ISSN 1467-1069

INTERNATIONAL JOURNAL OF

Clinical Legal Education

August 2005 pages 1–73

NORTHUMBRIA LAW • PRESS

INTERNATIONAL JOURNAL OF
Clinical Legal Education

August 2005 Edition No. 7 Pages 1–73

Notes for contributors

Material intended for publication should be sent to the Editor, Philip Plowden, School of Law, University of Northumbria at Newcastle, Sutherland Building, Northumberland Road, Newcastle upon Tyne, NE1 8ST, United Kingdom or e-mailed to philip.plowden@northumbria.ac.uk.
The Editor encourages the submission of articles and comments on topics of interest in the area of Clinical Legal Education. When submitting manuscripts for publication, it would be helpful if authors could observe the following suggestions:

Refereed status

All articles published in the journal are refereed by two independent referees with expertise in clinical legal education.

Form of manuscript

Contributions should be typed with double spacing throughout on one side of uniform size paper (preferably A4 size) with at least a one inch margin on all sides and pages should be numbered consecutively. Manuscripts may be submitted by post or e-mail. Submissions on disc will be accepted where they are of Word 6 format. In such cases a hard copy should also be submitted. A cover page should be included, detailing the title, the number of words, the author's name and address and a short biographical statement about the author.

Papers submitted to the International Journal of Clinical Legal Education will not be returned except by request and unless a postage paid envelope is provided by the author.

Footnotes and references

Footnotes to sources should be numbered in one consecutive series of Arabic numerals and placed at the foot of the page. Footnote style must conform to the standards set forth in a Uniform System of Citation, published by Harvard Law Review Association. The publishers are unable to check the accuracy of references and the onus of the accuracy falls on the author.

Copyright

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

Yearly subscription rates (2 issues)

£50 Sterling – Organisations
£20 Sterling – Individuals
Please contact Ann Conway: +44 (0) 191 243 7593
E-mail ann.conway@northumbria.ac.uk
Northumbria Law Press, School of Law,
Northumbria University, Sutherland Building,
Newcastle upon Tyne NE1 8ST
United Kingdom.

135112B/08/05

Contents

Page

Foreword

Welcome to the Summer edition of the Journal for 2005.

This edition of the Journal:

This edition of the Journal continues to illustrate our commitment to coverage of clinical learning at its broadest. I am delighted with the sheer range of material that continues to be submitted, and which we are able to draw upon. I'm also particularly pleased to accept two very interesting student contributions to this edition of the Journal. The clinical movement has always found strength in the high levels of support given to it by students, and it is right that in our reflection on our work we should be listening to the voices of those who learn in our clinics.

In the first of the two student pieces, Martin Wilson reflects on his experiences as the beneficiary of the first Irwin Mitchell International Clinical Scholarship, which took him from Northumbria University in the United Kingdom, to work for a month at the Springvale clinical programme run by Monash University in Melbourne. In the accompanying piece, Adam Wilson reflects on his experience in helping to organise the first of hopefully many national student conferences on clinic and pro bono in England and Wales – and on the shared experiences of the student delegates. I would encourage readers to encourage their students to submit similar pieces for future editions of the Journal, so that we can continue to learn from those we teach.

Elsewhere in this edition we have articles by Nigel Duncan, looking in particular at the issue of clinics and the learning of ethical practice; by Phillip Iya, examining the potential of clinics for enhancing the teaching of human rights in African law schools; and by James Marson and his co-authors, taking a look at the particular issues arising in the long-running clinical programme at Sheffield Hallam University, alongside the potential for clinical teaching to impact on the on-going review of the funding of Law teaching in English universities.

In the clinical practice section of the journal, there is what I hope will be the first of a number of joint articles from Lance Robson and his collaborators on the different forms of clinical education in the Scandinavian countries, along with articles by Carol Boothby on the specific aspects of running clinical work in the context of a housing repossession court, and from Romulus Gidro and Veronica Rebreanu on the clinical context in Romania.

Continuing change:

Those involved with international legal education will be aware of the long-running review of legal education in England and Wales by the Law Society. This wide-ranging review proposes a replacement of the current very tightly prescribed structures for legal training with a far more flexible outcomes-based approach. It has to be said that it is an approach that has largely been viewed with dismay by both the legal profession, who are concerned about quality suffering, and by the providers of legal training at the vocational stage, who see significant threats to the courses that they provide.

Within this debate, however, it is interesting that the high degree of support given by the Review

to the use of clinical education has been broadly uncontentious. For clinicians therefore, the Review potentially represents an important stage in the move from a minority provision in English law schools, to a more significant aspect of the mainstream. The Review falls short of the ABA requirement for exposure of all students to live client work, but if the Review does come to fruition – and that is a big If – it will potentially serve as a driver for the development of an English clinical movement which encompasses many more law schools in the jurisdiction.

The 2005 IJCLE conference – Melbourne, 13–15th July 2005

This Journal goes to press before the Monash conference begins – but it is clear already from the number of people who are attending, and from the sheer range of different papers, that it promises to be a hugely informative and enjoyable event. I hope to have the opportunity to publish many of the papers from the conference in the next two editions of the Journal – so if you weren't able to attend, you will have the opportunity to read the papers.

And for those of you who haven't been able to come to Melbourne this year, I hope to see you at the 2006 conference. Any suggestions for a venue?

Philip Plowden

Editor

Ethical Practice and Clinical Legal Education

*Nigel Duncan**

Introduction

This article is designed to explore a variety of ways in which clinical methods can achieve the goals of educators and the professions in the preparation of student lawyers. In particular I intend to show how clinical methods assist in the development of:

- a deeper understanding of the law, and the law in context;
- general transferable skills;
- legal professional skills;
- a sound values basis for ethical practice.[1]

In addition, I hope to show that there are ways of using clinical methods which may also assist us to meet other social concerns such as the extension of legal services and individual knowledge of rights, throughout the community.

This article is based on the UK system of legal education, whereby a degree, usually of three years, is followed by a one-year vocational course (the Legal Practice Course for solicitors and the Bar Vocational Course for barristers) then an apprenticeship of two years' training contract for solicitors or one-year pupillage for barristers.[2] However, some of the examples I will draw on relate to differently structured legal education systems such as that in the USA and I believe that my remarks are of general application. In order to provide concrete examples to illustrate my arguments I have drawn extensively on the course of which I have most experience: the Bar Vocational Course at my own institution, the Inns of Court School of Law (ICSL).

* *Principal Lecturer, Inns of Court School of Law, City University; Editor, The Law Teacher; National Teaching Fellow; founder-member: Clinical Legal Education Organisation, Global Alliance for Justice Education.*

1 *These are among the central qualities sought in legal education by the Lord Chancellor's Advisory Committee on Legal Education and Conduct: ACLEC 1996: First Report on Legal Education and Training (Stationery Office, London). pp. 24–5.*

2 *For an explanation of the current system of professional legal education in England and Wales, see Duncan, N.: Gatekeepers Training Hurdlers: The Training and Accreditation of Lawyers in England and Wales, 20, Georgia State U. L. R., 4, p. 911. Change may be imminent. The Law Society is currently conducting a Training Framework Review. The current state of consultation suggests a relaxation of specific requirements for courses, provided individuals can demonstrate that they have achieved the 'Day 1 Outcomes'. This is highly controversial and it is premature to predict what will emerge from the consultation process. However, it is worth noting that the importance of addressing ethical issues is recognised and that clinical methods appear to be highly regarded.*

Other providers may have differently structured courses, but all are validated by the Bar Council, and are expected to meet the same standards. The degree to which clinical methods are adopted varies, but (as defined below) is, to some extent, a feature of all the courses.

Clinical methods in Professional Legal Education

The concept of 'clinical' methods is derived from medical training where doctors learn by practising first on simulated and later real patients. I define clinical methods of learning as those which require students to learn by undertaking the tasks that lawyers undertake in such a way that they have an opportunity to reflect on the law with which they work, the circumstances and relationships they encounter in that work and the development of their own skills and understanding. This may be done through simulated exercises, through taking on responsibility for real clients in the law school setting or through working with lawyers, judges or others providing advice or representation.[3] To ensure that using these methods goes beyond mere skill development is a demanding requirement to which most providers of professional courses aspire, but are still working towards.

On the Bar Vocational course students learn three adjectival law subjects: Evidence, Civil Litigation and Criminal Litigation and six skills: Case Preparation (incorporating Legal Research and Fact Management), Advocacy, Conference Skills, Negotiation, Opinion Writing and Drafting. They also study two options. Professional Conduct is taught both in discrete classes and integrated as a pervasive topic into the other learning programmes. In describing the use of clinical methods I will be concentrating mostly on the skills development and option courses.

Within the skills development programme I shall concentrate on Conference Skills as a model of how we use these techniques. Students are given a manual[4] which is a guide to the development of effective client conference skills. They have three introductory Large Group sessions which illustrate the underlying principles. They also give students an opportunity to discover for themselves how difficult it can be to prepare for and conduct an effective conference by conducting a client conference in these Large Group classes. These also provide students with video demonstrations of conferences which they are able to discuss and criticise, informed by their experience of attempting a conference on the same case papers. This barely qualifies as clinical work, although it is certainly interactive. The tutorial programme which follows these involves simulated clinical techniques. Students work with realistic bundles of papers just as if they were being instructed by a solicitor. They are given opportunities to discuss how they have prepared for the conference, and then to carry it out, with fellow-students taking the role of client. After an opportunity for feedback the students who have played client then carry out a conference as counsel.

Reinforcement of learning is approached by requiring students to keep a Professional Development File in which there are pro-forma sheets encouraging them to reflect upon their performance at these tasks. Thus their learning engages the process of Kolb's learning cycle[5] to ensure that they undergo a process of reflection upon their developing skills and understanding, which should inform their subsequent planning and preparation for their next client conference.

3 *The different approaches to clinical legal education are presented in Brayne, H., Duncan, N. & Grimes, R. 1998: Clinical Legal Education: Active Learning in Your Law School, (Blackstone Press, London).*

4 *Samwell-Smith, R., (ed) 2004: Conference Skills, (OUP, Oxford).*

5 *Kolb, D (1984) Experiential Learning: Experience as the Source of Learning and Development (Englewood Cliffs, NJ: Prentice Hall).*

All colleagues managing an over-full curriculum will recognise that opportunities for reflection in classes are few and far between.

Students have a series of such simulations, progressive in difficulty and in the issues covered. It is worth observing that they also go through similar programmes in the other skills, which tend to reinforce each other as there are many underlying skills (research, analytical, language and communication) which are in varying degrees common to all these skills.

This, with appropriate adaptations to meet (for example) the requirements of the written skills, is the basis for the learning of all the skills and the options. One option, however, is approached differently. This is the Free Representation Unit Option in which students learn by representing real clients in the Employment Tribunals. The rationale behind this course is fully presented elsewhere.[6] The Free Representation Unit (FRU) is supported by the Bar and provides tribunal representation for impecunious clients whose claims did not attract legal aid. Many of our students undertake cases for FRU on a voluntary basis while they are studying and it is always a valuable experience. The FRU option, however, requires students to write a reflective journal while they go through FRU's training and assessment, which they must pass before they undertake their own cases. They may then choose one of those cases to present for formal assessment. They are assessed on their reflective journal as well as their actions representing their client. These journals usually show how they have reflected upon the ethical dilemmas they encounter. This is an example of real-client clinical education.[7]

Reflective practice

The concept of reflection is fundamental to the clinical approaches presented here. It is designed to entrench learning from experience. As Gary Blasi has observed, we all know people who appear to have repeated the same 20 years experience while learning very little. Others appear to have learnt something new from each of their 20 years experience. The difference, Blasi argues, is reflecting on experience.[8] This is a crucial element of David Kolb's learning cycle (which through further progressive iterations becomes a learning spiral) and was developed in respect of professional practice by Donald Schön.[9]

There are many ways of encouraging students to engage in reflective practice. Opportunities to reflect on simulated clinical experience can be provided through a structured professional development plan.[10] These take many forms. I have already mentioned the professional development file used at ICSL which encourages students to engage in a Kolbian learning spiral. This is designed to assist students to approach further iterations of a particular type of activity (eg a client conference) having thought hard, on the basis of experience and feedback, about how best to build on their strengths and to overcome perceived weaknesses.

6 *Duncan, N. 1997: "On Your Feet in the Industrial Tribunal: A Live Clinical Course for a Referral Profession", in 14 Journal of Professional Legal Education, p.169.*

7 *This is often described as a live-client clinic in the American literature.*

8 *Blasi, G. (1995) "What Lawyers Know: Lawyering Expertise, Cognitive Science and the Functions of Theory" 45, J Legal Educ. 313, at p. 387.*

9 *Schön, D. 1987: Educating the Reflective Practitioner, (Jossey-Bass, San Francisco).*

10 *The UK Centre for Legal Education website provides information about personal development planning in law: see http://www.ukcle.ac.uk/resources/pdp.html and Prince, S. 2002: Personal Development Planning and Law, http://www.ukcle.ac.uk/resources/prince.html. All website references accessed May 2005.*

Real client experiences provide opportunities for different types of reflection. Where students take on real cases in 'firms' or tutorial groups, the tutor will facilitate sessions where students discuss their work and critique what they have been doing. This can both improve the continuing work on behalf of the client and help students to understand the qualities of their work to date and what to do to improve those areas which are less developed. Another common approach to using reflection on real client work is to help to contextualise and add a critical perspective to more conventional studies which have already taken place, or which run alongside the clinical experience. Thus Laura Lundy[11] describes how her students' work in advice centres led them to reflect on what they had learnt on a Welfare Law module. This enabled a more effective academic understanding of those rules themselves by providing experience of how they work in practice, and also, at a meta-level, of the very capacity of rules to provide solutions.

'Reflective practice' has acquired iconic status amongst educationalists. There is, however, limited empirical evidence of its effectiveness. The theoretical justifications are impressive[12] and the common-sense approach: 'how can it be other than good to get students thinking hard about their own experience as opposed to simply blundering into another experience' may convince many. Empirical evidence is inherently hard to come by. It would be unethical to impose on students a method the teacher considered to be inferior. It is, of course, possible to do year-on-year comparisons with past cohorts having introduced a reflective method. However, here the other variables are enormous and virtually impossible to control for.[13]

The benefits of using clinical methods

Using clinical methods can produce considerable and diverse benefits.[14] The individual skills students have been developing tend to fall into place when they have the responsibility of undertaking a real case. The need for effective fact management and legal research becomes frighteningly obvious as the date of their hearing approaches. Perceiving how real people are affected by the court system can provide profound insights. As one of my students has commented in her reflection on the experience:

> 'It has helped me to understand civil procedure in context, fact management, conference and negotiation skills in reality and the power we possess over people's lives'.

