the errant law student in dialogue about the need to collaborate as equals. Perhaps this is because of the social work supervisors we have had, perhaps because of the students we have had. And perhaps it is because we, as supervisors, understand and work hard to make visible to clinic students that the demands of the cases and the clients' needs so clearly implicate the knowledge and skills of social workers. Also, the law students, who are quickly drawn to the needs of their clients, and develop a commitment to help them – something they learn both explicitly and implicitly in law school – recognize that without partnering with social workers, they simply cannot achieve the same results for those clients.

By now there have been so many cases in which the law students realize that without the medical students or social work students they would have been at a loss to address the real needs of their clients, we seldom are faced with a law student who thinks that the social work or medical student is merely an "add on" to the "legal team."

2. Collaborators Who Are Complementary

When we first sought to create a collaboration across disciplines, we were aware that an attempt at such a clinical relationship at Penn Law fifteen years earlier had not worked out. The relationship had been abandoned, in large measure because there was no agreed-upon model for integrating the social work students in to the law school clinical course, nor as to the role of the social work supervisor. Because the initial plan had been to partner with a good friend who was a member of the faculty of University's Medical School and ran a clinic for battered women, which gave her the opportunity to collaborate with lawyers, mental health professionals, social workers and law enforcement personnel, we expected that many of these concerns would not affect our relationship; she already had a framework from which we could start building a collaborative relationship. Unfortunately, when that didn't work out, a new concern emerged. Without knowing anyone in a position to be a partner in such an endeavor well enough to have confidence that the investment would pay off, moving forward became a challenge. The potential colleague from the Medical School fortunately recommended and introduced us to a colleague with whom she had worked for many years, the director of the child abuse program of Children's Hospital of Philadelphia (CHOP). As director, she collaborates with lawyers and social workers on a daily basis. Similarly, in seeking out a social work supervisor, recommendations sought from several individuals in the child welfare community finally led to collaboration with a person who had extensive experience in child welfare work and in cross-disciplinary collaboration. The collaboration ultimately has been successful because, from the beginning, everyone was ready to collaborate.

Collaboration requires the ability to work closely, trust one another, acknowledge that one's partners have essential assets to bring to the work, be open to learning from one another, be open to ceding control to one's partners, and perhaps most importantly, listening. Moreover, in an interdisciplinary collaboration, each partner, at least at the start, does not have sufficient knowledge of the other's discipline to know in a specific case whether the knowledge and judgment brought to the problem by that partner is appropriate. Thus, it is imperative that the partners to an interdisciplinary collaboration are compatible professionally

and personally, flexible, and firmly committed to investing the time and patience necessary to make the collaboration work.

B. Respecting Partners and their Respective Professions

Even when a collaborative arrangement has been successfully negotiated, there exists the potential for serious problems between professionals used to working within discrete and separate professional frameworks. This results at least partially because, in addition to the particular subject matter expertise a professional holds with respect to her practice, she holds also an obligation to uphold principles of responsible practice within her profession. Because each profession's obligations differ, and at times may even conflict, partnerships between professionals from different disciplines can be challenging.

For the legal professional, the Model Rules of Professional Conduct proscribe certain lawyer-non-lawyer professional partnerships that may hinder the attorney's capacity for independent and reasoned judgment.[127] While this rule is designed primarily to prevent fee-splitting arrangements with non-lawyers for the provision of legal services, it exists also in part to ensure that the lawyer exercises independent judgment in rendering legal services.[128] The rule does not prohibit collaboration, but does demand a particular level of care when working collaboratively with non-lawyers. Therefore, a lawyer who chooses to collaborate with a non-lawyer to provide better service to her clients must ensure that she makes decisions independently.[129] She must also ensure that she upholds other professional responsibilities to her clients, including the duty of confidentiality.[130] Ordinarily, when the lawyer conducts her work in consultation with non-lawyer assistants, those assistants are bound by the same professional obligations of the lawyer.[131] In the context of collaboration, however, where professionals are most effective by approaching a problem on equal footing, questions unavoidably arise as to whether the collaborating professionals ought to be bound by these rules, particularly when they conflict with the obligations inherent to their own profession.[132] We do not submit that there are easy or comprehensive solutions to these problems. They will inevitably exist, just as questions regarding potentially inappropriate professional conduct exist for any lawyer in practice with other lawyers. A common conundrum is one in which our client, especially one old enough to form and defend an opinion about what she wants to do,[133] is faced

127 *MODEL RULES OF PROF'L CONDUCT R. 5.4(b) (2006) ("A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law."); see also, generally, WILLIAM WESLEY PATTON, LEGAL ETHICS IN CHILD CUSTODY AND DEPENDENCY PROCEEDINGS: A GUIDE FOR JUDGES AND LAWYERS 7, 27, 69 (Cambridge Press: NY 2006) (acknowledging the particular difficulties that ethics rules create for lawyers in these proceedings).*

128 *MODEL RULES OF PROF'L CONDUCT R. 5.4 cmt. (2006) (noting the dual aims of this rule).*

129 *See MODEL RULES OF PROF'L CONDUCT R. 2.1 (2006).*

130 *MODEL RULES OF PROF'L CONDUCT R 1.6 (2006) (defining the scope of the duty of confidentiality).*

131 *MODEL RULES OF PROF'L CONDUCT R. 5.3 (2006) (imputing the obligations of the lawyer on non-lawyer assistants).*

132 *In the context of child welfare work, this challenging question arises particularly with respect to the tension between a lawyer's obligation of confidentiality and the existence of mandated reporter laws obliging both social workers and physicians to report suspected abuse or neglect. While the lawyer can only break confidentiality to disclose such information under very narrow circumstances, permitted only when there is "reasonably certain death or substantial bodily harm," the standard applicable to mandated reporters requires disclosure at a much lower threshold. Very real questions arise as to which standard a physician or social worker in a child welfare-related collaboration ought to follow.*

133 *The provisions of Rule 1.14 (Client With Diminished Capacity) of the ABA Model Rules of Professional Responsibility and the Pennsylvania Rules of Professional Responsibility simply do not provide much help in deciding where on the slippery slope of "diminished capacity" one's actual client falls, and thus whether it is appropriate to seek the appointment of a guardian ad litem. See MODEL RULES OF PROF'L CONDUCT R. 1.14 (b).*

with a situation in which other adults think that her best interests are served by a solution different from the one she prefers. We choose to deal with these problems by acknowledging that they will arise, making students aware of the professional responsibilities attributable to their respective professions,[134] and then investing the time, analytical effort and trust necessary in order to handle together any potential conflicts that arise. One constant component of this approach is to stress, and re-stress, the importance of the counseling function. While the role of counselor is common to each of the three disciplines,[135] we have found that social work students are much better prepared as professionals to counsel their clients than are law students or medical students. We believe that our approach has worked because it is predicated upon each participant's deep understanding of and respect for the indispensable professionals with whom they collaborate.

C Overcoming Institutional and Administrative Challenges

Universities are usually composed of a number of "colleges," or "schools," each with its own faculty, its own schedule, and, worse yet, its own budget. Moreover, different schools may be located at distant locations on campus, on separate campuses, or even in different parts of the city. Thus, creating an academic offering that will include faculty and students from more than one school can be a challenge. The initial proposed collaboration to provide advocacy and counseling for victims of domestic abuse failed even though both of the proposed collaborators are at the same university, and all of the schools involved are within walking distance of each other on the same campus. The failure occurred largely because certain individuals whose administrative approval and support were required failed to consider how the vastly different schedules of medical, law, and social work students might be harmonized, what sort of academic requirements and credit would be appropriate for the medical students, and how to give the medical school faculty member "credit" for the teaching and supervision that she would be doing. This last item involves the trade-off of required teaching time and money, because if she was to be given credit for participation in this interdisciplinary course, additional details had to be settled. For example, we had to consider how much a collaborator should be compensated. After all, she would be co-teaching, not handling the workload alone. Additionally, we had to think about how to compare teaching in this course with other, more traditional teaching done by other medical faculty. Finally, we had to consider whether anyone, and if so who, would teach the courses that she had previously taught and where the money would come from to compensate that person.

These are all real problems, and in many traditional academic institutions, formidable ones. We spent a long time planning our current collaboration, and have been fortunate. The dean of our School of Social Policy and Practice has been very supportive, actually raising the money from a donor to pay for our social work supervisor. The pediatrician with whom we co-teach is on the faculty of two institutions, and was willing, and proved able, to negotiate that this work would be part of her teaching responsibility on the one that is not our medical school. She has also included her residents and fellows in the course as part of their

134 Law students, for example, are required to read the Model Rules of Professional Conduct concurrent with their enrollment in the seminar; additionally, seminar time is devoted to discussing mandated reporter statutes that bind social work and medical professionals. While we have done no studies, it has always seemed to the faculty that discussion of these issues – how to represent a pre-teen or teen aged client whose articulated goals seem adverse to their best interests and well being – usually occupy more time than virtually any other issue.

135 See MODEL RULES OF PROF'L CONDUCT R. 2.1 (stating the lawyer's counseling obligation); National Association of Social Workers Code of Ethics R. 1.07(h) (noting confidentiality in the counseling role of social workers); American Medical Association Code of Medical Ethics, Opinion E-10.01 (including among the "Fundamental Elements of the Patient-Physician Relationship" the right of patients to seek information and advice from their physician).

educational experience. To facilitate this collaboration, we agreed to have the majority of the classes at CHOP. This year, the Director of Training for the Pediatric Psychiatry Fellowship recognized the training value of participation, and agreed to have her fellows participate as well. And, finally, the Law School and the School of Social Policy and Practice, with our urging, agreed to provide academic and field-work credit for the social work students in the course. It was not easy; it took time, planning and negotiation. But in the end it worked. The fact that there are other interdisciplinary clinics throughout the country attests to the fact that it can be done. And who better to do the planning, negotiation and advocacy necessary to persuade others to support this collaboration, than lawyers?

IV. CONCLUSION – WORKING TOWARDS CHANGE

One thing that is becoming clearer to me as I progress in this clinic is the need for the law to be as "available" as possible in terms of being accessible to all of the people that it affects. In law school, students gain a skewed perspective of the legal process, as appellate cases with complex procedural machinations, and high financial stakes are the order of the day. The life of a litigation associate in a major law firm can inculcate similar values and perspectives, as it may be difficult for that young attorney to put a "face" to their client or to truly understand the practical ramifications of their case to any degree beyond the financial bottom line. This clinic has illustrated for me a theoretical notion that I had only acknowledged [sic] in passing – that most of the law in this country is practiced on an individual level – and the lives of those people are directly affected by the legal process.[136]

If the model we propose here is accepted, it demands that legal educators and administrators also accept a diversion from traditional approaches of educating lawyers. But, "[c]hange is the process by which the future invades our lives, and [change] is important . . . not merely from the grand perspectives of history, but also from the vantage point of the living, breathing individuals who experience it."[137] The effective lawyer must constantly adjust her approach to suit the needs of her client in a dynamically changing legal environment in which new legal issues consistently arise. Crucial to successful modification is educating lawyers who understand, embrace, and most importantly can adapt to the change. Interdisciplinary endeavors are an increasingly important mechanism by which different groups can together absorb and address the changes that affect a population they are both working to serve. We posit here that an intense interdisciplinary experience – which promotes and expects students to perform high-quality professional work, and to do so in a collaborative model otherwise unknown in law school; motivates powerful emotional attachments to that work; and sometimes results in successes for a population that has the capacity to demand more than a student knows she can give – generates long-term critical professional learning and fosters an ability for collaboration. The process tends towards better outcomes for clients and collaborators alike because we understand, by engaging our clients habitually and by incorporating the wisdom of the living breathing individuals with whom we collaborate, how we can change together to create more just and favorable results.