The different approaches to clinic have their own advantages and disadvantages. Using simulations[15] enables a considerable degree of control over each student's experience and enables

11 *Lundy, L.: "The Assessment of Clinical Legal Education: an Illustration", (1995) 29 Law Teacher p. 311.*

12 *Kolb and Schön, above.*

13 *Guidance on using reflective methods in the context of legal education is available in Hinett, K. Developing reflective practice in legal education, 2003. http://www.ukcle.ac.uk/resources/reflection/index.html.*

14 *This would not be agreed by all. There are many criticisms of using clinical techniques. They include the view that it is anti-intellectual and only concerned with skill development; that it is an inefficient use of scarce faculty resources; that it limits the control over syllabus content available with more didactic methods. There is no doubt that it can be resource-intensive (but see text below for methods of sharing resources with those responsible for providing legal services). However, any programme concerned narrowly with skill development fails to achieve the potential benefits of clinic. The concern for syllabus-coverage must be challenged, given the short shelf-life of much legal knowledge. What is more valuable is the understanding of legal concepts made concrete through the application of rules to real (or realistic) cases, and the ability to analyse fact patterns and undertake the necessary legal research to enable knowledge and understanding of the changing law. Clinic can achieve this.*

15 *The use of simulations is developed in Burridge, R.: Role play and simulation in the clinic, in Brayne, Duncan & Grimes, op cit, p. 173.*

the course designer to ensure a progressive experience over a period of time. Students share their experiences and are thus able to reflect collectively on what they have worked through, providing each other with feedback on their performances and thus developing their ability to use each other as a learning resource. Simulations can be designed so that individuals work alone or in groups. They enable teachers to present situations from the perspectives of different parties to the issue.[16] It is almost impossible for students to avoid some active engagement with their studies where these techniques are adopted. Finally, students usually enjoy their learning and this makes the results of that learning more likely to stick.

However enjoyable and valuable a course based on simulations may be, however, it has its limitations. My students on the BVC report that after several months they become accustomed to interviewing each other, to negotiating with each other and to attempting advocacy in each other's presence. What had been exciting and new becomes ordinary. We can respond in some ways to this within the concept of simulations. When they start working on their options we change their groups, so that they are working with relative strangers. We also provide them with opportunities (on a voluntary basis) to advise real clients in our in-house advice clinics or by working with one of our Pro Bono Partners.[17] These initiatives help, but ultimately the students know that in the classroom they are just working through exercises. They know that if it goes wrong it does not really matter (until it comes to their summative assessments).

This is where working with real clients comes in. On the FRU option my students represent clients with complaints of discrimination and unfair dismissal. These clients are generally poor and often unemployed. Their claim is of central importance to them, and if the student was not aware of that before taking on the case they are as soon as they have had their first client conference. The motivating effect of taking on a real case is wonderful to see. I have seen students whose application in classes was poor putting vast amounts of work into preparing for their tribunal case, and every hour of work provides an hour with learning potential.

The quality of the learning in a real situation is also different. Representing a real client, faced with real opponents, advocating in real tribunals, students know that they are learning about the realities of practice. The care with which they prepare their case and the requirement to reflect upon the process usually produce a deeper learning.[18]

Work with simulations is, of course a valuable preparation for taking on real cases and I would not recommend that students take on the sole responsibility for a client's case until late in their legal education process. However, successful examples of real client work at the undergraduate stage[19] give individual students much more support. For a start they work in teams (often described as

16 *The way this is used in vocationally-oriented courses in the Netherlands is presented in Reijntjes, J. & Valcke, M. 1998: "Implications of Electronic Developments for Distance and Face to Face Learning" 32 Law Teacher 245. For a more recent presentation of related approaches in Scotland and the Netherlands see Maharg, P. and Muntjiewerff, A. 2002: "Through a Screen Darkly: Electronic Legal Education in Europe", 36 Law Teacher, 307 at p. 320.*

17 *For details of these programmes see http://www.city.ac.uk/icsl/current_students/pro_bono/index.html.*

18 *By 'deep' learning I mean that which involves the student in linking old and new knowledge to personal experience and distinguishes evidence and argument. By contrast 'surface' learning refers to an unreflective, externally-driven focus on words and sentences. In a deep approach, students seek to understand; in a surface approach they seek only to reproduce. LeBrun, M., & Johnstone, R., 1994: The Quiet (R)evolution: Improving Student Learning in Law, (Law Book Company, Sydney) pp. 59–61.*

19 *For a detailed discussion see Brayne, Duncan & Grimes op cit, Ch. 3.*

firms) and their work is subject to the supervision of a tutor who is normally also a solicitor. Thus they assist each other with the actual tasks of advising and representation, their work is checked before it goes out, and they have regular team meetings which provide the basis for learning from each others' reflection on their work and their developing understanding.[20]

I have so far addressed clinical experience for students on undergraduate or vocational courses. In the United Kingdom all lawyers pass through an apprenticeship after their vocational course: a training contract in the case of solicitors and a pupillage in the case of barristers. At this point they naturally come into contact with real cases and may be given considerable responsibility for them. Well supervised, this can be valuable clinical legal education. Why then not wait until that stage to introduce this experience? In my view this can partly be answered by the way in which clinical experience can inform every other learning experience in both undergraduate and vocational courses. It makes sense of what might be abstruse. It makes concrete what might remain abstract. It should therefore form part of that experience, not follow it. However, there is another reason why I believe that clinical work should form part of the law school experience, but I will leave that until I have introduced my next proposal.

Using clinical methods to develop professional values

In many countries the legal profession is perceived as being in an ethical crisis. In the United States lawyers are often perceived to be highly unethical in their practice, particularly as that practice moves from a professional to a business orientation.[21] This public perception is all the more galling for the majority who take matters of professional conduct seriously. Recent changes in the UK, such as the introduction of conditional fee agreements,[22] raise new prospects for conflicts of interest and new pressures for unethical behaviour which will face our trainees as they enter the profession. The responsibility for addressing this lies with both established practitioners and legal educators.[23]

Courses in professional responsibility are a required element of the JD in the USA. However, they are widely criticised, in many cases because they attempt little more than rote-learning of the Codes of Conduct and the Commentaries that have been developed to flesh out the Codes.[24]

20 *For a discussion of how these programmes can inform an understanding of the ethical aspects of legal practice, see Kerrigan, K. & Hall, J. 2003: Broadening the ethical horizon – why and how law clinics can help create reflective lawyers, paper at ALT Conference, Maastricht, April 2003.*

21 *Kronman A. T. 1993: The Lost Lawyer: Failing Ideas of the Legal Profession (The Belknap Press of Harvard University Press, Cambridge).*

22 *Agreements whereby the lawyer receives no fee unless the outcome of the litigation is a success, in which case a standard fee plus an uplift based on the likelihood of success is payable.*

23 *The responsibility of legal education was recognised in the UK by ACLEC, who included 'legal values' amongst what legal education should achieve and defined these as: '... a commitment to the rule of law, to justice, fairness and high ethical standards, to acquiring and improving professional skills, to representing clients without fear or favour, to promoting equality of opportunity, and to ensuring that adequate legal services are provided to those who cannot afford to pay for them. These values are acquired not only throughout the legal educational process but also over time through socialisation within the legal professions.' (emphasis in the original) ACLEC op cit, p. 24.*

24 *Pipkin, R.: "Law School Instruction in Professional Responsibility: A Curricular Paradox", (1979) 2 A.B.F. Res. J. 247 and Granfield, R.: The Politics of Decontextualised Knowledge: Bringing Context into Ethics Instruction in Law School, in Economides, K., (ed) 1998: Ethical Challenges to Legal Education and Conduct, (Hart, Oxford).*

Matters are improving and there are honourable exceptions: Columbia,[25] Georgia State,[26] Georgetown,[27] amongst others.

We as legal educators must ensure that our students learn their Codes of Conduct and practise within them. However, Codes are subject to interpretation and can never anticipate every situation which may arise. In terms of formal assessment, it may be that it is only compliance with the Codes, rather than an ethical response to an area left grey by the Codes, that can be subject to 'Pass/Fail' judgements. But learning does not have to be restricted to what can be formally assessed. We clearly also have a responsibility to do all we can to give our students a solid values-base on which to prepare their responses to the ethical dilemmas which will face them.[28]

On the BVC at ICSL we have a number of methods of addressing ethical issues. We provide students with a manual which contains the Bar's Code of Conduct, discussion of the broader ethical context and a series of practical problems. This manual[29] contains a chapter entitled *The Letter and Spirit of the Code*.[30] This is designed to ensure that students realise that their responsibilities go beyond simple compliance with the Code. Where the Code permits alternative actions or where it is capable of different interpretations students are encouraged to explore the underlying values which inform the Code. Recognising that there may be conflicts between those values or indeed between the values of the profession and their own personal values helps to situate their responses to ethical dilemmas in richer soil than the Code alone can provide.

The manual is supported by a series of large and small group classes. Practitioners present the issues arising from a number of case studies for discussion with students. In small groups, students role-play realistic situations which have been designed to contain embedded ethical dilemmas, to put their ideas into practice and then have opportunities to discuss and reflect upon their experience. This is an example of simulated clinical work. Moreover, throughout the series of simulated activities that students undertake in their skills development programmes ethical problems arise. Some of these are inherent (as where a student asks her client leading questions in conference, thus receiving confirmation of her pre-suppositions, rather than getting the client's actual instructions). Others are built into the problem by asking those playing clients to introduce requests that place the student in an ethical dilemma.[31] This is a clinical approach because the student is faced actually, not hypothetically, with the situation to be resolved, and after the role-play is completed there is an opportunity to discuss and reflect on the best ways of dealing with such a problem.

More profound opportunities to recognise the impact of ethical dilemmas arise in real-client clinical situations. Students undertaking the FRU Option regularly encounter such dilemmas. The requirement of keeping a reflective journal significantly increases the likelihood that they will

25 *See discussion of the clinical programme at Columbia in Brayne, Duncan and Grimes op cit at pp. 220–8.*

26 *See http://law.gsu.edu/ccunningham/PR/*

27 *See http://www.law.georgetown.edu/curriculum/tab_clusters.cfm?Status=Cluster&Detail=25*

28 *See Duncan, N: Responsibility and Ethics in Professional Legal Education, in Burridge, R., Hinett, K., Paliwala, A. and Varnava, T. (eds) 2002: Effective Learning and Teaching in Law, (Kogan Page, London).*

29 *Stead, K., (ed) 2004: Professional Conduct, (OUP, Oxford).*

30 *By the author of this article.*

31 *For example, a client accused of an offence of dishonesty may ask counsel whether she would be guilty if a particular event had happened. To answer such a hypothetical question would breach the Code of Conduct as it could lead the client to fabricate a defence and thus to mislead the court.*

learn from such a situation. Here is one example of a student encountering an ethical dilemma. In an employment tribunal case where the client had been paid without deduction of tax the student was carrying out a telephone interview with his client using the client's daughter as a translator. The student (who spoke the client's language to a fair degree and had informed the client of that fact) overheard the client resisting his wife's suggestion that he should lie about his understanding of the tax situation. He pre-empted the daughter by indicating that he had heard the conversation. His reflective journal records:

> 'In a sense I had averted an embarrassing situation by shooting first and not letting them tell me lies. On the other hand, should I not have waited until they came back to me with an answer (albeit a lie) aimed at me? Or would that have been unethical? Maybe I was exaggerating my ethical duty and should have just pretended not to hear. But then again maybe they should not have spoken that loudly (I could not *not* hear)'.[32]

This student was faced directly with a clash between the values of client autonomy and duty to the court.

In a taught situation, students are more likely to respond to ethical dilemmas if permitted to raise them themselves. To do this one can devise a role-play which is value-laden and focus initial discussion on the skills elements. Students will usually raise the values dimension and are likely to accept the results of that discussion more as they will feel a greater ownership of the issues.[33] However, this goal may be more effectively achieved on the vocational courses if there has been a sound underpinning of ethical debate in students' undergraduate experience. How might this best be done?

Julian Webb proposes a three-stage approach to meet the normal structure of an English or Welsh law degree.[34] In the first year a foundation course (such as Legal System) would explore as part of its remit the ethics of the English legal system. This lends a values context to the subsequent skills-oriented work. A simulated clinical element would be introduced in the second year in a 'Legal Profession and Ethics' course which would combine discussion of professional ethics with a study of the major ethical traditions supported by working through realistic and value-laden simulations. The third stage would be a real client clinical course through which supervisors would facilitate students' application of their ideas and understanding of ethical issues to the discussions of how to conduct real cases.[35]

Such a programme, particularly if the ethical issues are reinforced by being addressed in a number of different subjects, will provide the ideal basis for students to undertake a more focussed study of professional ethics on their vocational courses. The earlier opportunity to look critically at the

32 *This extract has been published previously in Brayne, Duncan & Grimes op cit, p. 170.*

33 *Koh-Peters, J. (ed) 1998: Reflections on Values for Clinical Teachers, proceedings of the AALS Conference on Clinical Legal Education, Portland, Oregon, 5–9 May 1998, p.2.*

34 *Webb, J.: "Inventing the Good: A Prospectus for Clinical Education and the Teaching of Legal Ethics in England and Wales", (1996) 30, Law Teacher p.270.*

35 *For a critical commentary on this proposal, suggesting how this be improved by integration through simulation into other subjects on the degree programme, see Evans, A.: An Australian Perspective, in Brayne, Duncan & Grimes op cit, pp. 267–74.*

issues provides a remedy for the tendency in many vocational courses to concentrate on the Codes, rather than their underlying values.[36] It supports attempts to consider the underlying values and fundamental tenets of the Codes.

The impact of legal education on students' values

It is inherently difficult to conduct research into the influences on students' responses to ethical dilemmas. The issues are usually of such complexity that apparently different responses may have related values at their roots. However, there has been substantial research in the United States as to the impact of legal education on students' attitudes towards the availability of legal services. This is clearly a matter of core professional values and is recognised by ACLEC as well as by the influential MacCrate Report.[37].