136 *Clinic Law Student (2003) (journal entry, on file with author).*

137 *ALVIN TOFFLER, FUTURE SHOCK 1 (1970).*

APPENDIX

THE FAMILY OF BABY "M"

Baby M., a 2 1/2 yr old child, had been reported to the county child protective services agency, known as The Department of Human Services (DHS) as having an elevated blood lead level. The family would neither speak with the investigator from the Department of Human Services (DHS), nor permit him in the home, so DHS filed a Petition in Court seeking an order to compel mother's cooperation. Our Clinic (CLINIC) was appointed to represent the child. Mother failed to appear at the first hearing, and had not responded to her court appointed lawyers letter. The Court continued the case for a week. By the time the case was back in court, DHS had been to the house, determined that mother & child had moved next door with Maternal Grandmother (MGMa), and visited there.

Mother and child appeared at court for the continued hearing, accompanied by the MGMa, and counsel for Mother. We observed, and were concerned about, MGMa's verbal interactions with the child, always critical ("You are a bad girl.") and threatening ("If you don't come here right away, I'm going to hit you."), etc. Mother did not intervene; however, Mother and child seemed connected to each other. In court we learned that mother had recently had another child ("INFANT"), and also has a 15 yr. old son ("TEEN") who lives with them, and goes to school. However, neither of them was the subject of the Dependency Petition.

Because MGMas house also had old and peeling paint – probably lead based – DHS removed M. and placed her with her paternal grandparents (PGp), who live a few blocks from mother. DHS reported that the PGp agreed that Mom could visit whenever she wished. Mother agreed to cooperate, and signed a Release permitting us to obtain the child's blood lead level reports. We made arrangements to make a home visit. Mother also agreed to accept Services for Children in Their Own Home (SCOH), and other services from DHS. We offered, and the court approved, having the child, M, seen, evaluated, and followed at Children's Hospital of Philadelphia (CHOP).

During the telephone call to make arrangements for the home visit, when our student asked Mother a question, she handed the phone to her mother (MGMa), who then took over the conversation. At that point she said that they would not have the child go to CHOP because there was nothing wrong with her, and they were not going to let strangers experiment with her.

The home visit was done by our 3d yr. law student, and our 4th year medical student. The medical student is also a former Peace Corps worker in West Africa. When they returned, they reported that MGMa's house was filthy, and overrun by roaches. Mother and MGMa. were dressed in dirty unkempt attire, MGMa in a night gown. The home had a space heater in the middle of the living room. The roach problem was the worst that either student had ever seen, with roaches in, on, and coming out of every piece of furniture, drawer and closet. Also, much of the furniture, including the child's bed, was broken. Trash was piled and strewn everywhere.

DHS took the position that the Baby M. could not return home until the house was exterminated for roaches, cleaned, and the lead paint problem was abated. Mother's lawyer complained that that would take weeks to accomplish. Mother's lawyer also said that there was serious hostility between Mother and MGMa on the one hand, and the paternal grandparents, the former alleging that the Father suffered from AIDS. By the time the home visit took place, Mother's lawyer had arranged to get them paint to paint over the lead paint, and that had, pretty much, been done.

We then arranged to have mother and all 3 children accepted immediately at Peoples' Emergency Center (a highly regarded, full service residential center for homeless mothers with children) to live there, temporarily, pending the extermination of the house. Mother's lawyer said that she would recommend that; however, mother refused.

PGp were both retired. Their home was clean, well organized, filled with family photographs, and adequate in every way. They were careful and attentive to M.; however, there was not evidence of much hugging and other forms of emotional nurturing. Baby M. expressed the desire to be with her mother, saying that she would clean Maternal Grandmother's house so that she could return home. Also, although the PGp confirmed that Mother, who does not work, was welcome to visit any time, they said that she came only once a week.

Our investigation also included interviewing Father. Based upon the conversations with father and PGp, our students concluded that it was highly likely that Father does suffer from AIDS, and that it is a sufficiently advanced state to suggest that he was HIV infected when M. was conceived. Consequently, we requested, through Mother's lawyer, that M. be tested. We were told that she had been, at birth, and was negative. We asked for a release for the child's medical records, and were told they would be provided. When we finally got the records, there was no indication of HIV testing. Mother continued to insist that it had been done, and refused to agree to have current testing for M.

At the follow-up hearing three (3) months later, while we were still trying to find money to pay for an exterminator, and about to ask the Court to order Mother to have baby M. tested for HIV, Mother's lawyer argued that the child was not neglected, her best interests were not being served because it was more harmful to her to remain in the home of her PGp, than it would be to have her living in the MGMa's home with her mother and siblings, and that Mother's constitutional and statutory rights to parent her children as she sees fit is being violated.

Mother contends that because M. is neither abused nor neglected she must be returned immediately.

(What recommendations would you make to the court; and why?)

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THE LAW

The Pennsylvania. Juvenile Act, 42 Pa. C.S.A. § 6301, et seq.,[138] and the Pennsylvania Child Protective Services Act, 23 Pa. C.S.A § 6301, et seq.,[139] generally govern proceedings to protect children who have been abused[140] or neglected,[141] or are otherwise found to be dependent,[142] i.e., without proper parental care, or supervision, including school attendance as required by law.[143]

The burden of proof in a dependency case is on the party seeking to have the child adjudicated dependent and/or removed from the home, to prove dependency by "clear and convincing evidence."[144] Once a court has adjudicated a child dependent, that child is subject to supervision by the court which may be in the home, or after commitment to the custody of the Child Protective Services Agency (CPSA) and removal

138 Pennsylvania Juvenile Act, 42 Pa. C.S.A. §6302–6365, et seq. (2007)

139 Pennsylvania Child Protective Services Law, 23 Pa. C.S.A. §6302–6385 (2006)

140 23 Pa. C.S.A. §6302(a)

141 42 Pa. C.S.A. §6302

142 Id.

143 Id.

144 42 Pa. C.S.A. §6341(c)

from the home, in an appropriate out of home placement. Before a court can order a child to be removed from her/his home, the CPSA is required to make reasonable efforts to avoid such removal, and once the child is removed, the CPSA must make reasonable efforts to return the child to her/his parent.[145]

In any proceeding which could result in the removal of a child from its home, temporarily or permanently, the court must appoint a guardian for the child in the litigation (Guardian ad litem [GAL]), and the guardian must be a lawyer. The guardian must pursue the "best interests of the child."[146]

If a child is adjudicated dependent, and committed to the CPSA, the CPSA is responsible for providing for all of the child's needs, to assure its safety, health and well being,[147] and for making reasonable efforts to re-unify the child with the parents.[148] Implicit in the CPSA's responsibility for the protection of children is its responsibility to provide reasonable assistance to parents in recognizing and remedying conditions harmful to their children and in fulfilling their parental duties more adequately.[149]

Once a child has been adjudicated dependent the court must review the case not less than once every six months,[150] and include in its order (a) whether the child remains dependent, (b) whether the child is safe and her/his needs are being met – whether in the home, or in a placement – (c) whether it is contrary to the child's health, safety and well being to remain where she/he is – at home or in placement – and (d) whether the CPSA has made reasonable efforts to prevent placement, or if the child is in an out-of-home placement to re-unify the child with the parents.[151]

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Social Work Considerations

As described in the preamble to the Code of Ethics of the National Association of Social Workers, the mission of the social work profession is rooted in a set of core values. These core values, embraced by social workers throughout the profession's history, are the foundation of social work's unique purpose and perspective:

- service
- social justice
- dignity and worth of the person
- importance of human relationships
- integrity
- competence

While looking at the facts laid out in the case, we must make sure we look at this family through the lens of these core values, and ask ourselves these questions (and more!)

1. Is the child safe? Are her needs being met?
2. Do we have any responsibility to the other children in the home?
3. What direct supports can we help mother with in improving her home so she can improve her living conditions?

145 42 Pa. C.S.A. §6351
146 42 Pa. C.S.A. §6311(a)
147 23 Pa. C.S.A. §6373(a)(7)
148 23 Pa. C.S.A. §6373(a)(5)
149 23 Pa. C.S.A. §6374(b)
150 42 Pa. C.S.A. §6351(e)
151 42 Pa. C.S.A. §6351

4. How can we encourage the mother/daughter relationship while apart from each other?
5. What is the quality of the interaction between mother and child(ren) and how can this be improved? What in these facts suggests this is an area that needs support?
6. How can we assist the family in overcoming their concerns about our involvement and "strangers experimenting" with their daughter?
7. How do we honor the "dignity and worth" of our client and her family when they are so hostile to our concerns about their situation?

Thoughts to consider:

If a child is safe, than how do we justify separating her from her mother – how much could our own values about 'what a home should look like' be affecting our judgment?

If the child is HIV positive, how does this affect our reaction to mother, father, and the child, and how does it affect our position and work with this family?

Poverty is an overarching issue here – what can we as social workers do in direct support around this issue for this family as well as on the macro/societal level for all families in similar situations.

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Physician & Patient

You are the physician for "M", a 2 yr old child, who you see for the first time in your clinic. You notice that M has not had routine care and order lab work, including a lead level, which is missing from her record. You discover that the lead level is high. On your exam, you also notice that M is small for her age and that she does not talk much. When you question the mother, you find out that they are living in a home without running water. You report M's lead status and living conditions to DHS. Your colleagues at Penn Law are appointed as child advocates for M and her siblings. They contact you for additional information, including her medical records, and you ask them to keep you aware of developments that may affect the children's health. During this conversation, you learn that DHS investigated your report and discovered 2 additional children in the home, a 4 month old baby "J" and a 15 year old boy "R" and opened a case on them as well. DHS filed a dependency petition. The child advocate also tells you about their first home visit.

At this visit mother indicated that the baby was sick "a lot" and that the 15 year old (who was not at home but unaccounted for) had not attended school in about a year because he's a "dummy" and she "could not make him go". She also said she used crack cocaine "once in a while" to help her "get her mind off her problems". She suspected her 15 year old was using, and perhaps dealing, drugs as well. M was observed to be very hyper and to have no comprehensible speech. Her clothes appeared too small and very dirty.

The home was observed to have some peeling paint (believed to be lead based on M.'s lead levels) and a few exposed wires in the ceiling. The home had a space heater in the middle of the living room because the heat had been shut off for non-payment. There was water but not hot water. The roach problem was excessive. Also, much of the furniture, including M's bed which she shared with Mother, was broken. Baby J. slept in a bassinet and the R. on the couch. Stuff was piled and strewn everywhere. Mother seemed very depressed with little affect and when asked, admitted she had depression but was not being treated. She feels overwhelmed by her responsibilities. None of the children's fathers are involved and Mother alleges that M's father "had AIDS."

You agree to care for all three children, and are asked to testify about their health at the first hearing, where you hear the Judge defer adjudication and order DHS to "help" the family or he will place all three children at the next hearing. You want to assist in any way that you can.

Medical Considerations

- Lead levels are generally checked in children routinely at between 9–12 months and sometimes again at 2 years. Screening is necessary because lead toxicity can have significant adverse effects on the development of the brain and nervous system in children. Beyond these initial screenings, children are typically assessed for risk of lead exposure throughout early childhood.

> 12% of 1–2 y.o. children have an elevated lead level. Higher risk populations include those:

    - In which there is inadequate data on the rate of increased blood lead levels
    - Residing in the >27% of housing built in USA prior to 1950 that contain lead

- By two years of age,
    - a child should know several words
    - The child also should be able to combine these in 2–4 word sentences.
    - A listener should be able to understand 50% of what a child is saying
- Father with suspected HIV/AIDS and a 4 month old who is sick a lot and a mother who is doing crack cocaine
    - If father has AIDS, there would potentially be transmission to mother
    - There is potential for perinatal (in utero) transmission of HIV to fetus, which could affect M or J
    - The situation raises obvious concerns for J & M to get tested for HIV – treatment for very young infants can be quite effective.
    - Another consideration is whether mom breastfeeds J
        - Crack cocaine could be ingested by J in breast milk
        - J at 4 months of age is unable to make the first line antibody defense to infection (IgA). The infant's immature immune system isn't ready to produce this until 6 months of age. A breastfeeding infant can usually get IgA from a portion of the mother's breast milk. Formula does not contain IgA. If J is not breastfed, and is exposed to infection, J may be more susceptible.
- Beyond the sanitation concerns, cockroaches are highly allergenic. We don't have evidence of allergenic/asthmatic reactions of the older children or mother but it may be something to follow. This would not be expected to account for J's being sick because the immature immune system also does not mount a huge response to allergens.
- Cataracts in children can be congenital (present at birth) or acquired (develop later). Acquired cataracts may be related to an underlying disease. While the definitive treatment for cataracts is removal, when underlying disease is present the cataracts may reoccur after surgery. A medical evaluation to look for underlying disease would be prudent.

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Using the problem of "THE FAMILY OF 'BABY M'" as a teaching exercise

This case has twice been used as the basis for an exercise to demonstrate the value of multi-disciplinary collaborations, each time with an audience primarily of lawyers. We divided the audience in to three groups: lawyers, social workers, and doctors. All three get the introductory case description. Each group then also gets the additional information that is discipline-specific – "The Law" for the lawyers; "Social Work Considerations" for the social workers, and "Physician & Patient" and "Medical Considerations" for the doctors. The three groups then go off and discuss the situation by themselves,, returning after about 15 minutes to share their advocacy proposals with the others.

Each time that the exercise was done, all three groups decided, independently, that the goal should be that the child would be returned to her mother; however after that, they were on very different pages. Each time, the lawyers group focused on the conflict between the child's interests and the mother's, and identified the things that the mother should be required to do to get her baby back. The medical folks had everyone in the family undergoing some test, assessment or treatment, but made no suggestion about anything having to do with interpersonal communications or relationships. The social workers advocated counseling, and talking together to discuss where to go and what everyone needed to do, individually and together, to enable the family to live together. They also recommended that resources be made available to address the roach situation, and to assist Mother to do what she needed to do while obtaining counseling, as well as an assessment for depression. The group as a whole then discussed the ideal "package" of responses using some from each group to demonstrate that the collaboration can, but the individual disciplines acting alone cannot, provide what the child and family needed to go forward constructively.

The Challenge of Providing Work-Integrated Learning for Law Students – the QUT Experience

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SUMMARY:

This paper explores the elements necessary for a university to create an academic model for a successful work-integrated learning experience in light of the current policy imperatives of the higher education sector in Australia. It identifies some of the practical issues encountered in attempting to implement those models and hypothesises on what an effective work-integrated learning experience for undergraduate law students should look like taking into account the available research on students' perceptions of engaging learning experiences. It culminates in the proposal of a Virtual Work Integrated Learning Project which is currently under design in the Faculty of Law at the Queensland University of Technology.

INTRODUCTION

Australian universities have been heeding the call to produce more capable graduates since the 1980's.[1] Much time and attention has been devoted to the incremental development of graduate attributes to

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1 *Legal Education and Professional Development – An Educational Continuum ABA Chicago 1992 (MacCrate Report); C McInnes, S Marginson & A Morris, Australian Law Schools After the 1987 Pearce Report, AGPS Canberra 1994.*

complement the acquisition of professional knowledge in every field. That shift in educational focus which centres on building students' skills and self awareness for future employment has also highlighted the desirability of work-integrated learning experiences to provide a context for skills development and an opportunity for students to prepare for the transition from university to professional practice.

Research into work-integrated learning experiences is a problematic exercise. Whilst large numbers of students around the world participate in work based education each year, there is great diversity in the nature of the programs offered. Such experiences range from highly structured university controlled placements for academic credit, to informal situations where students volunteer to be part of a workplace outside of the formal university semester.

The size of the student cohort in question, the nature of the professional experience sought and the geographical situation of the institution will all impact on a university's ability to create an enriching workplace experience for students. In addition, cyclical factors such as economic prosperity, political stability and environmental impact are also likely to affect the availability of collaborative education partners.

Compounding the definitional problems is the fact that there are many different titles for work-integrated learning experiences in the educational literature including: cooperative education, field placements, internships, experiential learning programs and externships, and these experiences are being offered and evaluated across fields as diverse as nursing, engineering, education and business.

Despite those challenges, this paper will attempt to identify the core elements of an effective work-integrated learning program in light of the current policy imperatives of the higher education sector in Australia. It will identify some of the practical issues encountered in attempting to implement those models and will hypothesise on what an effective work-integrated learning experience for undergraduate law students should look like taking account of the available research on students' perceptions of engaging learning experiences.

This paper will culminate in the proposal of a Virtual Work Integrated Learning Project which is currently under design in the Faculty of Law at the Queensland University of Technology as a possible solution to the experiential learning needs of undergraduate law students at that university.

THE SEARCH FOR AN ACADEMIC MODEL

What is Work-integrated Learning?

The United States National Commission for Cooperative Learning (USNCCL) defines cooperative education as:

…a structured educational strategy integrating classroom studies with learning through productive work experiences in a field related to a student's academic or career goals. It provides progressive experience in integrating theory and practice. It is a partnership among students, educational institutions and employers, with specified responsibilities for each party.[2]

The Engaging Students in Work Placement (ESiWP) working party defines work-integrated learning as: "the integration of academic learning experiences with those in professional practice through workplace experience (including work placement, work experience, practicum, clinical placement, internships etc)

2 *T. Groenewald,. Towards a definition of cooperative education, in INTERNATIONAL HANDBOOK FOR COOPERATIVE EDUCATION, Boston: World Association for Cooperative Education, 17-26 (R Coll & C Eames eds., 2005).*

that secures learning outcomes that are both transferable and applied".[3]

Working from that definition, the Griffith University Work Integrated Learning Management Guide identifies the following five features of effective work experience:

- Meaningful Work;
- Induction;
- Assessment;
- Reflection and debriefing; and
- Monitoring of the quality of outcomes.

Research into work-integrated learning programs has been summarised through literature reviews, attempted definitions and conceptual models in educational literature for many years.[4] However in this field, where educational practice is so affected by the pragmatic factors of the workplace, even theoretical models appear to be designed to be context specific.

Overarching theory gives educators comfort in designing learning experiences as it ensures our practices are informed by research, however in this field, where theories of learning are only one of the many factors which impact on the success of the learning experience, they are arguably not as helpful.[5] This is particularly so where the proposed task requires the creation of a new type of work-integrated experience which is intended to operate in the digital environment and not in the physical workplace which was the focus at the time the Boud, Kolb and Biggs models were conceived. The traditional educational context for work integrated learning centred on the provision of technical or manual experience to bring theory to life in fields such as engineering and medical science. In that paradigm students were expected to participate in normal "working" hours and by a physical contribution to the workforce.

In the digital age the very nature of the "workplace" is changing to accommodate workers who may never physically attend the office but may be engaged on a full time basis from a remote location. The technical skills required for these workers are quite different. Manual skills are being replaced by Information Communication Technology (ICT) skills such as electronic mail, messaging services and video conferencing. Synchronous "on the spot" person to person communication is being replaced by asynchronous digital communication which allows people on opposite sides of the globe to work collaboratively on a project despite their different time zones and geographical locations.

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3 *L. COOPER, J. ORRELL, & M. BOWDEN, WORKPLACE-LEARNING MANAGEMENT MANUAL., A GUIDE FOR ESTABLISHING AND MANAGING UNIVERSITY WORK-INTEGRATED LEARNING COURSES, Practica, Field Education and Clinical Education, South Australia: Flinders Press (2003).*

4 *J. DEWEY, EXPERIENCE AND EDUCATION. New York:MacMillan (1938).,*

D. KOLB, EXPERIENTIAL LEARNING. Englewood Cliffs,NJ: Prentice Hall (1984).,

D. Boud, Creating a work based curriculum. in D. BOUD & N. SOLOMON (EDS.) SRHE and Open University Press, UK, 45,45 (2001).,

S. Dressler, and A. Keeling, Benefits of cooperative education for students, in INTERNATIONAL HANDBOOK FOR COOPERATIVE EDUCATION, Boston: World Association for Cooperative Education, 217-236 (R Coll & C Eames eds., 2005).,

T. Groenewald, Towards a definition of cooperative education, in INTERNATIONAL HANDBOOK FOR COOPERATIVE EDUCATION, Boston: World Association for Cooperative Education, 17-26 (R Coll & C Eames eds.,2005).

5 *G. Van Gyn, and E. Grove-White, Theories of learning in education, in INTERNATIONAL HANDBOOK FOR COOPERATIVE EDUCATION, Boston: World Association for Cooperative Education 27-36 (R Coll & C Eames eds. 2005).*

Who are the participants?

Work-integrated learning programs generally involve at least three parties: the student, the workplace supervisor and an academic coordinator.

From the students' perspective work-integrated learning experiences provide an opportunity for students to augment their theoretical training with practical skills, learn about career options, explore their abilities and mature as they move towards transition to the professional workplace.[6] Where the experiences involve physical placement in a workplace they may also present some drawbacks from the student perspective including transportation costs, additional expense in meeting workplace dress standards and limited opportunities to obtain experience in the student's particular area of interest.[7]

From the employer's perspective the potential benefits of work-integrated learning experiences include the opportunity to: screen potential graduate employees, engage positively with the higher education sector, increase market awareness of the firm culture and take advantage of students' currency of knowledge in the relevant discipline field. The potential drawbacks include difficulties in: managing relationships with students[8] giving appropriate feedback,[9] finding physical space for students who are placed in the organisation and the pressure of having to supervise the student in an already busy schedule.