The research explores this commitment by assessing students' intention to undertake public interest work in the future. It consistently suggests that the proportion of students who are committed to including public interest work in their future professional activities declines as they work through their legal education process.[38] For example, Stover found that while 33% of first year students rated public interest practice as their ideal first job, three years later the proportion had fallen to 16%. These studies also showed a decline in the importance law students paid to doing pro bono or social reform work. By contrast, Maresh shows evidence that undertaking a clinical programme with real clients reverses this trend.[39] Over six years she found a consistent tendency for a higher proportion of students to express an interest in public interest work after taking their clinical course than they had before taking it. It might be objected that the students opting for clinical courses would most probably be those motivated towards public interest work. However, this does not explain the *increase* as a result of the experience and the percentage of students expressing the interest before their clinical course was as low as 25% in one year.[40]

---

36 *These approaches are not restricted to the UK legal education system. For an example of integrating simulated work and public service activities in India see Madhava Menon N. R. & Nagaraj V. 1998: Development of Clinical Teaching at the National Law School of India: An Experiment in Imparting Value Oriented Skills Training, in Madhava Menon N. R. (ed) 1998: Clinical Legal Education, (Bangalore) , p. 238.*

37 *MacCrate identified four 'fundamental values of the profession' each of which generates a 'special responsibility'. Thus the value of competent representation begets responsibility to clients; and (significantly here) the value of striving to promote justice, fairness and morality begets public responsibility for the legal system: MacCrate R. 1992: Legal Education and Professional Development – An Educational Continuum: Narrowing the Gap, (Chicago: American Bar Association).*

38 *Kubey, C., 1976: "Three Years of Adjustment: Where do your Ideals Go?" (1976) Juris Doctor, December, p. 34; Erlanger, H. & Klegon, D. 1978: "Socialisation Effects of Professional School: the Law School Experience and Student Orientation to Public Interest", vol. 13 Law and Society Review, , p. 1; Stover, R. & Erlanger, H., 1989: Making it and Breaking it: The Fate of Public Interest Commitment during Law School, (University of Illinois Press, Urbana and Chicago); Erlanger, H., Epp, C., Cahill, M., & Haines, K 1996: "Law Student Idealism and Job Choice: Some New Data on an Old Question", (1978) 30:4 Law and Society Review, p. 851; Stone, A: Women, Law School and Student Commitment to the Public Interest, in Cooper J. & Trubek, L. 1997: Educating for Justice: Social Values and Legal Education, (Ashgate, Aldershot) p. 56.*

39 *Maresh, S., 1997: The Impact of Clinical Legal Education on the Decisions of Law Students to Practice Public Interest Law, in Cooper J. & Trubek, L. 1997: Educating for Justice: Social Values and Legal Education, (Ashgate, Aldershot), p. 154.*

40 *It is true that other studies have shown that students take clinical courses to gain practical experience rather than because of their desire to practise in a particular area: Abel, R: Evaluating Evaluations: How Should Law Schools Judge Teaching? (1990) 40 Journal of Legal Education, p. 407. This, however, does not undermine the significance of Maresh's findings.*

This suggests that in respect of one major value of the legal profession, not only does conventional legal education tend to undermine that value, but that the process is reversed by students undertaking clinical work which brings them into contact with real clients. I do not, of course, extrapolate from this that those who are not concerned with the availability of legal services will necessarily act unethically in other aspects of their practice. However, I would suggest that those with a concern for some of the profession's core values are likely to be willing to consider other core values seriously. What is more, those dealing with real cases within their educational experience will perforce have come into contact with the ethical issues that are endemic in legal practice and will not have been able to evade them. They will have been under a duty to take decisions and actions.

Furthermore, their experience will have addressed ethical issues in a way hard to achieve without clinical experience. Surveys in the USA have shown that ethics courses (compulsory since the Watergate debacle) are perceived as inferior.[41] In a study by Granfield:

> 'only three out of forty respondents characterized their ethics course as valuable preparation for legal practice. The vast majority reported that their ethics course merely provided them with formalistic instruction about the rules of professional responsibility that were largely silent on the fundamental contradictions inherent in their practice'.[42]

It is the experience of real clients in all the messy complexity of real cases that overcomes this problem.[43]

Why not leave this to the apprenticeship stage?

I have already suggested above that clinical experience increases the value of other educational experience with which it is integrated. There is a further reason why it is important that it not be left until the vocational course is finished. This is a point which must be expressed with some care, as it risks offending the majority of lawyers who strive to maintain high ethical standards in their practice. It requires two assertions which I shall draw from the work of others. The first is that:

> '... it is workplace experiences that have the greatest impact on shaping professional behavior. Ethical education may be eclipsed if law students encounter workplaces that are unsympathetic to ethical practice'.[44]

The second is that:

> '... for those students whose first significant work place experience is a 'live client' clinical programme, better values, social awareness and motivations are inculcated because students are under the control of legal educators rather than 'the market''.[45]

41 *Pipkin, op cit.*

42 *Granfield, R: The Politics of Decontextualised Knowledge: Bringing Context into Ethics Instruction in Law School, in Economides, op cit at p. 308.*

43 *This is reminiscent of Donald Schön's swamp (Schön op cit) and the difficulty of recognising the problems of living in the swamp if you stay on the academic high ground.*

44 *Myers, E.W: "Simple Truths' about Moral Education" (1996) 45 Am.U.L. 823 at p. 824.*

45 *Evans, A: "The Values Priority in Quality Legal Education : Developing a Values/Skills Link through Clinical Experience" (1998) 32. Law Teacher 274 at p. 284.*

This is not intended to be a criticism of all practitioners. Practitioners reading this journal are clearly concerned for the quality of legal education and will be taking care to ensure that their trainees would be given appropriate instruction in ethical practice. However, this cannot be true of every lawyer who accepts the responsibility for a trainee. The realities of practice will properly expose trainees to the market and the adversarial nature of litigation. As Auerbach has observed:

> 'Litigation expresses a chilling Hobbesian view of human nature. It accentuates hostility, not trust. Selfishness supplants generosity. Truth is shaded by dissembling. Once an adversarial framework is in place, it supports competitive aggression to the exclusion of reciprocity and empathy'.[46]

These are the pressures which can lead to conflicts of interest or other ethical difficulties. Evans does not argue that students should be protected from those pressures, rather that they should first experience them in an environment in which it is possible to explore the problems in principle. For these reasons, students should be exposed to realistic (or ideally, real) problem situations in the context of their academic and vocational courses, in order to provide them with a sound foundation in values which will strengthen their ability to deal with the vicissitudes of practice.

Meeting our social responsibilities

One of the founding characteristics of the codes of professional ethics is the responsibility to promote justice and accessibility of legal services. Currently most Governments are seeking ways to reduce spending on the public funding of litigation. This raises questions as to how any ensuing gaps in provision might be filled.[47] Law schools, whether dealing with the academic or vocational stages of legal education, which develop real client clinical programmes may provide a valuable social service to those clients. This may include the provision of legal advice, full representation in appropriate circumstances, or it could include working with community or interest groups to address perceived injustices or to empower community groups to recognise and meet their own needs. This could be addressed by law schools setting up their own student law clinics,[48] working with other agencies such as (in the UK) Citizens' Advice Bureaux, Law Centres and Advice Centres,[49] or working in a community legal education programme.[50] There has been considerable development of these programmes in recent years, often under the title 'Street Law'.[51] The burgeoning scope for work of this kind in the UK is presented in Brayne and Grimes.[52] Those interested in the international development of different projects involving law students learning

46 *Auerbach, J. 1983: Justice without Law? (Oxford, 1983) at vii.*

47 *I do not argue that we should simply accept that government minimise or abandon its responsibility for the provision of proper legal services to those who cannot afford it. However, when faced with clients with an unmet legal need it is incumbent upon us to consider how to contribute to meeting that need while maintaining a principled pressure on government.*

48 *For practical guidance see Brayne, Duncan & Grimes, op cit ch. 3.*

49 *Ibid. ch. 4. See also Kibble, N.: "Reflection and supervision in clinical legal education: do work placements have a role in undergraduate legal education?" (1998) 5 Int. J. Legal Profession 83.*

50 *See Jones, P. 1997: The Growing Need for Community Legal Education, in Cooper & Trubek, op cit, at p. 247 For students to prepare an explanation of a particular legal issue appropriate for a lay audience or readership requires high levels of understanding of that issue as well as communication skills and a sensitivity to the needs of those to whom they are explaining it.*

51 *For information and guidance see the Street Law website at: http://www.streetlaw.org/.*

52 *Brayne: Law Students in the Community http://www.ukcle.ac.uk/directions/issue5/brayne.html. Grimes, R.: "Legal Literacy, Community empowerment and Law Schools – some lessons from a working model in the UK" (2003) 37 Law Teacher 273.*

through working with individuals or community groups should contact the Global Alliance for Justice Education through their website at http://ls.wustl.edu/Academics/Faculty/Activities/Global/.

In recent years the UK Solicitors' Pro Bono Group has actively promoted student work in a pro bono capacity, in the hope that this will establish patterns of behaviour which will continue into practice.[53] This raises a number of issues. Lawyers struggling in publicly-funded areas of practice often take a jaundiced view of lawyers with corporate client experience occasionally offering voluntary work in a field of which they have little current experience. There is the broader issue of whether undertaking pro bono work (whether as a practitioner or a student) undermines attempts to persuade the Government to accept what many would regard as their responsibility to fund proper levels of access to legal services.

This issue becomes particularly pertinent when recent developments by some UK universities are considered. They have entered agreements with the Legal Services Commission to provide legal services. High standards of supervision and client care are required, but where funding comes from both the LSC and the university there is the potential for conflict between educational and service-delivery interests. Tensions can arise over the choice of cases accepted or the period of time over which they are likely to be 'live'. This is a complex issue which cannot be fully explored here, but which requires careful management if justice is to be done to both students and clients. Properly conceived and managed, careful co-operation between the legal education community and the various bodies concerned to provide legal services can produce something of mutual value.

The characteristics of clinical educators

I will conclude by considering what we need of clinical teachers. It seems to me that there are two essential characteristics. One is that they have a sufficient understanding and practice of educational theory to be able to design and implement experiences for students which will maximise their opportunities for deep learning. The second is that they should have the experience of practice which is necessary for them to act as effective supervisors of their students' attempts to advise and represent their clients. Neither alone is sufficient.

It may not always be possible to find individuals who combine both types of experience. Where this is the case it is essential that teams are developed which include individuals with each type of expertise. For example, my practice experience is limited. I therefore collaborate on my FRU option with one teaching colleague with considerable experience of litigation in the Employment Tribunals[54] and the employment case-worker at FRU, whose practice experience in this field is unparalleled. Between us we can provide learning opportunities which are real, properly supported, and which build in the opportunities for reflection which ensure a truly educational experience. Working collaboratively in this way also provides a good model for the students and I would commend it to anyone.

53 *See http://www.students.probonogroup.org.uk/*

54 *Over the years these have included a part-time Chairman of the Employment Tribunals, a former trade union official and a former Law Centre caseworker.*

Conclusion

I have argued that the use of clinical methods of legal education (as presented in the concrete examples in this article and through different models developed elsewhere) provides an effective method of meeting a number of our concerns in professional legal education.[55] It provides the most powerful experience of the real context in which the law operates; it is the most effective way of developing transferable and specific professional skills and it provides a sound basis for ethical practice. It works most effectively when reinforced with built-in requirements for reflection and approaches to curriculum design which expect students to take some responsibility for their own learning. This experience should precede the training contract or pupillage. In designing courses which meet these objectives we can also help with the provision of legal services to those who cannot afford to pay for them. These proposals have been based on the experience of a number of jurisdictions which have very different legal education structures. How best to implement this approach in different jurisdictions will vary, but experience to date suggests that the effort is eminently worthwhile.

55 *The question of assessment of students' clinical work goes beyond the scope of this paper. However, for a discussion of this see Brayne, Duncan & Grimes op cit pp 54–62 and Macfarlane, J.: "Assessing the reflective practitioner: pedagogic principles and certification needs", (1998) 5, Int. J. Legal Profession, 63.*

Enhancing the Teaching of Human Rights in African Universities: What Role for Law School Clinics?

Professor Philip F. Iya[1]

I. Introduction[2]

This Paper aims at exploring the weight accorded to the teaching of human rights in law schools generally and in particular it will attempt to examine the status of human rights in clinical legal education (herein after referred to as "CLE") in law schools in Africa, with a view to recommending more emphasis in the teaching of human rights and the establishment of specialist human rights clinics as a viable growth initiative for CLE, especially in Africa. Concerns over similar issues were seriously debated during the last conference on Educating Lawyers For Transnational Challenges held from 26–29 May 2004 in Hawaii, USA, (herein after referred to as the "Hawaii Conference") just as much as they formed a serious bone of contention during the design and implementation of the new LL.B curriculum for South African Universities especially in 1997 and 1998. Because of the intricate issues involved, the emerging concerns are likely to continue. The purpose of raising the concerns here is to increase awareness, provoke more discussion and encourage empirical research on a subject matter considered to be of absolute importance for legal education generally and in Africa in particular.

One has to note at the outset that the human rights discourse, currently taking place the world over, is not only topical because it is full of contentious issues but also because its importance covers a

1 *BA, LL.B., LL.M., PhD, Professor of Law and former Dean of Law and Executive Dean of Research and Development at the University of Fort Hare in South Africa, but currently on sabbatical at the British Institute of International and Comparative Law (BIICL) in London, UK and Research Project Manager for the Death Penalty in Commonwealth Africa Project at the Institute.*

2 *This is a revised Paper presented at the Second International Conference on Clinical Legal Education held on the 14 and 15 July 2004 at the University of Edinburgh in Scotland, UK. I am grateful to the Conference participants for the comments received which made the revision of the Paper possible. My thanks also go to Ms Lauren Morris, Intern/Research Assistant at BIICL.*

multiplicity of complex socio-economic, political and legal issues. Of necessity, therefore, this discussion has to be limited and will thus focus on the teaching aspect of human rights courses in universities especially in Africa and the need to establish specialist human rights clinics as a viable mechanism for advancing clinical legal education programs to address its twin major objectives, namely: to serve clients with problems in the particular area of human rights, while at the same time providing law students with the peculiar opportunity to focus their legal education in developing specialised skills for the practice of human rights. The arguments that follow are based on the assumption that insufficient weight is being accorded to the teaching of human rights and that CLE in law schools in Africa mostly provides programs, which today are still based on the traditional general approach in which the clients and the caseload intake are limited primarily by the financial means of clients rather than by the subject matter e.g. the human rights, of their problems.[3] This type of approach is easily understandable in Africa in the context of the rampant levels of poverty existing there, a point we have already made elsewhere.[4] However, given the concerns over the teaching of human rights and for the purposes of this discussion, a number of emerging issues need consideration and further research, namely: is there a need to review the teaching of human rights in universities? If so, why? Is there a need to review law school curricula to incorporate specialist human rights clinics in law schools? If so, why; and why particularly in law schools in Africa? Would greater emphasis in the teaching of human rights generally enrich clinical legal education in Africa and provide more space for growth initiative in the education of lawyers for tomorrow?