From the university's perspective work-integrated learning opportunities improve the quality of the educational experience for students, offer a recruitment advantage, assist the university in building networks and stimulate curriculum development. International work experience placements also offer universities the opportunity to enhance their international status and develop their international expertise.[10] The potential drawbacks from the university perspective include: the logistical difficulties often encountered in finding placements, a lack of staff with the necessary practical experience to coordinate the program effectively and the lack of career development opportunities for the academic staff members involved in such programs as distinct from research based opportunities.[11]

The Higher Education Context

The higher education sector in Australia has undergone a period of rapid change during the last decade. An altered funding model, new levels of competition between providers, an increasing emphasis on research quantity and quality and a larger, more diverse and demanding student population are all factors which affect Australian University strategic plans in the digital age. The strategies currently employed by Australian universities in these changing times are both proactive and reactive in nature. A substantial number of strategies are aimed at improving the quality of the educational experience for the new student body.

6 *C. Cates, & P. Jones, Learning Outcomes and the educational value of cooperative education, (1999), http://www.waceinc.org.*

7 *L. BATES, BUILDING A BRIDGE BETWEEN UNIVERSITY AND EMPLOYMENT: WORK INTEGRATED LEARNING. (2005).*

8 *N. Pepper, Supervision: a positive learning experience or an anxiety provoking exercise?, AUSTRALIAN SOCIAL WORK, 55-64 (1996).*

9 *M. Eisenberg, K. Heycox & L. Hughes, Fear of the personal: Assessing students in practicum, AUSTRALIAN SOCIAL WORK, 33-40 (1996).*

10 *M. Weisz, & R. Chapman, Benefits of Cooperative Education for Educational Institutions, in INTERNATIONAL HANDBOOK FOR COOPERATIVE EDUCATION, Boston: World Association for Cooperative Education 247-258 (R Coll & C Eames eds., 2005).*

11 *Martin in J. Orrell, L. Cooper, & R. Jones, Making the Practicum Visible, HERDSA Conference 1999, 1 (1999) http://www.flinders.edu.au/teach/t4l/practicum/resources/pdf/herdsa99.pdf. The Higher Education Research and Development Society of Australasia is a scholarly society for people committed to the improvement of teaching and learning in higher and tertiary education. The HERDSA Annual conference attracts academics from throughout Australasia and acknowledgement of this issue at the annual conference is indicative of its relevance to the Australian Higher Education sector.*

Course Experience Questionnaire (CEQ)

One useful source of data which Australian universities access in order to gain insight into students' perception of their educational experience is the data collected by the Course Experience Questionnaire (CEQ). This is an instrument which has been used over the past decade to obtain student feedback on the quality of Australian higher education. Every graduate is surveyed a few months after the completion of their studies. An interpretation and analysis of this data was recently undertaken as a major research project titled 'Accessing the Student Voice' and was completed in December 2005. The project was funded by the Federal Department of Education, Science and Training and included an analysis of what 'promotes engagement in productive learning in Australian higher education'.[12]

One part of the project involved a number of workshops with key university staff held throughout Australia to discuss a range of issues relating to the study of the CEQ data. It is noted that there was general agreement that in the current higher education context, universities faced a dilemma involving 'how best to balance mission (achieving the key purposes of the university) with market (giving students what they want in order to gain and retain them – even if this is specific, skills-focused job training)'.[13] Participants concluded that managing this dilemma required universities to be continuously aware of rapid changes in both their disciplinary and external environments.

Improving the QUT Student Experience

Queensland University of Technology (QUT) is conversant with the need to balance mission and market and has utilised its strategic planning process to emphasise the importance of improving the student experience while strengthening 'real world' engagement. One of the University's Learning and Teaching Strategies is to 'Strengthen the real-world focus of learning experiences through developing and strengthening active partnerships and collaborations within and beyond the University'.[14]

The beneficial learning experiences created through work-integrated learning have proven to be a positive factor in improving the student experience with research showing that 'engagement in activities contribut[es] to enhanced academic outcomes'.[15]

Community Engagement through Work-integrated Learning

QUT connections with the community have been strong and enduring. In fact, the current QUT Mission is 'to bring to the community the benefits of teaching, research, technology and service'.[16] The emphasis on community activities has recently changed from 'community service' to 'community engagement' with a focus upon outcomes which are mutually beneficial for both the University and the community. This trend has been given a national impetus through the work of the Australian Universities Community Engagement Alliance (AUCEA). This organisation is committed to a form of engagement which is clearly two-way by promoting 'direct and mutually beneficial interaction between universities and communities'.[17]

12 *G. Scott, Accessing the Student Voice: Using CEQuery to identify what retains students and promotes engagement in productive learning in Australian higher education, Final Report of a Project funded by the Department of Education, Science and Training. (2005) http://www.dest.gov.au/sectors/higher_education/publications_resources/profiles/access_student_voice.htm*

13 *Id.*

14 *QUT LEARNING AND TEACHING PLAN 2005-2009, (2005), http://www.qut.edu.au/about/learnteach.jsp.*

15 *A. FURCO, Strengthening community engagement in higher education. Seminar held at Queensland University of Technology, Brisbane, October 12, 2005 (2005).*

16 *QUT MISSION, (2005), http://www.qut.edu.au/about/university/mission.jsp.*

17 *AUCEA (Australian Universities Community Engagement Alliance Inc.) (2006), http://www.aucea.net.au/.*

Work-integrated learning clearly falls within this form of community engagement. It has recently been suggested that one measure of the community engagement undertaken by universities should include an assessment of the percentage of students undertaking a domestic or international workplace learning experience.[18]

The Law Perspective

The Faculty of Law at QUT is one of the largest Law Faculties in Australia. In 2005 the Faculty had 2419 students enrolled in its Bachelor of Laws (LLB) and associated double degree courses. Of those, 647 were enrolled as external students.

A diverse range of undergraduate and postgraduate courses are delivered by the Faculty in conjunction with practical legal training programs which enable the requirements for admission to professional legal practice to be satisfied.

The Faculty caters effectively for the diverse learning needs of students through a range of on- and off-campus delivery modes, all of which include components of online delivery which provide a greater level of flexibility in terms of accessing study materials and resources, access to staff and the completion of assessment items. In addition, steps have been taken to ensure that graduates enter the workforce with appropriate levels of theory and knowledge combined with the requisite capabilities and skills required of both law and justice professionals to operate effectively in the context of professional practice.

In its major review of the Federal Civil Justice System[19] the Australian Law Reform Commission concluded that legal education should be more concerned with "what lawyers need to be able to do " as distinct from the traditional Australian approach which has been centred around "what lawyers need to know". In response to that recommendation and a number of other reports echoing the same theme, the QUT Faculty of Law integrated professional attributes within the content of all substantive undergraduate law units to facilitate incremental capability development throughout the LLB degree.

To ensure incremental development, each specific skill was broken down into three levels to represent gradual attainment. The first level involves scoping of the component parts of the skill, the second level provides an opportunity to practise the component parts of the skill and the third level offers an understanding of the skill in the context of practice. Broadly speaking, those three levels are developed through core units in the first, second and third years of the LLB respectively.

Essential to the project was the pedagogical aim to embed skills training within the content of learning and to specifically assess competency levels within each of the skills through a reflective process that would lead to the development of a "student capability profile". To be effective, this learning approach requires each skill to be developed through a cycle of instruction, practice, feedback and assessment both horizontally and vertically through the LLB degree, and that project was implemented effectively from 2000 to 2003.

Attempts to physically place undergraduate law students into relevant professional workplaces have not however been as successful in the QUT experience and this is due to the large number of students in the undergraduate program and competition from other Law faculties for the limited number of placements available in Brisbane. In addition there is a significant cohort of post-graduate students the Faculty must place through the Graduate Diploma in Legal Practice program. The Law Admissions Consultative

18 *S. HARDING, Engagement: Wobbly Third Leg Or Core Approach?, Knowledge Transfer and Engagement Forum, Sydney (2006)*

19 *ALRC DP 62, August 1999.*

Committee of Queensland requires that every entry level lawyer should have experience in a law office before being admitted. For that reason the Faculty must ensure that each Graduate Diploma in Legal Practice graduate has a placement experience in a law office to satisfy legal practitioner admission requirements.

With an annual student intake of approximately 232 in the QUT Legal Practice course in 2005 and plans for further growth, the Faculty's professional relationships are currently under strain to find geographically convenient placement opportunities for those post-graduate students. As a result, work-integrated learning experiences for undergraduate law students have to date been restricted to specific internship positions (approx 25 per year), voluntary vacation placement opportunities and vacation research experience scholarships for high achieving students. In our current curriculum we are therefore only able to offer approximately 14% of our undergraduate students a university controlled workplace learning opportunity.

Converging work-based and campus learning through ICT

New Information and Communication Technologies (ICT) are transforming the practices of both universities and workplaces. The internet, mobile technologies and particularly email have transformed traditional methods of communication within organisations. As the concept of "workplace" expands to accommodate employees who may never physically attend the office but may be engaged on a full time basis from a remote location, the communication methods utilised within such workplaces are also changing. Synchronous person to person communication is being supplemented and in some cases replaced by asynchronous digital communication which allows people on opposite sides of the globe to work collaboratively on a project despite their different time zones and geographical locations.

At the same time ICTs are contributing to a surge of global initiatives in online learning and eLearning in campus-based higher education. Whilst many universities are now using ICT for the flexible delivery of content, there are fewer examples of the effective use of technology to enable student centred and flexible learning which focuses on the learner rather than the transmission of content by the teacher.[20]

Given the transforming nature of workplaces and the radical changes in work practices in organisations which have a sophisticated technological infrastructure, it is submitted that authentic work-integrated learning experiences can and should now be created in the virtual paradigm.

Similarly, given the wealth of current research documenting the changing nature of the way today's students learn and the competing demands on their time, it is submitted that work placement opportunities which enable flexible delivery and flexible learning are also a desirable addition to the traditional physical placement programs offered by universities.

ENGAGING STUDENT LEARNERS

Engaging student learners – accommodating learning preferences of Generation Y students

In 2004, it was predicted[21] that by 2006 the majority of undergraduate students attending Australian

20 *D. Radcliffe, Technological and Pedagogical Convergence between Work-based and Campus-based Learning, EDUCATIONAL TECHNOLOGY AND SOCIETY 5(2) (2002).*

21 *D. Jonas-Dwyer & R. Pospisil, The Millennial Effect: Implications for Academic Development, (2004), http://herdsa2004.curtin.edu.my/Contributions/Refereed Papers.htm .*

universities would belong to Generation Y;[22] that is, born after 1980: and also known as Millennials, echo boomers digital natives or the net generation. Generation Y are the first generation of students to have grown up with digital media and information technology in a developed, prolific form.[23] Technology forms such a key part of who they are that, for Generation Y students, computers and the Internet are regarded as simply part of the environment and not as "technology"; this term is reserved only for the most recent "gadgets".[24] The variety and level of Generation Y's exposure to information technology media during their formative years has led to a shift in learning preferences as compared with past student generations.[25]

Although other factors, in addition to theories of learning, will impact on the success of work integrated learning programs,[26] it remains appropriate to consider the learning preferences of the majority of participating students when developing the virtual work placement model. Research shows that as student attitudes and aptitudes change, so too do their learning preferences, and suggests that in order to ensure a more effective learning environment, learning and teaching strategies must adapt to meet these preferences.[27] By taking into account what today's students value most, it is hoped that we can more effectively engage them, with a view to positively influencing their learning experience, understanding and learning outcomes.

Oblinger[28] identifies technology use, experimental activities, structure and teamwork, as the learning styles preferred by Generation Y. The significance of these learning styles to the design of a virtual work integrated learning model is considered below.

22 *Generation Y are also known as Millennials, Echo Boomers, Digital Natives and the Net Generation. See further C. Raines, Managing Millennials, (2002), http://www.generationsatwork.com/articles/ millenials.htm; M. Prensky, Digital Natives, Digital Immigrants, (2001), http://www.marcprensky.com/ Writing/default.asp, D. Tapscott, GROWING UP DIGITAL: THE RISE OF THE NET GENERATION. New York, NY: McGraw-Hill (1998).*

23 *C. Raines, Managing Millennials, (2002), http://www.generationsatwork.com/articles/millenials.htm .*

24 *J.L. Frand, The Information Age Mindset: Changes in Students and Implications for Higher Education. EDUCAUSE REVIEW, 35(5), 15-24 (2000); D. Oblinger, Boomers Gen-Xers Millennials, Understanding the New Students. EDUCAUSE REVIEW, 38(4), 37-47 (2003).*

25 *M. McCrindle, Understanding Generation Y., PRINCIPAL MATTERS, 28-31 (2003); D. Oblinger, & J. Oblinger, Is It Age or IT: First Steps Toward Understanding the Net Generation, in EDUCATING THE NET GENERATION, 2.1-2.20. (D.G. Oblinger & J.L. Oblinger eds. 2005), http://www.educause.edu/ content.asp?page_id=5989&bchp=1 ; D. Oblinger, Boomers Gen-Xers Millennials, Understanding the New Students, EDUCAUSE REVIEW, 38(4), 37-47 (2003); J.L. Frand, The Information Age Mindset: Changes in Students and Implications for Higher Education. EDUCAUSE REVIEW, 35(5), 15-24 (2000); P. Mellow, The Media Generation: Maximise Learning by Getting Mobile, (2005), http://www.ascilite.org.au/conferences/ brisbane05/blogs/proceedings/53_Mellow.pdf .*

26 *G. Van Gyn, and E. Grove-White, Theories of learning in education, in INTERNATIONAL HANDBOOK FOR COOPERATIVE EDUCATION, 27-36, Boston: World Association for Cooperative Education, (R Coll & C Eames eds. 2005).*

27 *B. Costello, R. Lenholt, & J. Stryker, Using Blackboard in Library Instruction: Addressing the Learning Styles of Generations X and Y., THE JOURNAL OF ACADEMIC LIBRARIANSHIP, 30(6), 452-460 (2004); D. Jonas-Dwyer, & R. Pospisil, The Millennial Effect: Implications for Academic Development, (2004) http://herdsa2004.curtin.edu.my/Contributions/Refereed Papers.htm ; J.L. Frand, The Information Age Mindset: Changes in Students and Implications for Higher Education, EDUCAUSE REVIEW, 35(5), 15-24 (2000); D. Oblinger, & J. Oblinger, Is It Age or IT: First Steps Toward Understanding the Net Generation, in EDUCATING THE NET GENERATION, 2.1-2.20 (D.G. Oblinger & J.L. Oblinger eds. 2005), http://www.educause.edu/content.asp?page_id=5989&bc hp=1 .*

28 *D. Oblinger, Boomers Gen-Xers Millennials, Understanding the New Students, EDUCAUSE REVIEW, 38(4), 37-47 (2003).*

Technology

Generation Y students are technology savvy and therefore relate to and appreciate the flexibility and convenience of an online learning and teaching environment. Like all students, they engage better with materials anchored within their own experience and possess a greater potential for deeper learning and understanding when allowed to study on their own terms as to time, place and pace.[29] Raised in a world of fast food and Internet banking, they have 'zero tolerance for delays'[30] and expect information and resources to be available when and where needed. This desire for convenience or flexibility is enhanced by the fact that many students of this generation balance their study and social life with part or full time work.[31] The virtual work placement model as an alternative to physical placements will provide students with flexibility in the context of a learning experience which may more effectively engage today's students who are used to the constant connectivity provided by digital media, such as the Internet and online interactive gaming.[32] Such an approach to communication will also be aligned with what actually occurs in the workplace and will therefore be authentic. Indeed Poole and Zhang[33] claim that 'once people become accustomed to working in virtual contexts – as they rapidly are' – the ability to work in virtual teams will become a 'taken for granted skill.'

However, as more technology is not necessarily better, the model developed will endeavour to focus on the activity enabled by the technology, rather than the mere use of technology per se, so that the virtual learning model will be engaging – by making it more interactive, social or student-centred[34] – rather than simply focusing on content delivery of knowledge or the packaging of lectures and structured readings online.[35]

Experimental Activities

Kinaesthetic and visual learning styles are most prevalent in Generation Y learners[36] – these students learn best through multi-sensory media such as diagrams, graphics, video and flow charts, rather than text. For Generation Y, life is an interactive, rather than passive, experience – they are achievement driven and 'creative, communicative participants rather than … passive, reception-only consumers'.[37]

29 *M. Le Brun, & R. Johnstone, THE QUIET REVOLUTION, Sydney: Law Book Company (1994).*

30 *J.L. Frand, The Information Age Mindset: Changes in Students and Implications for Higher Education, EDUCAUSE REVIEW, 35(5), 15-24 (2000).*

31 *K.Manuel, Teaching Information Literacy to Generation Y, JOURNAL OF LIBRARY ADMINISTRATION, 36(1-2), 195-217 (2002); C. Raines, Managing Millennials, (2002), http://www.generationsatwork.com/articles/millenials.htm .*

32 *D. Oblinger, Boomers Gen-Xers Millennials, Understanding the New Students, EDUCAUSE REVIEW, 38(4), 37-47 (2003).*

33 *M.S. Poole & H. Zhang, Virtual Teams, in THE HANDBOOK OF GROUP RESEARCH AND PRACTICE, 363-384, Thousand Oaks: Sage Publications, (S. Wheelan Ed., 2005).*

34 *D. Oblinger, & J. Oblinger, Is It Age or IT: First Steps Toward Understanding the Net Generation, in EDUCATING THE NET GENERATION, 2.1-2.20 (D.G. Oblinger & J.L. Oblinger eds. 2005), http://www.educause.edu/content.asp?page_id=5989&bchp=1 ; J.L. Frand, The Information Age Mindset: Changes in Students and Implications for Higher Education, EDUCAUSE REVIEW, 35(5) 15-24 (2000); D. Laurillard, Multimedia and the Changing Experience of the Learner, BRITISH JOURNAL OF EDUCATIONAL TECHNOLOGY, 26(3) 179-189 (1995); D. Radcliffe, Technological and Pedagogical Convergence between Work-based and Campus-based Learning, EDUCATIONAL TECHNOLOGY AND SOCIETY, 5(2) (2002).*

35 *B.L. McCombs & D. Vakili, A Learner-Centered Framework for E-Learning, TEACHERS COLLEGE RECORD, 107(8) 1582-1600 (2005).*

36 *D. Oblinger, & J. Oblinger, Is It Age or IT: First Steps Toward Understanding the Net Generation, in EDUCATING THE NET GENERATION, 2.1-2.20 (2005), http://www.educause.edu/content.asp?page_id=5989&bchp=1 ; K. Manuel, Teaching Information Literacy to Generation Y, JOURNAL OF LIBRARY ADMINISTRATION. 36(1-2) 195-217 (2002); J.L. Frand, The Information Age Mindset: Changes in Students and Implications for Higher Education, EDUCAUSE REVIEW, 35(5) 15-24 (2000).*

37 *B. Alexander, Going Nomadic: Mobile Learning in Higher Education, EDUCAUSE REVIEW, 39(5) 29-35 (2004).*

As today's students prefer "active learning" or learning experiences which actively engage them within the learning process and encourage them to construct their own learning by "doing" rather than simply being told, the interactive discovery approach to learning which will be implemented in the virtual model will, it is anticipated, decrease boredom, whilst increasing student participation and retention of skills and knowledge.[38] Studies have shown that students retain five percent of materials presented in lectures, ten percent of what they read, 20–30 percent of what they see, and 75 percent of what they do. However, as it has been recognised that a balance needs to be maintained between didactic and discovery (process over content), approaches,[39] the model developed will also enable opportunities for academic and workplace instructors to moderate and guide the learning process in more traditional ways.

Structure

Generation Y students value structure and feedback[40] and expect learning to be "high touch" as well as "high tech".[41] Although they are accustomed to multitasking and quickly switching from one activity to another with minimal adjustment time, Generation Y students have a short attention span and a preference for processing information in "bite sized chunks" or a concise easy to use format.[42] They therefore prefer a step by step approach to learning, which assists to make information more manageable and readily processed.[43] The virtual model developed will enable students to work through authentic tasks in a structured way in a supportive learning environment which appropriately scaffolds or structures the learning and teaching process. As suggested by Frand,[44] "the instructor needs to play a more Socratic role, posing questions and guiding the learning process, rather than taking an ecclesiastical approach, providing "the word" on a subject that the student is to "learn" (memorize) and repeat back." Therefore, although tasks may be carried out online, feedback, and monitoring by instructors, still fulfils an important motivational role.[45] It is anticipated that this support and structure will feature in the virtual work placement model, by an appropriate mix of synchronous and asynchronous online communication such as video, skype,[46] online discussion and email, and some opportunities for face to face communication.