Not only will the present discussion attempt to prove that the time has come for universities in Africa to consider a new dimension to CLE by placing more emphasis on the teaching of human rights, but that their law schools have to join the world wide movement towards establishing clinical programs with specialist areas, particularly in human rights. Following from that, some suggestions will be made to address logistical issues of implementation of such clinics, once a decision is taken to establish them.

Before addressing some of the above concerns, it may be prudent to set the appropriate context by explaining the background for the arguments set out in the subsequent paragraphs.

2. Contextual perspectives

Several factors have influenced the positions taken in this presentation. In the first place, the growing trend in establishing specialist legal clinics cannot be denied; except that the subject matters dealt with in such clinics are as various as are the law schools offering them. One notes, for example: the Sexual Assault Clinic of Monash University, run in conjunction with Springvale Legal Service[5]; the Family Law Clinic also of Monash University[6]; the Domestic Violence Clinic of Tulane University in New Orleans, Louisiana, USA[7]; Refugee Law Clinics established by

3 *A point well argued in the case of Australia by Campbell, S and Ray, A in: "Specialist Clinical Legal Education: An Australian Model" (2003) International Journal of Clinical Legal Education (IJCLE) p.67.*

4 *See Iya, PF "Fighting Africa's Poverty and Ignorance through Clinical Legal Education" (2000) IJCLE pp.13–32.*

5 *Evans, A: "Specialist Clinical Legal education Begins in Australia" (1996) 21(2) Alternative Law Journal p.79.*

6 *Campbell, S and Ray, A, op.cit., p.67.*

7 *Sherman, EF "Special Methods and Tools for Educating the Transnational Lawyer for Transnational Challenges" (2004) Proceedings of the Conference on Educating Lawyers for Transnational Challenges AASL Ed 645;*

UNHCR, Non-governmental Organizations (NGOs), and law faculties in many universities in Eastern and Central Europe (after the collapse of the Soviet Union), to protect refugees by providing legal services to meet their desperate needs; Women and Gender Clinics found in many American and European universities, to mention but a few.

There is the other factor relating to the acknowledgement and support by legal educators for increased weight to be accorded to the teaching of human rights in law schools particularly in the developed countries. The extent of this factor became evident during the Hawaii Conference referred to earlier[8] when arguments in support of the need for specialised human rights clinics, as the best method for training transnational lawyers became a dominant position. Speaker after speaker argued in favour of having such a clinic.[9] Besides, and more importantly, it is common knowledge that Africa's record of human rights abuse is so disturbing as to generate greater sensitivity to the promotion of the culture of human rights across the continent, thus justifying not only its emphasis in the law school curriculum but its place in a clinical programme as the most ideal for the purposes of training the lawyers in human rights for tomorrow.

Equally to be noted as an important factor is a personal experience acquired during the implementation two year Project at the British Institute of International and Comparative Law (BIICL) on the Application of the Death Penalty in Commonwealth Africa. Indeed, a needs assessment for the Project indicated that there is very little information available on the death penalty in Africa and comparative legal information is often not available.[10] While, information on international human rights and other treaties is only now being made available in Africa by a variety of institutions via different sources including websites,[11] comparative African legal materials have, however remained lacking. Of even greater concern is the fact that lawyers working in Africa have often had little or no training in advocacy in capital cases and are left without guidance and sometimes in ignorance of international standards. In Africa, the circumstances surrounding the imposition of the death penalty are often far removed from the text of the law. Furthermore, prison conditions, delays in the criminal justice system and underfunding are matters of concern. Equally important are issues surrounding the sentencing to death of minors and women (e.g. under Sharia Law). Critical to all these concerns is the fact that there is very little, if any, information sharing network on a regional African basis on this important topic. Whilst there has been a *de facto* moratorium observed in many African countries, the death penalty still remains in the statute books of, and is rigorously applied in, many of them. It is important that steps are put in place to strengthen knowledge and awareness regarding the application of the death penalty among legal professionals (defence lawyers, prosecutors, judges, NGOs, Ministries of Justice and other departments); to strengthen networks of lawyers representing people on death row or working within the criminal justice system; and to strengthen human rights values within the legal systems of African countries.[12]

8 *Sherman, op.cit.*

9 *Ibid; teaching methods and approaches constituted an important aspect of the conference agenda.*

10 *Grant Application submitted by BIICL 22/03/2002 to the European Commission ('EC') under The European Initiative for Democracy and Human Rights: Support for the Abolition of the Death Penalty p.4–5.*

11 *Ibid., p.4 e.g. Library Resources Project run by the Bar Human Rights Committee in Tanzania (1999) and in Uganda, Botswana and Malawi (2000).*

12 *These are the objectives of BIICL's Death Penalty Project.*

The BIICL experience coupled with the rest of the above factors in Africa has not only confirmed the need for specialised knowledge and skills acquisition in the field of human rights, but has further strengthened the belief that clinical programs in human rights at law schools are the best place to lay the foundation for a culture of human rights in the young lawyers of tomorrow; hence the resolve for establishment of such clinics in Africa.

The subsequent paragraphs will accordingly be used to elaborate the impact of all the above factors.

3. Why curriculum review?

It has already been argued that rethinking the responsibility of law schools in preparing tomorrow's lawyers will demand facing up to the human rights challenges and perspectives in the contemporary order, through changes provided to students in their legal education program.[13] The significance of this argument can be found in the following statement:

> *"If Universities constitute a privileged locus for the production and transmission of knowledge, as well as for action for social change, it is fundamental to incorporate (in their curricula) the contemporary challenges of implementation of human rights, in as much as they constitute the only emancipatory platform of our time".*[14]

However, it is not just a matter of incorporating human rights in the law school curricula to achieve academic pursuits. Law schools should go further to consider establishing practical training programs, such as establishing law clinics within law schools, staffed by a new cadre of clinical human rights teachers, where students could learn not just to think like lawyers but also to represent victims of human rights abuses under the supervision of human rights' practical lawyers and clinical teachers. The question that emerges, though, is: what makes human rights so fundamental as to necessitate its incorporation in law school curricula, including establishment of specialist human rights clinics?

In response to the above concerns and without going into details, it is common knowledge that human rights has a critical role to play in development because international and national protection of fundamental human rights provides the essential requirements for the achievement, maintenance and promotion of sustained development. At present, international instruments and national constitutions and legislations, the details of which are outside the scope of this discussion, all provide clear statements on those fundamental human rights and freedoms for development. Any desire to achieve sustained development must be based on the dignity and supreme value of the individual through respect and protection of all human rights related to material, financial and social welfare. These are in fact the necessary factors to recognise in determining a good standard of living and freedom that any human being should have.

Unfortunately, it is simple to provide evidence to prove that in many places the culture of human rights is not being properly observed nor developed, and indeed their respect and promotion are being totally infringed. The world over, most individuals and communities have continued to experience a long and painful history of human rights abuses. There is a bit of everything in their lives: inequality, unemployment, poverty, hunger, injustice, dictatorship, racial discrimination and so many other abuses that result from social discrimination at local, national and international levels.[15]

13 *Piovesan, F "Human Rights Challenges and Perspectives" Conference Proceedings, Hawaii Conference – see www.aals.org/international2004/Papers/Piovesan.pdf.*

14 *Ibid.*

15 *Omara-Otunnu, A "Historical and Legal Aspects of Humanitarian Crisis in the Great Lakes Region of Africa" A Public Lecture delivered on 20 February 2004 at the Africa Centre in London, UK.*

It is against such a backdrop that the legal profession is expected to rise to the challenges posed by such wide and growing abuse of human rights. Therefore, the need thus arises for lawyers, and would be lawyers who intend to start careers as international human rights lawyers, to engage in special training leading to specialisation in human rights. Such an approach would meet the goals of legal education to provide knowledge and skills that contemporary lawyers need to serve their clients in the specialised field of human rights, thus offering opportunities for careers not only in the United Nations, international organisations including courts and tribunals, regional groupings of sovereign states and nongovernmental organisations, but also at governmental level within all its structures. All this will be in addition to providing that service in private legal practice on human rights issues with national and international perspectives.

The critical point to note here is that since human rights constitute the basis for humanity and for the law, legal education should therefore have human rights' courses at its core. However, in order to fulfil its function of helping future lawyers to both understand and acquire the relevant values knowledge and skills, the teaching of human rights must not focus too much on formalistic repetition of rules, but rather emphasise acquisition of the necessary skills for their application in resolving the multifaceted problems emerging from the application of those rules. This explains the basis for emphasising the training of lawyers in human rights through enhanced teaching of human rights and through clinical legal education programs. The conviction of this direction further explains the growing trends the world over, not only in curricula review with the emphasis on human rights teaching in the curricula but also in the establishment of specialist human rights clinics earlier discussed. University law schools in developed countries have taken the lead in these areas. Hence, the law schools in Africa should not be left behind.

4. Why specialist human rights clinics particularly for law schools in Africa?

That universities in Africa are engaged in the teaching of human rights is a matter of common course. However, the point of departure arises from a personal experience in teaching in a number of law schools/faculties in Africa, revealing that human rights as a course is taught in most law schools but only as part of International Law to undergraduate students.[16] For a few others, in addition to offering it as part of International Law, it is also offered as an elective in the last year of undergraduate study just as much as it is offered as an elective for postgraduate students. Very rarely does one find a law school where International Law and /or Human Rights are compulsory courses. Even rarer is the situations where human rights as a course is applied as an integral part of every law course. The unfortunate result is the de-emphasis of human rights teaching and yet, Africa's record of human rights abuse is one of the worst in world, given the crises in Liberia, Sierra Leone, Nigeria (in Western Africa); in DRC, Rwanda, Burundi, Sudan, Northern Uganda (in the Great Lakes region of Africa); Ethiopia, Somalia (in Eastern Africa); and Zimbabwe, Swaziland (in Southern Africa), to mention a few.[17]

16 *The author has taught law in the universities of Makerere in Uganda; of Swaziland in Swaziland; of Witwatersrand, Vista and Fort Hare in South Africa.*

17 *See Omara-Otunnu, op.cit., p 10.*

Another interesting experience with optional courses is that students will register for them only if lecturers are available and/or if that particular available lecturer is a "soft" or "easy" one because of his/her generosity in awarding marks. Given such a scenario, it becomes obvious that human rights teaching will not get the seriousness and prominence it deserves and an optional offer of the course may end up as no offer at all, since no students will register for the course for the many reasons explained.

Personal experience apart, a quick survey of CLE in Africa provides little evidence of specialist human rights clinics in African Law schools.[18] The latest report of the Association of Universities Legal Aid (AULAI) of South Africa does not list human rights as one of its subject matters for clinical legal education.[19] One may argue that the reason for its omission is because every aspect of a client's case in the clinics involves human rights. However, does such an approach provide students wishing to specialise in human rights issues with sufficient grounding in the challenges he/she will face in the future practice of human rights? Besides, given the increasing importance accorded to the role of human rights, does such an approach really do justice to the subject matter?

It is also often argued that specialisation in human rights issues should be left to students pursuing postgraduate programs. The support of this argument is evidenced by the mushrooming of human rights centres in Universities in Africa which not only provide postgraduate programs but also avail facilities for research, documentation/information, conference organisation, internships, publication, international cooperation programmes, radio and television programmes etc in human rights from which postgraduate students may benefit.[20] The main criticism against specialisation in human rights being left to postgraduate students in the context of the de-emphasis of human rights in undergraduate courses in Africa is the limitation of specialised knowledge and skills to only a few academically outstanding students, thus cutting out the majority of students interested in careers in human rights from acquiring the required knowledge and skills to enable them to participate fully in the growing challenges of human rights.

There are also those who argue that human rights issues, including training, are already being provided by NGOs whose numbers and human rights activities have recently swollen in most African countries.[21] However, accepting such an argument would be abdicating the role of the university to train lawyers for society. In any case are most NGO's more suited than universities to provide that type of training?

It is, therefore, submitted that the above arguments appear very persuasive in explaining and supporting why the teaching of human rights should be enhanced and specialised human rights clinics should be established in the law schools of Africa. A review of law school curricula to reflect this motivation is, to many educationists including the writer, a natural consequence. But the question then is: What strategies should be employed in the design of a suitable curriculum and how does one ensure viability?

18 *Iya, PF: Fighting Africa's Poverty and Ignorance Through Clinical Legal Education 2000 International Journal of Clinical Legal Education p. 13.*

19 *Association of Universities Legal Aid Institutions' 2003 publication.*

20 *See UNESCO publication on World Directory of Human rights Research and Training Institutions (6th ed).*

21 *Kaburise, J: "Non-Governmental Organizations" Paper delivered at the Hawaii Conference pp. 233–237.*

5. Strategies, viability and sustainability considerations

5.1 Educational values and expectations – towards a paradigm shift in Africa

In developing countries generally, and Africa in particular, there are vast economic and social differences between the rich and the poor; the majority of the population are not only ignorant of their legal rights but remain unrepresented and with hardly any access to proper legal services; the majority too are victims or potential victims of human rights abuses; and more importantly, lawyers who work in universities and NGOs or related structures are becoming more and more sensitized about human rights issues. It is against this kind of background that the introduction of new economic policies under the New Partnership for African Development (NEPAD) and establishment of the African Union are creating a paradigm shift in values and expectations. In January this year the Protocol to the African Charter on Human and Peoples' Rights came into force and a few months later a new Pan African Parliament was inaugurated, meaning that Africa now has a Pan African Parliament and will soon also have a Human Rights' Court.

While these developments herald a paradigm shift in Africa, they also introduce new demands for well trained lawyers, including judges to address the emerging socio-economic challenges of development. Targeted are issues of poverty, ignorance, HIV/AIDS, good governance, conflict resolution and many other problems of development most of which, as earlier discussed are issues of human rights and humanitarian concerns. Legal education, including clinical education, is thus expected to make provision for such concerns. That should explains why clinical programmes in Africa today are conceived to encompass activities directed towards achieving human rights objectives and the justification for such activities is based on the expectation that law students can play a valuable role in assisting with combating issues of human rights and of a humanitarian nature and in this endeavour, they are expected to liaise and closely cooperate with other organisations outside universities for the wider and greater benefit of society.