38 *M. Garry, Training for the Nintendo Generation, PROGRESSIVE GROCER 87 75(4) (1996); D. Oblinger, & J. Oblinger, Is It Age or IT: First Steps Toward Understanding the Net Generation, in EDUCATING THE NET GENERATION. 2.1-2.20 (D.G. Oblinger & J.L. Oblinger eds. 2005) http://www.educause.edu/content.asp?page_id=5989&bchp=1*

39 *J.L. Frand, The Information Age Mindset: Changes in Students and Implications for Higher Education, EDUCAUSE REVIEW, 18 35(5) (2000).*

40 *K. Phalen, Self-Assured, Stressed, and Straight: Millennial students and how they got that way, (2002), http://www.itc.virginia.edu/virginia.edu/fall02/student/home.html; C. Raines, Managing Millennials, (2002), http://www.generationsatwork.com /articles/millenials.htm.*

41 *M. Garry, Training for the Nintendo Generation, PROGRESSIVE GROCER 87 75(4) (1996).*

42 *M. Prensky, Digital Natives, Digital Immigrants, Part II, (2001). http://www.marcprensky.com/writing/default.asp ; P. Mellow, The Media Generation: Maximise Learning by Getting Mobile, (2005), http://www.ascilite.org.au/conferences/brisbane05/blogs/proceedings/53 _Mellow.pdf .*

43 *M. LE BRUN, & R. JOHNSTONE, THE QUIET REVOLUTION, Sydney: Law Book Company (1994).*

44 *J.L. Frand, The Information Age Mindset: Changes in Students and Implications for Higher Education, EDUCAUSE REVIEW, 35(5) 15-24 (2000).*

45 *B. Costello, R. Lenholt, & J. Stryker, Using Blackboard in Library Instruction: Addressing the Learning Styles of Generations X and Y, THE JOURNAL OF ACADEMIC LIBRARIANSHIP, 30(6) 452-460 (2004); D. Oblinger & J. Oblinger, Is It Age or IT: First Steps Toward Understanding the Net Generation, in EDUCATING THE NET GENERATION, 2.1-2.20 (D.G. Oblinger & J.L. Oblinger eds. 2005), http://www.educause.edu/content.asp?page_id=5989&bchp=1 .*

46 *An online communications system that provides free voice and video conferencing, and synchronous chat or discussion forum functions to other skype users. See http://www.skype.com/download/.*

Teamwork

Friendship and social relationships assume particular importance for Generation Y. Indeed, their level of socialisation is such that they are almost constantly connected, either in person or online, for example by computers (email, blogs,[47] and synchronous or asynchronous discussion forums), PDAs[48] or mobile phones.[49] They seek a sense of community – to be included – and are more likely to make decisions based on the collective experience of their peers, rather than their teachers.[50] As a result, in addition to web-based resources, today's students also desire social interaction and connection, either in person, via mobile technology or online[51] and gravitate towards activities that promote peer or social interaction and collaborative learning, such as gaming activities.[52]

The benefits of such learning and teaching approaches have been widely recognised.[53] Collaborative activities are appropriate to the Generation Y psyche as they have been found to improve student relationships, social skills and psychological development. In addition, such approaches also increase academic learning and retention; cognitive development; and active engagement, through discussion in which conflicting perceptions of the issue under consideration arise that, due to attempts to reconcile them, are then critiqued, resolved and reformulated by exposing and modifying inadequate reasoning and constructing new knowledge.[54] Furthermore, given that 'the half-life of information is [now] measured in months and years'[55] the teamwork, communication and leadership skills developed through collaborative

47 *A user-generated web site that combines text, images and links to other sites to provide commentary on a topic. 'The ability for [users] to leave comments in an interactive format is an important part of many blogs': Blog, (2007), Wikipedia, http://en.wikipedia.org/wiki/Blog .*

48 *Meaning a "Personal Digital Assistant" or handheld device combining features such as: computing, telephone, facsimile and Internet and networking access.*

49 *M. McCrindle, Understanding Generation Y, PRINCIPAL MATTERS, 28-31 (2003); J.L. Frand, The Information Age Mindset: Changes in Students and Implications for Higher Education. EDUCAUSE REVIEW, 35(5) 15-24 (2000); D. Oblinger, & J. Oblinger, Is It Age or IT: First Steps Toward Understanding the Net Generation, in EDUCATING THE NET GENERATION. 2.1-2.20 (D.G. Oblinger & J.L. Oblinger eds., 2005).*

50 *A.Taylor, Do We Know Who We Are Teaching? Teacher Education Undergraduates' Views of the World' (Paper presented at the New Zealand/Australian Association for Research in Education Conference – Educational Research, Risks and Dilemmas, Auckland, 29 November 2003); M. McCrindle, Understanding Generation Y, PRINCIPAL MATTERS, 28-31 (2003); K. Manuel, Teaching Information Literacy to Generation Y, JOURNAL OF LIBRARY ADMINISTRATION, 36(1-2) 195-217 (2002).*

51 *D. Oblinger, & J. Oblinger, Is It Age or IT: First Steps Toward Understanding the Net Generation, in EDUCATING THE NET GENERATION, 2.1-2.20 (D.G. Oblinger & J.L. Oblinger eds. 2005), http://www.educause.edu/content.asp?page_id=5989&bchp=1 .*

52 *P. Shield, B. Atweh, & P. Singh, Utilising Synchronous Web-mediated Communications as a Booster to Sense of Community in a Hybrid On-campus/Off-campus Teaching and Learning Environment, (2005) http://www.ascilite.org.au/conferences/brisbane05/blogs/proceedings/70_Shield.pdf; K. Squire, & H. Jenkins, Harnessing the Power of Games in Education, (2003), http://www.iaete.org/insight/articles.cfm?&id=26 .*

53 *D. Johnson, & R. Johnson, Learning Groups in THE HANDBOOK OF GROUP RESEARCH AND PRACTICE, 441-461 Thousand Oaks: Sage Publications, (S. Wheelan ed. 2005); D.W. Johnson, & R.T. Johnson, Making Cooperative Learning Work, THEORY INTO PRACTICE, 38(2) 67-73 (1999); D.W. Johnson, & R.T. Johnson, What Makes Cooperative Learning Work, in JALT APPLIED MATERIALS: COOPERATIVE LEARNING. 26-36, Tokyo: Japan Association for Language Teaching, (D. Kluge, S. McGuire, D. Johnson & R. Johnson eds. 1999); M. LE BRUN, & R. JOHNSTONE, THE QUIET REVOLUTION, Sydney: Law Book Company (1994); E. WENGER, COMMUNITIES OF PRACTICE: LEARNING, MEANING AND IDENTITY, Cambridge, UK: Cambridge University Press (1998); E. Wenger, COMMUNITIES OF PRACTICE: LEARNING AS A SOCIAL SYSTEM, (1998), http://www.ewenger.com/pub/index.htm .*

54 *D. Johnson, & R. Johnson, Learning Groups, in THE HANDBOOK OF GROUP RESEARCH AND PRACTICE, 441-461 Thousand Oaks: Sage Publications (S. Wheelan ed. 2005).*

55 *J.L. Frand, The Information Age Mindset: Changes in Students and Implications for Higher Education, EDUCAUSE REVIEW, 35(5) 15-24 (2000).*

learning, even when conducted online, are especially important in the context of learning for workplace transition, as opposed to mere knowledge accumulation, thus providing an authentic learning experience which develops marketable life long skills.[56] An important feature of the virtual placement model is that it will provide students with another opportunity to develop these important skills.

THE VIRTUAL PLACEMENT PROJECT

The Concept

The Virtual Placement Project is being designed in accordance with the Flinders University Workplace–Learning Management Manual[57] but accepting Martin's proposition that 'there is no single model of successful practice'[58] and work based university education programs have to be designed to meet the resources and needs of participants.

The target skills for the project are derived from the Teaching for Learning Practicum of the Flinders program and include:

1. Self awareness:– knowledge of personal values, strengths and limitations in the workplace context;
2. Motivation:– knowledge about the employer, ability to prepare a CV and ability to effectively communicate with their supervisor;[58]
3. Intentionality:– the ability for students to establish what they are interested in learning and to consider how the experience will inform their job and future career;
4. Adaptability:– flexibility and the ability to deal with uncertainty; and
5. Capacity to work with others:– awareness of status and roles, the ability to self-manage and respect for others' perceptions.

The aim of the project is to provide an authentic and sustainable virtual workplace experience for undergraduate law students at QUT.

The Virtual Placement Project is intended for offer to full-time, part-time and external QUT students as an elective subject in the Bachelor of Laws program. It is yet to be determined which pre-requisites will apply but it is anticipated that students will participate in the program in their final year of study.

The virtual workplace will operate from the Blackboard Learning Management System supplemented by the QUT ePortfolio program.[60] It is also anticipated that once students are allocated to a placement, they

56 *D. Hanna, Building A Leadership Vision: Eleven Strategic Challenges for Higher Education 38(4), EDUCAUSE REVIEW 25 (2003).*

57 *L. COOPER, J. ORRELL, & M. BOWDEN, WORKPLACE-LEARNING MANAGEMENT MANUAL, A GUIDE FOR ESTABLISHING AND MANAGING UNIVERSITY WORK-INTEGRATED LEARNING COURSES, Practica, Field education and Clinical Education, South Australia: Flinders Press (2003).*

58 *E. MARTIN, THE EFFECTIVENESS OF DIFFERENT MODELS OF WORK-BASED UNIVERSITY EDUCATION, Department of Employment, Education, Training and Youth Affairs, J.S McMillan Printing Group (1997).*

59 *This task is included to enhance students' readiness for the transition to professional practice.*

60 *The QUT Student Portfolio and Resumé Builder services are available to all students through the QUT Virtual network. Student Portfolio is an online tool that students can use to document and present their academic, professional and personal development in the format of an e-portfolio (electronic portfolio). The e-portfolio enables students to facilitate the electronic development and management of a digital career 'folio' of evidence.*

will be given a level of access to the technological infrastructure used by their virtual employers. It is hoped that the technological platform will provide an appropriate mix of synchronous (real time) and asynchronous online communication such as video, skype,[61] discussion forum, online chat, wikis[62] and email as well as some opportunities for face to face communication.

The Aspirations

As this project is still in the developmental phase our learning design goals are aspirational. From our research to date we envisage a program with the following main features.

Students will apply for their work placement position by answering an advertisement in the virtual workplace newspaper. It is anticipated that the range of available placement opportunities will give students the opportunity to choose an experience in their preferred field. Specific criteria will apply and students will need to prepare a resumé outlining their experiences and demonstrated strengths and interests. Student resumés will need to be prepared using the QUT Student Portfolio and Resumé Builder services which are available to all students through the QUT Virtual network. Student Portfolio is an online tool that students can use to document and present their academic, professional and personal development in the format of an e-portfolio (electronic portfolio). The format of the service encourages students to identify their strengths and areas for improvement, also providing resources designed to help them to undertake an audit of how their skills development is progressing, and to plan for future skills development. The Resumé Builder is provided by QUT to enable students to prepare themselves to address employment opportunities as they arise.

This service enables students to:

1. record the details they may wish to include in their resumé;
2. create a resumé using a selection of those recorded details; and
3. export that resumé electronically as a file which can be opened for further editing or viewing in another application.

In preparing their applications students will be referred to the websites of their employers to explore the public profile and market niche of the organisation.