In this regard, one has to note the remarkable growth in the number of human rights centres in universities in Africa committed to carrying out programmes of human rights.[22] The only point of departure which is the concern of this discussion is that involving legal clinics to enhance the pursuit of the promotion of human rights for the reasons already explained.

5.2 Strategies and viability

A few suggested strategies, which law schools wishing to address the above expectations need to consider, are the following:

1. Human rights issues should form part of every course taught to all law students, whether such a course is compulsory or not and whether or not those courses are offered at undergraduate or postgraduate levels;
2. Human Rights Law should be an undergraduate course in its own right, rather than being left to be taught only as an aspect of International Law, and as such, it should in addition be a compulsory course;

22 *UNESCO Publication, op.cit.*

3. Specialist human rights clinics should be established in which students taking the course participate either during the year they take the course or soon thereafter. Such participation should be compulsory with clear rules of assessment;
4. Specialist human rights research projects and activities should be made available in areas of particular concern e.g. application of the death penalty;
5. Internship programs should be an established program and should be provided for credit;
6. Exchange of staff and students in the field of human rights should be an established feature of the law school.

In applying these strategies, the ultimate mission of the law schools should be to acknowledge the educational value of clinical programs and to regard it as a crucial step towards revolutionizing the educational system since these programs have broader aims for legal education beyond its educational component found in the books, libraries and lecture rooms. By exposing students to a holistic program of clinical activities as outlined above, acquisition of human rights, humanitarian law and good practice, of legal skills as well as of professional values are not only enhanced, but also nurtured and developed in an atmosphere of real life.[23]

5.3 Sustainability

It has to be acknowledged that the type of human rights clinic envisaged will serve a number of specific objects in legal education, thereby creating the following advantages for growth initiative:

- To provide expertise;
- To maximise competent service delivery for clients with problems peculiar to human rights;
- To acquire deeper understanding of the structures and mechanisms in the application of human rights values, principles, instruments and practices;
- To develop further appropriate skills in advocating and promoting specific aspects of human rights and humanitarian values.

However, despite some revelation of successful and progressive experiences in clinical education in both developed and developing countries, most writers on the subject agree that such programs are plagued most times by numerous challenges. For example, such practical training is resource heavy and many universities, especially those in Africa, may thus be incapable of introducing them and/or if introduced, maintaining them. It requires the use of legal practitioners with special knowledge and skills (in human rights in this particular case), and such lawyers if available do not usually have the time to participate in university programs. Pedagogically, participatory learning, a valuable aspect of the program, is hard to achieve due to large classes, lack of suitable teaching materials, including books, technical equipment, insufficient training of trainers and generally insufficient resources. There are even those who believe that introduction of a human rights clinic would be an unnecessary duplication of what is already offered by University Human Rights Centres and NGOs. In this respect, sustainability of any related projects becomes a serious challenge. Nevertheless, viability and sustainability as growth initiatives for clinical education focusing on human rights practice would be achievable provided that there is:

23 *Iya, PF: "Legal Education for Democracy and Human rights in the New South Africa with Lessons from the American Legal Aid Movement" 1994 The Journal of Professional Legal Education Vol 12 p.216.*

- Constant review of curriculum in favour of enhancing the teaching of human rights;
- Established adequate mechanisms for implementing policies and strategies emerging from monitoring, review and evaluation;
- Research to keep up with developments via availability of information;
- Experimentation via pilot schemes; and
- Partnerships and linkages for bench marking, dialogue and information sharing.

7. Conclusion

Rampant human rights abuses in most parts of Africa call for very innovative measures to squarely address the problem. Promoting and protecting human rights at stake in the African context, by applying principles and practices of clinical legal education, is hereby considered one viable initiative not only for meeting the challenges of the culture of human rights but also for pursuing the growth objectives for clinical education in Africa in that designing relevant and responsive law curricula to enhance the teaching of human rights in specialised clinics will contribute to strengthening human rights values within the continent and beyond. Present debates in this area are encouraging; but much more still remains in the challenge for developing further the culture of human rights the world over with Africa as a particular focus as argued in this presentation.

The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective

James Marson, Adam Wilson** and Mark Van Hoorebeek****

Introduction

Few law schools within the United Kingdom (UK) university sector have integrated clinics established as legal practices that offer live client work to the student body. Clinical legal education is becoming increasingly popular within the sector as it provides numerous advantages to the student cohort and establishes an opportunity for the students to gain important practical experience, whilst enabling them to offer a valuable service to the local community.

This paper proposes that the expansion and subsequent unbridling of the provision of a law clinic in the sector will provide the students with the skills necessary of graduates in the increasingly corporate, commercially motivated, UK university sector. Secondly, it provides a basis for the rationale of a movement in funding bands, a study which is being undertaken by the Higher Education Funding Council for England over the proceeding three years, in consequence to the increasing costs involved to the institutions. This increase in funding, coupled with a determination from the institution and case study evidence as presented in this paper, will hopefully propel clinical legal education to the forefront of undergraduate legal studies in the UK. Clinical legal education is a method of improving the student experience and offers various advantages if integrated fully into the university administrative set up. Such views have been given rigorous academic coverage, however this paper further analyses the academic benefits passed on to the student populace, in relation to the potential advantages to UK universities.

* *Senior lecturer in Commercial Law, Sheffield Hallam University, Department of Law.*

** *Senior lecturer, Sheffield Hallam University, Department of Law.*

*** *Lecturer, University of Derby, Department of Law.*

Clinical legal education (CLE) has been a concept long provided in institutions in the United States (US) and is increasingly being focused upon in both the Western (Bradney 1992;[1] Dickson 2000;[2] and Grimes 1995)[3] and developing worlds (Iya 2000)[4] as a fundamental aspect of the undergraduate law students' education. In the UK, whilst such skills have been addressed to varying degrees through mock court and mooting sessions, and the research skills necessary to acquire information through library exercises, the skills of communication with clients, ethical considerations in practice and the ability to put legal education into practical situations have been ignored. This has occurred (amongst other reasons) because of a lack of available expertise, funding, resources, time and accessibility. Despite these limitations universities have began a process of incorporating clinics into their academic framework notwithstanding the higher costs involved, since they see these costs as counter-balanced by a unique learning experience which offers a competitive advantage against similarly placed institutions.

This paper begins by outlining the necessity for CLE in UK law schools and how this will become commonplace and may even become a pre-requisite for full exemptions from professional bodies including the Law Society. It then offers an insight into the working of a law clinic in a university law school in the UK and the benefits and potential offered to students and the institution itself. The paper further highlights how a movement towards CLE may assist in the contentious study undertaken by the Higher Education Funding Council for England (Hefce) over the next three years regarding the funding of undergraduate students and the possible movement in the banding of funding – an initiative which is fundamental to the funding of law clinics and possibly the survival of these university departments. The paper concludes by assessing the implications of CLE to the student and institution with regard to the current structure of legal education and establishes the significant benefits of live client work for law students and the institution.

Necessity for a clinical approach to legal education

Recent evidence has demonstrated the continuing need for CLE and how universities have to continue to take a serious and proactive stance to this form of pedagogic instruction. Clinical legal education has been seen as providing students with an understanding of the legal environment which awaits them upon graduation and as a means to instil professional values and a sensitivity to the concept of justice.[5] However, research has highlighted the limitations of clinical education and in particular whether the skills and attributes learned under clinical models actually transfers effectively to the professional world.[6] Research therefore continues to be a necessary component of the concept of CLE to ascertain whether it does offer the skills and insight into a practical vision of legal practice which classroom based education fails. Clinic is however generally considered to be of value to the student and institution if undertaken seriously and rationally, with a focus on

1 *Bradney, A. (1992) "Ivory towers or satanic mills: choices for university law schools" 17 Studies in Higher Education 5.*

2 *Dickson, J. (2000) "Clinical legal education in the 21st century: Still educating for service?" International Journal of Clinical Legal Education, November 33.*

3 *Grimes, R. (1995) "Legal Skills and Clinical Legal Education" Web Journal of Current Legal Issues 3.*

4 *Iya, P. F. (2000) "Fighting Africa's poverty and ignorance through clinical legal education: Shared experiences with new initiatives for the 21st Century" International Journal of Clinical Legal Education, November 13.*

5 *MacCrate, R. (2004) "Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Profesional Development" Clinical Law Review, Vol. 10, Spring.*

6 *Binder, D. A. and Bergman, P. B. (2003) "Taking Lawyering Skills Training Seriously" Clinical Law Review, Vol. 10, Fall 301.*

the adoption of a real (albeit not-for-profit) law firm, and with the academic ability to extract a theoretical base from the practical experience. It is the very nature of this type of education – propelling the students as actors in the legal process rather than mere observers, which enables the full benefits of CLE to be extracted, reflected upon, and re-invested into the student cohort.

The benefits of CLE have been witnessed by the handful of university departments with a system of such education in place.[7] Historically, universities were established on an academic basis with a focus on theory and critical discourse, however law students require exposure to a more practical form of education and clinics fulfil this criteria. The role and weight of live-client clinical work within the curriculum has been noted and discussed in previous literature (for an interesting discussion see Tarr 1993).[8] Practical experience gained from work in 'real life' situations has been demonstrated to motivate students and to invigorate their appetite for legal practice, particularly as students have had to focus their attention on the needs of the commercial law sector which is ever more competitive. This focus on the necessity for "*commercially focused*"[9] graduates has been highlighted by leading law firms which have observed "*We firmly believe that the closer to real practice and the more realistic training is the more effective it will be*".[10]

This commercial focus has been reiterated at a governmental level through the Lord Chancellor's Advisory Committee on Legal Education and Conduct in its Consultation Paper, *Review of Legal Education – The Initial Stage*. The report makes explicit reference to both the relevance of intellectual and personal skills, and the importance of seeing law in its operational context.[11] This can be best gauged and assessed in the University setting where the students' learning is paramount. The students do often gain experience in the vacations through work experience at law firms but this is often intermittent and unstructured. Whilst the larger firms do seek to educate and lead the students in their learning, many students identify that they often feel 'used' and even a source of 'cheap labour'. The university can offer the structure that would satisfy the need for education along with the ability for live client work that also provides an invaluable insight into legal practice beyond academic debate.

Live client work: An empirical insight

CLE provides a learning experience that is difficult to replicate in any classroom setting. With the benefit of academic guidance and structure, an ability to instil values into the students' practice of law, and exposure to real clients with problems which are beyond mere textbook exercises, the students learn key skills and are encouraged to reflect on their experience and their role in the advice process. All students at the case study institution were provided with 'lawyering' skills through compulsory mooting sessions. These involved mock courtroom situations, senior academics acting as judges and arbiters, and a competitive and practical element being added through judging and prizes awarded by local law firms. These skills are vital to increase experience, raise confidence, and offer the students an insight into how the law is actually different in practice to that learned through textbooks.

7 *Recent survey figures demonstrate that 43% of UK universities (90% of all universities responded) provide students with some form of Law Clinic education, and a further 17% expressed an intention to provide the service in the future (Browne, S (2000) "A Survey of Pro Bono Activity by Students in Law Schools in England and Wales" Solicitors Pro Bono Group, London).*

8 *Tarr, N (1993) "Current issues in clinical legal education" 37 Howard Law Journal 31.*

9 *Legal Week Spring 2004.*

10 *Firth, S. (2004) Linklaters trainee partner Legal Week Spring 2004.*

11 *ACLEC (1994) Review of Legal Education – The Initial Stage, ACLEC, p.11.*

Beyond these skills is the awareness of real life advice and an ability for the students to gain experience of dealing with people with problems – and the consequences of these problems. Students advising clients are exposed to the emotion faced by clients, an awareness of their obtaining the relevant facts from the client and focusing their advice on areas of law where the client has a legal challenge; a sense of responsibility to be honest to the client – even where this may involve informing clients of outcomes which may be unpopular; and an appreciation of the pressure and dedication which is required of lawyers. All of these elements contribute to the professionalism which students are expected to demonstrate when they train and begin to practice, and as such they are required to be introduced as soon into the students' education as possible.

Many of the above elements may be a consequence of other modules studied and identified by the variety of learning outcomes as required by bodies such as the Quality Assurance Agency for Higher Education (QAA), but only the exposure in a controlled environment provided by a law clinic in a university setting can offer the rigorous legal practice experience so valuable to law students. The QAA, a body established to maintain standards in university education and to offer guidance to ensure universities achieve the best possible service to their student cohort, has identified the necessity for experiential learning and the strengths of an education which is complemented by legal practice.[12] This approach to quality is underpinned by the important lessons available in a live law clinic and is where the student can begin practicing the skills expected of lawyers – professional codes of practice, expected behaviour whilst training or on vacation placement, the relevant forms and deadlines for claims, and fundamentally, whether a career as a lawyer is what they would like to pursue. Such skills are essential to future practitioners and to have these instilled at as formative a stage as possible is likely to produce better equipped and more successful law graduates. If left until the professional training is studied (Legal Practice Course or Bar Vocational Course), or left largely unstructured in the plethora of courses available at undergraduate level, the student may find that practice is alien to the academic nature of their previous study and any poor habits formed may leave them disadvantaged in the highly competitive market they may wish to enter.

The case study law clinic

CLE is vital in a university's holistic approach to legal instruction as it offers the combination of both practical and theoretical bases, along with the structure of protecting and nurturing the students' development. However, such a view must be assessed through an examination of how law clinics work in a practical environment. The case study institution is a large, new university offering a variety of law degrees and instruction at undergraduate and post-graduate level. It has established CLE as a fundamental aim for the past ten years and the provision of a law clinic has grown since. The study involved the cohort of students in the 2003/04 academic session, twenty of whom successfully completed the module, and this section outlines the method of legal instruction adopted by the institution, the key skills identified and emphasised within the unit, the variety of legal cases undertaken by the law clinic team, and the students' participation and self-evaluation in this legal practice.

12 *See www.qaa.ac.uk/public/Cop/COPplacementFinal/contents.htm.*

Quality issues in advice at Law Centres

From the 1st April 2000 the former civil legal aid board was replaced by the Community Legal Service (CLS). The CLS was established to create networks between advice funders, such as local authorities, and suppliers. The avowed aim was to view regional provision of advice holistically to ensure the widest possible access to information and advice. By creating links and networks between advice providers the potential client had the tools to identify the provision of legal advice in the region, and choose the advisory service most appropriate to their needs. The system also enabled the advisory service in the region to keep abreast of the advice available at other centres so that a client could be referred or signposted to another service provider if this was more appropriate. The overriding concern was that all the advice experience and expertise was made as transparent and as available as possible, so as to be as inclusive to all involved in the process. The best quality advice, to those who required free-to-access legal advice and representation, was the CLS's aim.

Access to advice is, however, only a fraction of the equation. Potential clients naturally want assurance that the advice provider operates satisfactory procedures and proffers competent advice. To provide such reassurance the CLS has developed a number of quality marks to assist in the quality process, by providing evidence of the levels of advice offered at an advice centre. This is further supplemented by quality standards being published of the areas of law which are offered – such as housing, welfare, employment and the other main areas of advice required by potential clients. There currently exist quality marks at the various levels of expertise. The hierarchy of quality of advice are as follows: Information, General Help and Specialist Help.

The Quality Mark in Information essentially entails being able to supply referral material, such as leaflets, and to provide access to CLS information or access to its web page. Such limited assistance would not fulfil the educational purpose of a clinic and hence shall not be considered further.

The Quality Mark in General Help typically offers information and advice to a client to help them resolve their problem. The advisor (in this situation the student) will diagnose the problem, explain available options and identify further action which the client may take. In terms of a law clinic there shall also be assistance via drafting letters and any court forms. The case study law clinic retains a Quality Mark in General Help. Once the mark has been awarded it may be displayed at the clinic and upon stationary. It is suggested that this is the most appropriate quality mark for most law clinics.

The final potential quality mark lay in Specialist Help. This requires particular expertise in a specific field and may cover a particularly complex problem or a request for representation in court. The Specialist Quality Mark is a prerequisite to an institution potentially being able to secure public funding for a client. In theory there is no prohibition on clinics obtaining such a Quality Mark.[13] There are, however, numerous practical constraints. For example, a clinic may not be able to secure sufficient quantities of cases, in a particular field, to develop or provide evidence of specialised help. Equally, teaching staff may not have sufficient time to retain specialised advocacy skills.

All quality marks require clinics to adhere to stringent procedures established by the CLS. The CLS shall, at regular intervals, perform an audit to ensure that adequate standards are being retained. The quality award is advantageous in showing that satisfactory quality processes have

13 *Northumbria law clinic, for example, retains Quality Marks in Housing, Welfare Benefits and Employment. Such Quality Marks are only appropriate for substantial, developed clinics but demonstrate the route which law clinics may take.*

been achieved and maintained. Clinical legal education may, potentially, cover extremely disparate fields of law for example housing, employment, consumer, family, welfare, personal injury, criminal injuries claims and commercial work.[14] Criminal appeals may also be covered. In short, the particular emphasis of the clinic is dependent upon the expertise and stance of the clinic staff.

Typical advice at case study clinic

Legal advice covers various jurisdictions of law and naturally derive from the clients' needs. Law clinics however have to be selective in offering the advisory service to clients, whilst also recognising their key role as instructing and nurturing the student cohort. Law clinics in the US have established links between CLE and the advice service and consequently can frequently offer a more in-depth service with a greater range of legal services. The UK, whilst attempting to follow this mode, also has been slower to fully adopt this method of practical integration into their law schools and this can be reflected in the advice service that is offered. The case study law clinic offers particular expertise in personal injury, criminal injuries compensation, housing and consumer disputes. These it was considered offered the widest range of legal issues and would expose the students to a variety of clients and scenarios. However, whilst the student's education is vital in this context, the advisory service must also be taken very seriously. The legal same obligations to the client exist for the law students and law firms alike, and part of the CLS partnership scheme requires that the client receives the best possible, and most appropriate, advice. As such, legal advice providers are now part of a network and prior to assuming control of a file, it is essential to ensure that the clinic is the most appropriate advice agency. Due consideration further must be given to possible trade union funding, legal expenses insurance and public funding. If the client could receive funding from an agency (for example a trade union) which would also provide guidance, time and access to legal professionals that may potentially provide a better service for the client, this must be the primary concern of the clinic. This aspect of ethics is also considered when the practical issues of costs and access to private practice are undertaken. The students' education must include the realisation that the client has to be the priority in all advice work and consequently referrals or signposting is in the best interests of the client.

In each scenario where the clinic takes legal instruction, the situation poses unique learning opportunities for students. For example, one recent case concerned a criminal injuries claim for a client who had suffered post traumatic stress following a situation perceived as life threatening. The law was relatively straightforward in this instance and enabled the students to research the issues and create a formula for advice. The actual case, however, and the issues surrounding the treatment of the client and the remedies available caused students to feel aggrieved for the inadequate levels of compensation obtainable for such claims. The students in this situation began to realise the distinction between legal rights and access to what they might perceive to be justice. The lessons learned here were interesting in that injustice in CLE has a real face, the students develop the skills to inform clients of the limits of the redress which they have, and a key skill was highlighted to the student lawyers in the necessity to learn to manage their own emotional reactions.

The typical advice of this law clinic also highlighted a skill which can be difficult to fully develop in a classroom situation. In law schools the typical education is separated into categories of law (for example contract, tort, criminal law and so on) where the students learn how to advise clients in

14 *The case study Law Clinic has, in recent years, successfully advised in relation to each of these fields.*

their legal rights. In the real world, evidently, the advisors cannot expect the client to outline the legal problem and hence the advisor has to extract the necessary information and identify the area of law applicable. A recent personal injury file embodied the principle that legal cases cannot be neatly divided into distinct areas of law. A client had, prior to instructing the law clinic, been pursuing a personal injury claim for numerous years together with issues of land law and limitation periods. This provided many useful issues for the students to reflect on, and the requirement to identify the relevant facts quickly and professionally – emotionally distancing themselves from the client. These skills enabled the law clinic to utilise client cases to guide the students through their development as potential lawyers which further enabled law clinic staff to focus the teaching and instruction of the students.

Method of teaching and instruction

Cases, as identified above, have enabled established law clinics to develop methods to instruct and guide students as to the key skills which lawyers have to possess. This is vitally important as it transcends the textbook world of academic instruction to enable students to identify the distinction between legal research and paperwork, with the skills needed to advise clients. CLE has created and re-formulated these methods of teaching, and whilst there are differences between law clinics in regions of the world (as noted in the following sections), there exist approaches common to many clinical programmes, certainly within England and Wales.

Law schools typically have modules structured to provide a series of lectures, supplemented by seminars, to instruct students on the various points of law. The seminars range in sizes from groups of up to 20, to discussions between the lecturer and small numbers of students. Law clinics are slightly different to this method of teaching due to the presence of the practical base. Law clinics are established as a law firm which has areas of expertise and outlines to clients in which areas advice can be provided. These firms tend to be relatively small in structure[15] and as with any professional legal service offering advice, the law clinics have allocated at least one professionally qualified supervisor. Due to the restraints of the legal service available, the time restraints and restraints as to the level of competency available at the clinic, potential clients are interviewed to ascertain their suitability to receiving advice, and of course to attempt to make the law service as beneficial as possible to the students. To be as inclusive as possible the students are involved in the interview process of prospective clients who have applied to the clinic for assistance. The students decide, in consultation with their supervisor at the law clinic, which files the clinic can progress. If the client's case is not suitable the students assist in explaining why this to the client, and involve themselves in the referral or signposting of the client. This assists in the identification of suitable cases for the students and it further ensures the students are aware of the help and assistance which is available locally. Following the acceptance of the client to the law clinic, the students subsequently assume full responsibility for their files and collectively undertake all the required advice work.

Typically, the student firms meet at weekly sessions to discuss how their files are progressing, and to discuss any issues which may be relevant such as complex questions, ethical issues, or guidance and support from their peers. These firm meetings are essentially student driven, though the exact

15 *The law clinic at Sheffield Hallam University, for example, adopts firms of 6. The University of Northumbria's law clinic similarly has firms with between 4–6 students.*

division of work between students and tutor varies from institution to institution and perhaps even between supervisors.[16] Each active file is reviewed in turn and the details, whilst understanding the issue of confidentiality, can be explored so that important lessons, or a group approach to a specific issue or problem, can be reviewed and used as a learning tool. The students discuss the work that they have undertaken during the previous week, and agree a work plan for the forthcoming week to ensure the students remain focused to their case and enable the firm to be professional in ensuring a speedy resolution to the clients' problems. The supervisor's role at these meetings is largely to guide the discussions to be relevant to the students' learning; to ensure student understanding; and further to guarantee the expeditious treatment of files.

The weekly meetings are vital to ensuring the students discuss important aspects of practical lawyering skills and these meetings are further supplemented by students' participation in a concurrent programme of skills training. Lawyering skills are clearly of great importance. To offer the advice to any client the student first has to have identified the legal problem and researched the issues to ensure the correct and timely advice is provided. Skills' training focuses predominantly on the so called 'DRAIN' skills of Drafting, Research, Advocacy, Interviewing and Negotiation. These skills are developed on a continuous basis through weekly classes which require consideration of key texts on the particular skill being studied. These skills are then put into practice in the file which the student has responsibility for, and are also discussed in the weekly sessions that consider the development of the students' case. Nevertheless, these teaching sessions are never theoretical, or in the abstract as so much of other legal teaching is, but it assumes a practical guise requiring, for example, a particular court form to be drafted or the application of the skill to the students weekly workload in preparation of the clients file. Academic knowledge is thus applied in a practical context.

A further method of instruction which offers a different perspective to the students method of learning is provided through the series of guest lectures[17] available throughout the year. Students are encouraged to become involved in the series as the lecturers are drawn from local practitioners, from diverse backgrounds, involved in different areas of law, both from public and private law jurisdictions, and it enables the students to interact and gain insights into the world of legal practitioners. The lectures centre on the experience of practicing law, but the lectures also move away from simply an academic exercise on points of law, and increasingly highlight the commercial pressures of legal practice, and the benefits / drawbacks from practice. Students are encouraged to ask questions that have arisen from their own experience of clinic work, and to identify the need for critical reflection of their role as advisor and the justice system as a whole. Academic study, coupled and underpinned by a practical grounding, is the key to this form of teaching and instruction.

16 *The case study model advocates extremely active student participation. Students are responsible for chairing firm meetings. Students also act as secretary and are responsible for taking minutes. Students are expected to suggest work plans for the forthcoming week, though guidance from the supervisor may be necessary in this regard.*

17 *Guest lectures are an integral part of the case study Law Clinic programme.*

Legal skills developed

It has been demonstrated that the law clinic's education initiative emphasises the 'DRAIN' range of legal skills. The emphasis of these skills is important because of the typical skills backgrounds of the students studying at UK universities, and the tendency of many students entering clinical education to initially conceive of legal skills in a very narrow compartmentalised fashion. For example the skill of drafting legal documents may be viewed as limited solely to writing court and client forms. Advocacy also may be perceived as limited to formal hearings in courts and tribunals where the advisor addresses the court directly. Numerous students express their concern that they have little experience of such skills and this is one of the key elements which CLE covers. CLE not only attempts to instil DRAIN skills in the students, it fundamentally encourages the students to draw upon existing experiences to identify that they do actually posses many of the skills. CLE focuses the students' attention on reflection and critical thought.

It is perhaps apparent that any university modules aspiring to teach such diverse qualities *ab initio* would be destined to either fail or achieve extremely limited results. Other modules at the case study university do introduce the skills of advocacy and research, but do so as part of other teaching – being ancillary to the module rather than fundamental to it. The advantage of clinical education is that it places these skills central to the entire philosophy of the module. By teaching skills in relation to real, everyday cases, students quickly realise that they already have the basic skills identified in the DRAIN training, and that clinical education seeks to fine tune these in a legal setting.

DRAIN skills identified

Formal drafting of legal documents is vital to any lawyer and as such this aspect of the students' training very quickly becomes a weekly event in a clinic setting. Students undergo something of a baptism of fire once they realise that any document recorded on file may potentially be viewed by a court, client or another legal advisor. Attendance notes become an exercise of formal drafting. Letters become vital examples of drafting. In addition, students shall almost certainly have to draft witness statements or, at the very least, proofs of evidence, and it is quite likely that formal court documents such as Claim Form (N1) and a Particulars of Claim may also require drafting of the students.

Research is an inherent element of any academic study of law with the emphasis on continual research into statutes and case law being necessary of academics and practitioners alike. Academic modules require the identification, acquisition and comprehension of numerous primary and secondary sources of law. Students should enter clinical education with, at the very least, a competent grasp of research. Clinical education introduces a substantial array of new texts and pushes the student into the unique area of practitioner encyclopaedias and texts. Sources such as Halsbury's Laws of England assume relevance for perhaps the first time and whilst these may not in essence be new skills, they are skills which are applied in new contexts.

One area of the legal training which concerns students more than most is that of advocacy which can result in trepidation and fear. Many students assume it is a skill completely divorced from them because of the prospect of formal presentations and public speaking. In a clinical setting, however, it quickly becomes apparent that advocacy is solely about communicating in a persuasive fashion. In this sense it is a skill nurtured every time the student seeks to persuade someone of their point of view. Advocacy, through CLE, may now be perceived as a daily activity. Speaking to

a client or writing a letter is advocacy; persuading firm members to pursue a particular line of research is advocacy. It is this emphasis which aids in the students' development. Having established that they already possess excellent advocacy skills, together with years of practical experience, fear is, at least partially, reduced. Students may then reflect on how they have previously set about being persuasive. Such Socratic reflection, drawing on common experience, accelerates learning of advocacy skills. The relatively mundane setting of a file assists in 'grounding' advocacy and continued practice makes this skill 'second nature' to the student who begin to view advocacy as part of their work at the clinic. Guides are then introduced which develop these skills directly as to how the students' experience can be applied in a courtroom. This seems preferable to the more formal setting of a moot where the preoccupation with an abstract or technical academic point seems only to make advocacy more distant and frightening.

All students participate in at least one interview of a client or prospective client. Initially, this feature of clinical education is viewed with a degree of consternation. The students are assisted in this task by furnishing them with a suggested, though flexible, interview plan which helps to alleviate excess anxiety. Role-plays also assist in this regard. Students almost universally express fulfilment at having participated in an interview and the experience is usually enjoyed despite those feelings of anxiety. The ability to listen, under stress, is an essential skill developed during an interview session. Students further learn that engaging in an activity, despite initial anxiety, produces invaluable rewards.