In response to their applications, students will receive virtual letters of acceptance which will allocate them to workteams and employers on the basis of their expressed preferences. It is anticipated that the range of employers will extend across the spectrum of law firms, government, industry and community organisations, reflecting the wide variety of employment opportunities which are open to today's law graduates. It is envisaged that at this point students will also be invited to participate in their employer's virtual workplace, being granted a level of access to the organisation's intranet, online research tools, group emails and continuing education and professional development services.[63] Throughout this period students will also be encouraged to develop team familiarity through an assessed interactive online exercise conducted by the

61 *The Skype communications system is notable for its broad range of features, including free voice and video conferencing, its ability to use peer to peer (decentralized) technology to overcome common firewall.*

62 *A wiki is a website that allows visitors to easily add, remove, and edit available content, typically without the need for registration. This ease of interaction and operation makes a wiki an effective tool for mass collaborative authoring.*

63 *It is acknowledged that this raises issues such as confidentiality and site security which may need to be addressed on a case by case basis in accordance with both University and Employer organisational policies.*

University on the learning management system (LMS) platform.[64]

After teams have been allocated to employers, tasks will be set by workplace mentors in each employer organisation. Students will be asked to collaborate to prepare a plan of action to scope their approach to completing the task including an allocation of workloads and a timeline for completion. This plan of action will also require students to identify aspects of the task which may require expert advice from other sources or resources not ordinarily available.

Following submission of the group's plan of action, workplace mentors will provide feedback to the group highlighting practical considerations that may have been overlooked as well as the ethical, political and social dimensions of the task that may not have been readily apparent to the students in their initial proposal.

The major assessment item will then involve completion of the assigned task in groups. It is envisaged that given the range of employers, the nature of these tasks may include diverse activities such as research into legal problems, the preparation of client briefings on updates to the law in specific areas, memoranda of advice in relation to legal issues and submissions on issues of law reform or public policy. It is anticipated that the scope of the task may need to be modified along the way to reflect client's needs and the impact of other "real world" factors. The timing of submission of the task will therefore be negotiable between the students and the workplace mentor.

The workplace mentors will assess the project and give detailed feedback to the group on the strengths, weaknesses and practical utility of the work produced. Wherever possible it is proposed that students will receive a "red pen" or corrected version of the task which they will be asked to revise in accordance with their mentor's input. It is also hoped that wherever possible students will ultimately see their work implemented in the "real world" context and receive feedback from their mentor regarding their client's satisfaction with the work produced and where relevant, the outcome of the matter.

The final stage of the project will involve students being asked to revisit their original resumés through the ePortfolio service to record and reflect upon their workplace experience and how they feel it has contributed to their preparation for transition to professional practice.[65]

CONCLUSION

Work-integrated learning experiences are intended to supplement the traditional didactic approaches to teaching experienced by students elsewhere in their studies of "black letter" law.

The creation of an effective work-integrated learning experience which is intended to operate in the digital environment and not in the physical workplace requires significant adaptation of the traditional learning theories which have underpinned educational literature in this field to date. However, the current policy imperatives of the higher education sector in Australia, the practical challenges encountered in attempting to implement the traditional models in modern universities and the rapidly changing nature of today's students' learning preferences suggest that it is a worthwhile goal.

The Virtual Placement Project currently under design in the Faculty of Law at the Queensland University of Technology is a working example of an attempt to reconcile these various factors in the design of an authentic and rewarding learning experience for law students preparing for the "real world" of professional practice.

64 *A Learning Management System (or LMS) is a software package that enables the management and delivery of online content to learners. Most LMSs are web-based to facilitate "anytime, any place, any pace" access to learning content and administration. The assessed interactive activity is likely to be an online quiz competition.*

65 *The task of reflection is intended to consolidate in the students' minds the value of the learning experience so that they can supplement their CVs for future use as a result of the placement experience. It is not yet determined whether the assessment will be decided on a graded or competency basis.*

Clinical Practice

Introducing Legal Clinics in Olomouc, Czech Republic

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The Czech context

In the Czech Republic, clinical legal education is not very developed. It does not fit into the traditional view of legal education, which itself is based mainly on an Austrian and German legal tradition which emphasizes legal positivism, legal history and a lecture style of lessons.

The university environment in the Czech Republic is very conservative. Open minded teachers (mostly young assistants) have very little space for their own creativity during the lessons. Most of the Czech law teachers do not have any training in teaching methodology. Moreover the general attitude is that there is no special need for practical courses because "the students will receive their practical training once they are in practice after finishing the law school".

These attitudes result in very sceptical approach to the methodology of teaching, if we can speak about any methodology at all. To put it simply, the content of the lecture is seen as more important than the way the content is taught.

The knowledge-based approach of the Czech legal education is also very closely related to the lack of evaluation, assessment and reflection of the teaching process. Czech law teachers do not use these methods for several reasons. First, because they do not want to be evaluated; secondly they take evaluation very personally; thirdly they do not know how to make use of such evaluation; and fourthly they think the students cannot properly assess the quality of teaching. Even though students would be prepared to evaluate the teaching, most teachers would not know how to be evaluated. Equally the students have no motivation to evaluate the teaching process because they feel it is not going to have any effect.

The lack of student motivation affects education as a whole. There is a need to raise the general level of student motivation so that students are able to participate actively in their education. The general habits of the students are that they study only right before their exams, which means the learned information stays in their memory only for short time and in the long run, they can remember only a small fraction of it.

In relation to clinic specifically there are particular fears that the provision of free legal aid will mean that clinics will steal work from practising advocates – including the university lecturers who work as advocates. Such staff is therefore not greatly interested in helping to establish the clinics or taking part in them.

Finally, it should be noted that faculties are usually managed by old conservative professors, who are not

very fond of incorporating the practical courses into the law faculty's curriculum. There may be a degree of fear of the unknown, and in any event they are convinced their teaching methods are the best (they have used them with "good" results for such a long time). Most of the teachers still teach according to the old methods and in accordance with the motto "teachers are those who know, i.e. demigods, the students on the other hand know nothing". This causes a huge gap between teachers and students and it makes communication very hard.

The Palacky University context:

The Law Faculty of Palacky University in Olomouc is in some respects special even within the Czech environment. It is quite a young institution (being established in 1991), which means that the staff mostly consists of young teachers, enthusiastic and willing to do something new, to change the system of education as a whole. The management staff is also quite young and the institutional obstacles are therefore not as impenetrable as at the other faculties.

Even though we were able to incorporate some practical courses, problems have not disappeared. We have found out how difficult it is to manage the financing of the clinic, and establish a staff group with the necessary backgrounds. Teachers within the Law Faculty of Palacky University in Olomouc are likely to carry a substantial teaching load of lessons in doctrinal law. They are unlikely to have any training in clinical teaching methodologies. And the majority of them will not be practitioners since practitioners prioritize their own practice to teaching because teaching is both time-consuming and unprofitable when compared to the rewards of practice.

Legal clinics at Palacky University

Even though the Law Faculty of Palacky University in Olomouc, Czech Republic, was probably the first law faculty in Central Europe to start a legal clinic,[1] in following years it stagnated both in number of students and in quality of education, especially due to the lack of finance and the lack of people who were willing to be involved.

The clinic then benefited from a joint project of European Social Fund and Ministry of Education of the Czech Republic[2] which granted the Olomouc Law Faculty funding for period of July 2006 to June 2008. There are currently five legal clinics embedded in the curricula of the Law Faculty of the Palacky University in Olomouc – Students' Legal Advising Office, Administrative Law Clinic, Refugee Law Clinic, Human Rights Clinic and Clinic of Electronic Communications Law.

In total, there are more than 80 students taking part in clinical subjects, while eleven members of faculty and five experts from different NGOs are teaching and supervising in these clinics. The Students' Legal Advising Office is a live-client clinic, while the other clinics function on a mixed basis, i.e. combining various clinical methods (internship, externship, live-client work, simulation and so on). The Centre for Clinical Legal Education, which provides organizational and administrative support for functioning of the clinics, was established as an organisational unit of the faculty.

Legal clinics in Olomouc are not based solely on common law models of clinical legal education. In 2006 we started a very successful cooperation with the Polish Foundation of Legal Clinics. The co-operation with the Polish legal clinics was very helpful especially during the preparation of the clinical programs.

1 *With the kind help of Professor Stefan H. Krieger of Hofstra University School of Law in 1996*

2 *"Development of Practical Forms of Education at Law Faculty of Palacky University in Olomouc"*

In general terms, for the majority of general practical questions concerning the organization and methodology we drew inspiration from the US and the UK legal clinics, while the narrower practical questions of organization were taken from Poland, which enabled us to take advantage of the same legal system, similar cultural and social environment.[3]

Our experiences in implementing the clinics

This section focuses on our experience of introducing clinical legal education in the Czech Republic, focusing on problems we encountered or anticipated, what in our opinion their sources were and how we have resolved or avoided them.

Given that the idea of clinical legal education originates in and is very tightly connected with common law system, in the stage of preparing and designing the clinical subjects for Olomouc Law Faculty, which operates within our Czech civil law environment, we wondered whether there would be some problems deriving from differences between the common law systems and civil law system and how we would overcome them if they did arise.

One of the problems we anticipated arose in relation to the status of case law. Case law presents an important difference between the civil and common law systems since in civil law systems the search for judicial decisions is not as significant at the case analysis stage as it is in common law systems which are based on judge-made law (precedents). Throughout their studies, our students' work is focused mainly on abstract law and codes, whereas in common law systems students work extensively with case-law, which is without any doubt much more practical form of education since it tends to teach the students how the law is applied in a particular case.

We were therefore concerned as to how the Czech students would make the jump from a mostly theoretical education to the case-oriented approach of clinical education. However our experience shows that most students involved in the clinical legal education were able to start working on the cases of the clients coming to the clinic almost at once, although some of them required a short period (two weeks to one month) of more intensive cooperation with their supervisor to feel comfortable when working on the case. We were also pleased to find out, that students were quite happy to work with case law (such as European Court of Human Rights case law in a human rights clinic), since for them it was more or less an untouched area and therefore interesting and motivating, resulting in very good student outcomes.

Other issues in the clinic

After analyzing this issue and finding out that it was not as problematic as we thought it might be we started to analyze other problems we were experiencing. We realized that the rest of problems were either not related to the difference between common law and civil law at all or to a far greater extent arose from other sources, such as cultural and social diversity and differences between systems of education.

The liability issue: This feature has been of the utmost importance to us. It is clear that the students, who are helping the clients as a part of their education, should not be held liable for damage clients can suffer as a result of students' activity. However it is not easy to avoid such liability. Even though most live-client clinics require their clients to sign a statement that they are aware their case is going to be handled by the students in the legal clinic as a part of the students' legal education, and acknowledge that the students

3 *In particular we should give credit to the book The Legal Clinics. The Idea, Organization, Methodology. [http://www.fupp.org.pl/down/legal_clinic.pdf], which helped us a lot.*

will not be liable for any damage caused as a consequence of their help, the liability of the university still remains. This can to some extent be addressed through the provision of insurance cover. However, the amount of damages that the insurance covers may not always be adequate. We have therefore needed to take other measures such as introducing criteria for refusing cases, where the potential liability would be too great.

The practitioner/academic divide: Another problem is that the most of the teachers at the Law Faculty of Palacky University in Olomouc are not practitioners or advocates, which impacts on skills development and legal ethics. As we have suggested, experienced specialists who could share their practical experience with students are not interested in teaching at law faculty – they are too busy or the teaching is not profitable enough for them to do it. On the other hand teachers within the faculty lack practical experience, so that it can be hard for them to pass on the knowledge, and students often do not have enough confidence in them. Even where practitioners do contribute to the teaching, in our view the experienced lawyers usually lack experience of interactive teaching methods.

Currently, in order to resolve this, we apply the following model: the education is mainly the responsibility of law faculty teachers, who focus on skills development, while at the same time we try to involve experienced practicing lawyers in the clinic as much as possible in order to transfer practical experience to students. It has also proven very helpful to cooperate with various NGOs. The lawyers working in NGOs have very valuable practical experience and at the same time they are able to teach very effectively using advanced teaching methods such as simulation. Additionally they also tend to bring a positive attitude to pro bono work.

The organization of legal clinics: Clinical administration and organisation gives rise to a number of specific issues for our clinics.

Case selection: In the first place there are issues around case selection. In general the legal clinics do not accept all potential cases; quite often there are precise selection criteria for accepting the case, for example, the lack of finances on the part of the client. In the Czech Republic, there are many people in need of free legal aid, which thus creates a good environment for live-client clinics. In order to control the number of clients we cooperate with our NGO partners. Those clients whose cases are too complicated for our students are handed over to the NGOs. Equally where the NGOs are faced with too many clients, they may refer clients to our clinics.

The clinic does not take on any form of criminal case, largely because these are perceived as particularly risk-intensive for the clinic. Additionally we do not take on cases that arise in relation to issues between advocates and their clients, or cases which are likely to be overly complicated – such as property restitutions. Nor do we accept clients who are already represented by an advocate or clients who can apparently afford one.

Pre-requisite knowledge: We also face the difficulty of ensuring that students have sufficient knowledge to be able to help clients or otherwise participate in the clinic. When deciding the syllabus of the Students' Legal Advising Office, which is a live-client clinic, we could afford to design it to be almost completely practical, because the vast majority of clients' cases solved by the students were relatively simple cases in areas of law that had been taught very extensively during previous modules. There are, however, areas of law, such as refugee law that are not covered in any prior non-clinical studies, which means the students enter the clinic without having any knowledge of the relevant substantive law. It has therefore been necessary to design the Refugee Law Clinic so as to include a theoretical component in order to ensure that students have enough knowledge to successfully go through the practical part of the clinic.

Representation at court: Another important issue for us was whether the students should be able to represent clients in court. There are some clinical projects in other jurisdictions where the students are eligible to represent clients before the court. This makes the clinical courses more attractive and allows the students to gain a more profound understanding of judicial proceedings.

In respect to this, the Czech law provides for non-professional occasional representation before the court (in some aspects similar to the concept of the *amicus curiae*). This might apply to clinical students and would thus allow them to participate in any court proceedings. However we have decided that students will not be permitted to do so. There are two reasons for this: the first is to avoid possible conflict with local advocates; the second is the issue of liability, since we are still not sure whether the insurance would cover activities of students within judicial proceedings. However this is something that we are keeping under review for future years.

Clinical issues and the wider educational context

We believe that the rest of the problems we mention here have a very close connection with the organization of legal education and, moreover, with organization of education as a whole.

As has already been mentioned above, in the Czech Republic there are in general no special courses on any type of skills at any level of education and there is no tradition of teaching them. The older generation of lawyers were not themselves taught legal skills, and would find it difficult themselves to teach students legal skills. This corresponds with the stereotype of how ordinary people perceive a lawyer – someone with knowledge, rather than skills. Thus even university students have very little sense of the legal skills which a legal practitioner should have. In consequence they have no real expectations concerning the extent of skills training that they need or the need for the improvement of those skills that they already possess.

In general the Czech system of education is focused on theory and the transmission of specific theoretical findings. This contrasts with, for example, the UK or the U.S. where, in our opinion, much more emphasis is placed on teaching through student activity, on communication and the application of knowledge – as well as on skills development. In our view skills build a bridge between theory and practice, and we therefore feel that we need to maximize the teaching of legal skills in any form within our law faculty's curriculum.

We can provide a good example of the way in which knowledge is prioritized within our system. At the Law Faculty of Palacky University in Olomouc, due to the lack of skills training during the legal education we decided to conduct a workshop on legal skills for students involved in legal clinics. One part of the workshop consisted in simulated client interview. The students were taught by advocates, who also had some teaching experience. However, when it came to evaluation, the lecturers focused on knowledge the students exhibited, but did not pay any attention to use of skills during the interview.

Student and staff expectations in relation to legal education – and clinical education – cannot be disregarded, as the influence of teachers' expectations concerning the work of students and their study results is also obvious. These expectations (from both students and teachers) focus on the achievement of defined theoretical conclusions, not on skills development. A good example of this attitude is shown in the lessons conducted by experienced specialists (such as advocates and public officials), who would often hold a tedious lecture (and thus completely avoid addressing their own practical experience) instead of using simulation or another interactive method, which could also have developed students' skills.

However this is not simply an issue of the approach adopted by the teaching staff. Students themselves do not expect teachers to use other than didactical methods of education. Thus at the workshop on legal

skills which we mention above, a professional psychologist started his lesson by asking the students about their interests and expectations concerning the lesson (and thus concluding an educational contract with them) with the intention that the students gained the sense of being the ones who decided the content of the lesson. However after the lesson the students evaluated the psychologist as "not having the lesson sufficiently prepared, because at the beginning he asked students, what they would like to do"!

Our solution to this problem is to insist on the use of interactive teaching methods by all teachers and sometimes even "forcing" students to play an active part during the lessons. However this is not always possible, due to the great number of teachers who have never experienced such methods during their studies. Moreover, the students are used to passive forms of teaching with the teachers presenting everything needed without any effort being needed by the students.

In addition to these issues with expectations of teaching styles and methodologies, we also face difficulties in relation to teaching certain subject areas – in particular the teaching of legal ethics. This is a subject that is traditionally taught in western countries. However, during the communist era in the Czech Republic the traditional conception of legal ethics was violated and the development of the subject stopped. Ethics, as a subject for teaching, was neglected; it has not been taught at schools. In our view the level of morality diminished during this time and this was reflected in the law as well. Now there is a new opportunity to start the teaching of legal ethics either as a new subject in our curriculum or as a part of existing subjects. The impact of the lack of legal ethics teaching as a part of the legal education curriculum can arguably be seen in ethical frailty of some advocates in practice, perhaps arising from the fact that students are not taught about how to develop an appropriate relationship between an advocate and a client.

Another wider curriculum problem which affects the development of clinical programmes and skills development is assessment. We (and here we can speak for our whole clinical team) know how to evaluate knowledge. But we also know that within the clinical education the focus of the assessment may be on areas such as legal skills, particularly since possession of sufficient knowledge is a prerequisite for entering the clinics. However, since students spend considerably less time in clinics compared to the UK or the U.S. legal clinics, the consequence is that the contact between students and teachers is not intensive enough to allow for the assessment to be based solely on one's own observations of the students. That is why there is a pressing need for some form of externally reviewable assessment.

With this in mind we required clinical students to produce a reflective journal. This worked well but we came up against the problem of insufficient earlier skills development: students do not know how to reflect and some of them do not want to reflect at all (being afraid of sharing their perceptions, and feelings, and trying to protect their privacy). Most students do not even understand the meaning of the reflection as an invaluable part of learning process. Lack of the reflective skills came out very clearly during the evaluation of reflective journals after the first semester of the legal clinics. The reflective journals were almost completely descriptive and thus tended to reach no more than the first level of reflection at best. Having said this, however, we note that in our discussions concerning reflection with our colleagues from the UK, they have made clear that often they experience similar problems with student reflection, and that the solution is not an easy one.

The issue around reflection connects with another phenomenon that exists in the Czech Republic – the aversion to, and the fear of, sharing one's own opinion. This hunger to merge with the crowd and not to differ is the inheritance from the communist regime. There was only one accepted opinion and nobody was ever asked to present his own opinion. But the problem is also with the traditional teaching methods – with the reliance on lectures and seminars. Seminars, which are intended to practice and discuss the problems

covered by the lecture, often end up looking very similar to lectures; they have the same expository character. Most of the times the teachers use the seminars to catch up in what have not been covered at the lecture and there is no space for discussion, solving problems. When occasionally there is some element of discussion of practice in seminars, the teachers still do not use the practical and interactive methods of teaching.

In our opinion this also shows that there is a need for practical forms of education focusing on legal skills development in civil law systems. It seems to us that while in common law systems students acquire lawyering skills during their studies as a "by-product" of the learning style, this is not true in civil law systems. As against this, however, one should point out that in the Czech Republic there is no pressure on law faculties to include legal skills training in their curricula, because the most legal professions like judge, advocate or prosecutor require a three-year period of practice and exam. It is generally felt that graduates will have enough time during this period to develop legal skills in practice.

Conclusions

In our introduction of legal clinics into the curriculum of the Law Faculty of Palacky University, we found the experience from both civil law clinical models and common law clinical models extremely helpful. The differences that arose in introducing clinic into the Czech Republic were not only connected with law but also with social and cultural differences as well. Although the sources of our clinical inspiration were in different jurisdictions, we think that it is essential not to just mechanically transpose the experience from one system to another, but rather to identify the potential problem areas features in order to avoid them. Interestingly although we were worried about the impact of the differences between common law and civil law, we did not find any major conflicts that would exclude transferring experience from one system to another.

So far we have identified only one problem arising from the differences between two legal systems and that is the use of case law during work on specific cases. In the Czech Republic, because of the civil law system, the use of the case law is not that important in case preparation, so that the consequences of insufficient case law analysis are not that serious. On the other hand through using the case law in the clinics students start to focus on a more case-oriented approach to Law.

The other problems we have faced are connected with the particular context of the Czech educational system, and the approaches and general attitudes to legal education from both teachers and students. In our opinion the most important common problem of legal education (and clinical legal education in particular) is the development of transferable legal skills. In some countries, like our own, this may be very acute problem, because the lower levels of education are very knowledge-oriented and the skills are not being taught. The consequence is that even where teachers want to start teaching skills, they have to do so in a knowledge-oriented environment and therefore with a lack of support and understanding, and with little experience of skills teaching methodologies. In this regard it is enormously useful to be able to draw on teaching experiences from other jurisdictions with a tradition of skills teaching.

In relation to the legal clinics at the Law Faculty of Palacky University in Olomouc, the key problems are mainly those concerning the liability for damages, case management (including case selection criteria) and the lack of experienced supervisors. There is also the problem of the lack of any prior exposure to legal ethics teaching for the students. When facing all of these problems we had to find some functional solutions. We are aware that most of the solutions we have found are temporary and that we might find better ones as we get more experienced in running the legal clinics. However we also note that when we spoke to

colleagues from other jurisdictions about many of these issues, they tended to confirm that they were facing many of the same problems – the quality of students' reflection in reflective journals, lack of teachers with practical experience, problems in communication with students and so on. This supports the idea that there are fundamental similarities in clinical education regardless of legal systems. Social and cultural differences and especially the difference between systems of education can sometimes be very challenging but in our opinion far from being irresolvable. In the era of globalization it is clear that these differences are vanishing.