Negotiation is the last of the DRAIN skills and may assume many forms in clinical education. It may involve formal negotiations, for example with a representative of organisations such as the Advisory, Conciliation and Arbitration Service. Negotiation may assume an informal guise such as negotiating a workload for a particular week. Negotiation may be either in verbal or written form and students are taught to be astute to the many different forms that negotiation may assume. Having engaged in any form of negotiation, reflection allows participants to assess how they approached the negotiation. The merits, or otherwise, of their approach may be evaluated with the students encouraged to compare their approach towards negotiation with hypothetical models such as the aggressive, passive and principled negotiation models. Fundamentally, practical experience informs development. Hypothetical models are not taught in an academic abstract manner, which may fail to engage students, but are contrasted to and used to inform personal experience.

Student benefits

The first, and perhaps salient, benefit of clinical education is that the overwhelming majority of students enjoy the experience and have found it to provide different benefits from classroom study. There are, perhaps, a variety of reasons for this. First, students can see their work directly benefiting a real person and obtain personal satisfaction from impacting positively on someone's life. Second, they can see the vocational, and academic, significance of the skills they are developing. Third, they have been given responsibility and empowerment, which is often alien to students (this is something generally reserved for practicing solicitors), and they feel a duty towards their client. Enjoyment is naturally a desirable end in itself but it also serves the function of ensuring students actively engage with the process of learning. The energy of firm meetings frequently compares favourably to the apathy-induced somnambulism pervasive to more traditional seminars. Active engagement creates an atmosphere conducive to learning which is

almost infectious amongst the students. A team spirit is achieved where students assist each other rather than viewing others in the class as competition for grades or jobs.

A further benefit is that many students grow in confidence because of the 'close-knit' community of the clinic. By working in small firms a supportive, secure atmosphere is, usually, forged. Students quickly feel at ease with other firm members through sheer exposure and feelings of shared experience. Equally, there is no hiding place in clinical education. Students are required to participate in firm meetings and to develop assertiveness skills required to chair meetings. Students in seminars frequently do not participate in discussions and fail to achieve their potential, but clinics require full participation. It is also evident that academic ability is not necessarily predictive of clinical ability. Many students who are less able academically than their peers thrive in the clinic setting and their confidence blossoms, which turn reflects positively in their other module assessment.

A related, but distinct, feature is that interpersonal skills are nurtured. Students must be able to empathise with a client's perspective and this 'human' aspect is also coupled with the 'commercial' element of the case. This feature assumes salient importance and as such cannot be underestimated. Such facets are typically ignored in an academic exposition of the law. A further benefit of CLE is that it shows the practical relevance of the law studied on other modules. This renews interest in the law programme holistically. Furthermore, by applying the law to an actual case students frequently understand concepts previously less clear to them.

CLE may fundamentally offer tangible benefits for the students as it has the capacity to achieve deep learning – for numerous reasons. First, students must engage in fact analysis. In academic modules students are furnished with a question which requires the law to be applied to a series of distinct facts. In clinical education students are deprived even of a set of coherently presented facts. They must understand the law in sufficient depth to determine for themselves which elements of the client's story are important to the case, and which should be disregarded. In addition, practical problems, as found in clinics, rarely adhere to neat, distinct compartments. A case may require consideration of perhaps company law, land law, tort, civil procedure, professional ethics, evidence, negotiation, drafting and remedies. The ability to forge coherent links between such distinct and diverse elements, and view the cases as often a mixture of different legal jurisdictions, requires clarity of mind.

Of fundamental significance is the fact that students also acquire an understanding of law in context. Legal rights are juxtaposed to practical considerations. Questions of cost and commercial relationships acquire a status at least comparable, if not prevailing, over formal legal rights. Increasingly, law firms are insisting students have an understanding of the commercial aspect of legal practice (beyond impressive grades) and CLE provides this insight. Issues such as access to justice and legal procedures acquire a significance not otherwise encountered or emphasised. Finally, the complex, but fundamental, issue of ethics in legal work is provided. Students are required to have recourse to relevant parts of the Guide to the Professional Conduct of Solicitors 1999 and are presented with the opportunity to consider whether personal ethics require standards which are even more stringent than those imposed by professional bodies. This requires a reflective, critical and analytical approach to their studies which requires a great deal from the students involved in clinics. This in turn provides an education experience which establishes skills that are transferable, and gives an awareness of legal practice which classroom studies (or arguably vacation voluntary work) cannot provide.

UK and international approach

As emphasised in the introductory paragraphs to this paper, it was recognised that the UK has only recently, on a relative basis, began seriously considering the value of CLE and practicing this in their law schools. The US, by comparison, has for many years established and refined this form of education which can be witnessed by the breadth and depth of CLE offered. In the case study institution to which this paper has based the majority of its study, predominately the cases heard involve consumer problems and basic, entry-level, contractual disputes.[18] CLE has grown throughout the educational legal community (as indeed reflected by journals such as this) and can be evidenced in countries as diverse as Abkhazia,[19] Armenia,[20] Cambodia,[21] Mexico,[22] Mozambique,[23] Poland,[24] South Africa[25] and Turkey[26] (to name but a few). This international dimension is encouraging and in part demonstrates the seriousness with which educators and practitioners are viewing the necessity for CLE at the undergraduate level. Much research has been conducted on CLE in the US but relatively little elsewhere. It is also the case that the US has taken CLE seriously for a number of years and is therefore a model which other countries are looking towards for guidance and comparison (using it as a benchmarking tool to a certain extent).

The US approach has been significantly more proactive, inclusive and holistic in the provision of CLE which can be witnessed through the details of subject areas as listed in the various US-based directories.[27] It is also noticeable of the way in which UK institutions trail behind their US counterparts when viewing the provision of CLE by institutions such as Roger Williams University which offers three types of law clinic for student participation, including community justice, criminal defence and disability law jurisdictions. The Community Justice Clinic involves direct client contact, handling a case from beginning to end which includes the interviewing, counselling, investigation, drafting of documents, advocacy and negotiation elements. This ensures all facets of the process of justice are included and gives the student a unique insight into the justice system to which they may wish to enter. The Criminal Defence Clinic enables the student to directly represent clients on matters as diverse as traffic offences, drug possession, domestic violence and disorderly conduct. The Disability Law Clinic focuses on protecting rights in areas of social security, but this further focuses on low-income clients and legal advice in areas including divorce, supervision orders, custody matters and paternity issues. This level of contact with clients, coupled with regular seminars, classes considering legal techniques, and tutor supervision demonstrates an exposure to the legal profession which institutions based in the UK are at present unlikely to be in a position to match. This is, however, a model which progressive institutions in the UK are looking towards, and expansion is the next step following the successful incorporation of CLE law clinics. As a consequence law clinics are being established on a wider basis amongst the

18 *Over the years that the law clinic has been established, various cases have been addressed, but the cases most frequently undertaken are those involving consumer disputes. This is due to the time limits involved in UK university law clinics, the availability of supervisors to assist the students, and the CLS partnership which may require the complex cases to be referred to a more appropriate advisory agency.*

19 *Sokhumi State University.*

20 *Yerevan State University.*

21 *Pannasastra University.*

22 *CIDE Law School.*

23 *Eduardo Mondlane University.*

24 *Warsaw University.*

25 *University of Natal, Durban.*

26 *Bilgi University, Istanbul.*

27 *Such as the Clinical Legal Education Association, the Directory of Clinical Legal Educators and Association of American Law Schools, Section on Clinical Legal Education.*

UK university sector than previously undertaken, and they are also being expanded on an intra-university basis. Whilst the entire student cohort is unable to participate in the legal practice of their department, it is increasingly being made available to second and third year students to be more inclusive; there is a competitive element to gain entry to the system to ensure the participants benefit from the experience; and the success of the project at the case study institution has led to greater resources being made available from the departmental funds.

One area where there are similarities is on the necessity for student independence, and a student-focused approach to self directed learning and reflection. The students are encouraged to participate actively in their own educational growth – both personally and professionally – and this is continually assessed to ensure the student understands how to measure their success. This is clearly based on their skills, preparation and presentation of advice to clients rather than whether the client received the advice they were expecting, or whether the client 'won' their case. Reflection, in both the US and UK models, is a key feature of CLE and provides this invaluable learning experience.

Live client work and Hefce assessment of funding

The second element to the necessity of CLE in UK universities is how it may assist in gaining additional funding for the sector. It may be argued that law schools have often suffered from under-funding compared with other subject areas. The study being undertaken by Hefce is an opportunity to demonstrate how teaching in law schools is different from the other 'arts' subjects – and CLE may be the effective vehicle for the eventual change in funding bands. Hefce is the body that is charged with assessing and distributing the public funds which universities receive for the education they provide. The funding is based on the numbers of students expected at the institution and each student has a monetary value, which when multiplied by the student cohort, is the level of funding received by each university department. The current method of assessing funding levels is based on expenditure as reported by the institution and is further sub-divided on the basis of the nature of the teaching. There are four bands which identifies the level of funding provided to the institution multiplied per student – band A[28] is the highest and involves mainly clinical subjects such as medicine and dentistry; band B[29] covers laboratory based teaching such as engineering and technology subjects; band C[30] involves less expensive laboratory work, fieldwork dependent subjects and drama; and band D,[31] the lowest band, includes all other subjects and, importantly for this paper, law. It applies to law due to the assumption of the subject being taught wholly in lecture theatres and seminars / tutorials which is increasingly unrealistic. This funding has led to concerns over the feasibility of providing free education in the sector and may also be unrealistic due to the changing nature of university education. Due to these concerns it was decided at its meeting in December 2003[32] that Hefce would review its methods of funding and as a consequence would adopt a cost-based approach – the Transparent Approach to Costing model. This study is estimated to take three years to complete and as such it is proposed that the use of law clinics and exposure to live client situations would not only assist the students in their learning

28 *This band has a weighting of 4.*

29 *This band has a weighting of 1.7.*

30 *This band has a weighting of 1.3.*

31 *This band has a weighting of 1 – in the 2004/5 session this is estimated to be at a level of £3,400 per full-time student.*

32 *As published on Tuesday 23rd December 2003 – www.hefce.ac.uk/news/hefce/2003/funding.asp.*

but also aid in the movement of the subject into a more realistic band which would ease the financial burdens experienced by law departments in the sector.

This debate has already begun and has led to discussions by groups (see Burridge 2003)[33] which argue the nature of law teaching necessitates higher funding and additional resources which are peculiar to legal training and should not be banded with other social sciences. The requirement of law reports, statutes, subscription to various paper and electronic databases and journals (especially Lexis-Nexis and Westlaw), and of course teaching practical lawyer skills involves higher costs than traditional band D subjects, and the law clinics are essential to ensure the holistic and rounded approach to the students' educational experience. These resources are not simply referred to but have to be 'used' and applied which is more akin to a workshop or laboratory situation than simply a tutor / student dialogue in a seminar room.

Institutional benefits

If these clinics are established, or are amongst the strategic planning of university law departments, the benefits for the institution are transparent and tangible. The funding assessment being conducted is likely to recognise the unrealistic nature of band D funding and the distinct and unique teaching and the variety of learning methods required at law schools. The use of case law; law reports; the necessity for access to up-to-date materials in dynamic areas such as European Union and employment law; the necessity for research skills, advocacy and effective written and oral communication, and the interactive nature of legal education, which will be underpinned by the expansion of live client education in law clinics, will result in a strong case for movement into band C with its criteria of fieldwork and laboratory-type education. CLE, and the practical nature of law, is absolutely essential to the students' development and as such is a compulsory component in the teaching of law undergraduates. The increase in funding will generate a greater opportunity for legally-qualified staff to be retained by the institutions which can then be employed in law clinics which will also enable the expansion of the service to the student body and local community.

Links between the university, local community and local law firms will benefit from the law clinics due to the increased interaction between the not-for-profit legal service being provided (often, as with the case study law clinic, regulated to provide quality generalist advice through the CLS Commission) and the individuals who utilise the advice agency. Law firms also witness the benefit of this type of legal training and the important skills instilled in the graduates which makes students with this experience more employable and successful in the sector. As employability is increasingly being contained in higher education statistics, league tables and university prospectuses, law clinics offer only positive effects for the institutions with the capacity and desire to establish them.

33 *Burridge, R (2003) 'Reassessing Band Funding for Law: A Discussion Paper' www.ukcle.ac.uk/resources/banding.html.*

Conclusion

This paper has sought to demonstrate the necessity of a clinical approach to legal education, and reasons why such an approach must be taken by institutions to ensure future law graduates are being given the required training and skills in a structured environment. The case study has outlined the provision of live client work in a university institution and how it benefits all the actors involved through skills, training, experience and an appreciation of working as a lawyer. No simulation or class-room based session can offer the student a true insight into the pressures and, at times, exhilaration of legal practice, and this experience can only assist in producing better prepared trainee lawyers. Institutions cannot offer the service without a complete appreciation of the time and costs involved, but this paper has aimed to establish how it works in a modern UK university, the wider implications for all publicly funded university law departments, and the complementary benefits for the students and institution. CLE is becoming an option that students will be looking towards when choosing their education provider, and with the advent of top-up fees and students contributing financially to their own education, institutions without this option may become increasingly disadvantaged.

Clinical Practice

Jusshjelpa i Nord Norge – a Legal Advice Clinic in Northern Norway

Lancelot Robson and Christian Hanssen***

Geographical area

The area covered by the Clinic must be one of the largest and most remote in the world. It covers the whole of northern Norway from Bodo in the south to Kirkenes near the Russian border, and includes the "counties" of Nordland, Troms and Finnmark. All of it lies within the Arctic Circle, which brings special challenges from the climate and thinly spread population. The permanent base is in Tromso, in offices behind the port loaned from Tromso University. From there student volunteers travel to visit most communes in the area, including Norwegian Lapland. Volunteers attempt to visit clients in each major commune at least twice a year, (cases came from 78 communes in 2003), either upon request, or by advertising a clinic session in the local commune building. Sessions in 28 major communes outside Tromso were held in 2003.

The clinic is one of five similar clinics covering the whole of Norway, all founded upon operational and management principles pioneered by law students at Oslo University in the early 1970s. The Oslo JussBuss (literally the "law bus") has passed into Norwegian legal legend.

Mission

Jusshjelpa's mission is to improve the availability of legal services in northern Norway, and its social positioning requires it to offer free legal help to those in most need.

* *Director of Clinical Legal Studies at Kingston University.*

** *Manager, Jusshjelpa i Nord Norge, Tromso University.*

Caseload

The operation is significant by most standards. In 2003 it dealt with a total of 2,147 cases. Cases are divided into two categories which do not correspond conveniently to English classification. "Muntlig" strictly translates as "oral", but includes a certain amount of correspondence and contact with third parties. A "Skriftlig" (or written) case is generally more substantial, where there is considerably more contact with third parties and the issues are complex. The service dealt with 99 "Skriftlige" cases in 2003.[1] Overall, about 25% of cases involve contact with a third party. To use UK Community Legal Service classifications, 75% of cases are at the level of "General Help" and 25% are at the level of "General Help with Casework".

Staffing

The service has a full time manager and two administrative assistants, as well as 21 volunteers who provide the service. In English terms the clinic provides the type of service provided by both a Citizens Advice Bureau and a Law Centre. Due to the great distances involved, most clients initially contact the service by telephone. While personal contact is encouraged, it is estimated that only about 20% of clients are actually seen personally. In addition to the caseload, the more experienced volunteers or "Downscalers" train their successors and carry out social research projects.

Volunteers join one of three groups, Group 1 deals with Social Security, Immigration and Prisoners' rights; Group 2 deals with Labour law, Housing law, and Debt; and Group 3 deals with Inheritance, and Family law (including the law relating to children). The clinic can deal with cases falling outside the main groupings, such as commercial law, but it does not offer advice relating to criminal matters.

Organisational arrangements

The Clinic is organised as a charitable foundation, with final control vested in a general meeting of the organisation. An Administrative Board is responsible for policy, to which the office manager reports. The office manager (usually an ex-volunteer) is in charge of the day-to-day functioning of the service and the administration. All employees, volunteers, and members of the administrative board have a vote at the general meeting. The Administrative board has three representatives from the student volunteers, one representative from the law faculty (known as the professional resource person), and an independent external representative invited by the organisation. It operates with the benefit of a special licence granted by the Department of Justice.

Finance

The office manager is paid an average industrial wage, although s/he could expect to command a rather higher rate on the market. One administrator has elected to do civil instead of military service and thus is paid pocket money plus accommodation. The other is paid for by the Norwegian Department of Work and Social Security, being employed on a scheme to help long term unemployed get back into work. Volunteers are paid 40% of the national minimum wage, or

1 *Jusshjelpa i Nord Norge Annual Report 2003 (Norwegian only)*

20% if they are "Downscalers". In fact volunteers generally work much longer hours than the fractional posts they are paid for; this is part of their contribution to the service. Detailed records of hours worked are kept, which indicate that 37.6% of the work done by volunteers was given free in 2003. Administrative Board members receive a small payment for the extra work, equating to 50% of whatever they are paid for their volunteer work. The faculty resource person is not paid, and the organisation is currently considering how to remunerate the independent external representative. Other services pay a professional rate to the external representative for the hours spent, but it may be possible to persuade a retired local personality to do it for a nominal sum.

The Faculty of Law engages the Manager, while the administrators and volunteers are engaged by the Jusshjelpa organisation acting collectively.

About 75% of the budget ultimately comes from the Department of Justice, although the office manager, administrators and volunteers are actually employed by the University of Tromso. The remainder of the funding comes from the Faculty of Law, student welfare organisations, county municipalities, local communes and private organisations. One of the manager's duties is to maintain and improve the funding stream, either in cash or kind. Jusshjelpa nationally has much public goodwill which can be turned into donations. Jusshjelpa has its own separate account in the university accounting system, from which the staff are paid.

Legal politics

Case working is the dominant activity, which informs the service's other activities. In Norway a required learning outcome for law graduates[2] is to be able to participate in legal politics. Jusshjelpa students do this by drafting public information leaflets to be used by the service, taking part in newspaper debates, conducting surveys and research projects. The political work is mainly done by Downscalers. Currently two survey projects are being run. One seeks to identify the differences in the effectiveness of social services in different parts of Norway. The other survey hopes to establish the scale of people trafficking between Russia and Norway, which is a perceived problem in the area. The organisation consciously seeks a high profile. In a rather unscientific survey during his visit the writer noted that ordinary Norwegians exhibited a high level of recognition and approval.

Academic issues

Surprisingly, academic recognition for volunteers has been slow in view of the fact that the system has been running since the mid 1970s, and in Tromso since 1988. It is only recently that students have been able to have their service recognised as part of their degree programme. Norwegian students must study for 5 (previously 6) years to obtain a master's degree in law. At least 4 weeks of that period must normally be spent in a lawyer's office doing extra mural studies. That period is now waived for Jusshjelpa volunteers. Additionally the experience can be used as a compulsory special subject counting for 15 (30 in U.K. terms) credits. Additionally, from 2005 students will be able to gain 30 (Norway) credits for their clinical work, and a further 15 credits can be gained from doing a Jusshjelpa research project. Thus a student will be able to gain 45 credits in total, (i.e. 75% of a year's work plus exemption from the extra-mural studies period.

2 *See for example Tromso University Faculty of Law ECTS information package 2004/5 http://uit.no/getfile.php?SiteId=4&PageId=396&FileId=56.*

Student commitment

Volunteers are expected to spend a total of three semesters with Jusshjelpa. During the first two semesters they do casework. In the final semester they become Downscalers, when they train new recruits, hand over their personal files, and do the political and research work. Normally 6–8 new students are taken on each semester. To be eligible students must have reached year 3 of their studies and show commitment to the work. Competition for places is keen.

Accessibility

Public opening hours for the advice service are fairly limited, although the office runs during normal office hours. At the main office telephone calls and new clients are taken in a two hour period, two days per week. Additionally, in co-operation with local law firms doing pro-bono work, the service offers two hours in the evening once per fortnight at a building in the centre of Tromso. As mentioned previously the clinic also travels to other communes in the region, pre-advertising its visits.

Analysis of case work

As might be expected from a general legal advice service, the range of case work is wide. Seventeen different categories were identified in the 2003 Annual Report. Family law was the most frequent case type with 14.9% of cases. Law relating to children accounted for a further 6.2%. Inheritance and housing law accounted for 13% and 11.5% of cases respectively. Money problems (7%) and employment law (7.3%) were also significant categories.

Supervision and insurance

To U.K. lawyers the supervision and insurance schemes appear relaxed. Day to day supervision of cases is carried out by the working group collectively, with assistance from the more experienced Downscalers. The legal resource person from the Faculty normally only deals with policy issues, rather than individual cases. There is no necessity for a professionally qualified person to be available during consultations. The organisation carries its own insurance policy against negligence claims.

Some Questions for U.K. practitioners

The Tromso clinical experience raises a number of questions for U.K. clinical practitioners:

1. Can law students fill unmet legal need which the Community Legal Service system in the U.K. is failing to meet?[3] Consequently is it appropriate to publicly fund clinics and regard students as assets, rather than consider them as a mere expense to the public purse?
2. Is it possible for the U.K. clinical movement to create templates for a national or regional information and advice system based on law schools and legal education?

3 *See for example 2004 LSG 101/37 p.4 Charities call for body to educate public on rights.*

3. Can clinical work make our students more active citizens, and better fulfill nationally agreed degree learning outcomes?[4]
4. Does the present division between the academic and vocational stages of legal education inhibit the attainment of high quality legal outcomes?
5. Is the "professionalisation" of voluntary work in the U.K. discouraging students from joining in?[5]
6. Can the working methods and supervisory requirements of clinical work be relaxed far enough to allow the participation of all students who wish to do so?
7. Should we be afraid of learning outcomes which explicitly encourage participation in legal politics? What are the advantages and disadvantages of such outcomes?

In a later article the writers will review the Norwegian system as a whole to see how far the Tromso experience is typical, and also examine Norwegian perspectives on the questions raised above.

4 *e.g Law Society/General Council of the Bar joint statement 2001, and QAA Benchmark Standards for Law Degrees 2000*

5 *e.g. the movement of the CAB and other advice agencies away from the dissemination of information – see 2004 LSG 101/37 p.4, above.*

Four Years of a Romanian Juridical Clinic* 1998 – 2002

Dr. Romulus Gidro[1] *and Dr. Veronica Rebreanu*[2]

I. Introduction

Most of the jurists – no matter in which functions and places they are working now – will confirm that the theory which they learned in faculty was good to be known, but it was not enough for them to affirm their skills: they did not practice at all or not enough during their college years what really means to profess. And it is well known that learning anything is easier when the theory is applied into practice simultaneously.

In the 1930s, one of the most important Romanian professors in General Theory of Law, Mircea Djuvara, said that the Law Faculties were preparing the students only theoretically, without too much practice; this is why he considered that the theoretical preparation of the students was not enough, and said that a method should have been found to introduce them to practice as well, while they were still studying in college.

In any profession one needs to be taught in order to practice it well. If you have to work with clay, with metal, with wood, cement etc., it takes some time to get some experience and to get used to the properties of the material and how to put into practice the theory about them. But being a jurist (a lawyer, a judge, a prosecutor, a law councilor for that matter) – is one of the professions which deals with the most sensible and perfidious of all materials: human mind. Why human mind? Because it is in our minds that the juridical conscience is created and then it is reflected in the way we think and, especially, in the way we put into practice our more or less legal thoughts.

This is why, a respectable jurist must develop professional skills and combine them with the theoretical knowledge of objective law, positive law and substantial law, the way it is perceived, applied and followed or not by the people.

* *The article refers to the period of time in which the authors were the coordinators of the Clinical Legal Education course, from the very beginning, from the first negotiations till it was well equipped competing with a Western Juridical Clinic course.*

1 *Reader, "Bogdan Vod_" University Baia Mare and Cluj-Napoca, former member of the "Babes-Bolyai" University – Faculty of Law Cluj-Napoca.*

2 *Senior lecturer, "Babes-Bolyai" University Cluj-Napoca – Faculty of Law.*

More, a good jurist must be flexible, must be used to communicating and dealing with people who sometimes have no idea about the law, must have good skills for speaking in public etc.

Our target and mission as law teachers is to do our best in order to give the society well prepared jurists. How can we do that? By combining the theoretical disciplines with a practical approach, such as Clinical courses. Among other courses, as Mr. Stuckey was saying, "clinical education courses offer law students their first opportunities to discover firsthand how difficult is to be a professional lawyer".[3]

Based on our five years of experience, we would add that in the Romanian system of law Clinical education also shows how difficult it is to be a judge or a prosecutor.

For sure, most of the readers of this article, if not all of them, already know what Juridical Clinic means and how is it organized and functioning in the American[4] and British[5], as well law faculties in other countries.[6] The authors' intention is to present a Romanian Juridical Clinic, the way it has been functioning so far, the conditions we were offered when we set it up, what we achieved, the difficulties we were faced with, our reasons to be satisfied of what we have done, our regrets for what we couldn't do, leaving to the generation to come the continuation of our work.

2. History

Long before ABA came to Romania with the proposal to introduce this discipline in the law faculties curricula, students from the Law Faculty Cluj-Napoca were familiar with the simulation of trials, though this wasn't done in an official way, by transforming the civil procedure seminars in simulated trials by members of the staff; the students have experienced what it means to be a lawyer or a judge or a law councilor without having too much actual practice and with just a theoretical knowledge of the procedures. In these simulations the students were discovering the different roles of the participants in a trial such as: defendant, lawyer, prosecutor, judge etc. and also some of the "secrets" of the trials, which no professor can or has enough time to teach. All this could remain unknown to the students until they are graduates and start to practise.

In the 1980s, this kind of simulation of a trial was experienced by Romulus Gidro, then a young assistant in civil procedure, and having had experience as a lawyer before coming to teach in the Law Faculty. Aware of the difficulties he had had when he started practicing as a lawyer, Mr. Gidro started to simulate some civil trials – during the limited time offered by the seminars – and noticed that the students were more interested, more active, and acquired more information. This couldn't have been achieved if the students had only the theoretical approach to the trials.

Being so pleased of the way students were learning by practicing the civil procedure, Mr. Gidro organized a simulated trial where he invited the academic staff of the faculty. Everyone was amazed of the results and Mr. Gidro was encouraged to continue with this system doing seminars at civil procedure. More, the students' marks at the end of the semester were better than expected and improved as compared with other years of study.

3 *Roy T. Stuckey, "Ensuring Basic Quality in Clinical Courses", (2000) 1 International Journal of Clinical Legal Education, pp. 47–53.*

4 *Philip G. Schrag, "Constructing a Clinic", vol. 3, nr. 1, Fall (1996) Clinical Law Review, pp. 175–244.*

5 *Richard Grimes, "Learning law by doing law in the UK", in (2000) 1 International Journal of Clinical Legal Education, pp. 54–57.*

6 *Judith Dickson, "Clinical Legal Education in the 21st Century: Still Educating for Service?" in (2000) 1 International Journal of Clinical Legal Education, pp. 33–44. See also Philip G. Schrag, op.cit., supra, p. 244 referring to the Eastern Europe countries and the republics of the former Soviet Union.*

Everyone considered this way of doing seminars a very good method of teaching procedures, but no one thought that it could be transformed into an academic discipline.

Mr. Gidro was promoted as a lecturer; he started to teach Roman Law and Labor Law, and stopped holding seminars.

In 1996, Ms. Rebreanu started her full time academic activity with seminars in civil procedure. Without knowing anything about Mr. Gidro's experience and good results in this field, she simulated the trials with the students and taught them how to make a court file with all the papers, declarations, written procedures etc. The results were obviously very good: better attendance by the students; the students were more interested in preparing for the trial simulation seminars; the marks were again very good; other members of the staff were amazed at he great interest of the students and also at the load of work the professor took upon himself – it is a lot more difficult to teach in an active way.

3. Beginnings and further relations with the initiator – ABA

1. In May 1997, between the Dean of the Law Faculty – "Babe_-Bolyai" University Cluj-Napoca, prof.univ.dr. Liviu Pop, and an ABA representant in Bucharest, Mr. Lawrence Albrecht – lawyer – a discussion took place about the introduction of the Legal Clinic course in the Curricula of the faculty.

The idea of simulating trials was not completely new in our faculty – as I mentioned before. Assistants, lecturers were unofficially organized trial simulations to help students to better understand the procedures. But the novelty and, especially, the success of the discussion with Mr. Lawrence Albrecht lay in the fact that we found a way to give an official character to the trial simulations, by introducing a new discipline of study: "Juridical Clinic". Starting with the second semester of the 1997–1998 Academic year.

2. After Mr. Albrecht left Romania, other ABA members and representatives in Romania paid regular visits to our Faculty, to see in which stage we were and how we were getting on with the Clinical Legal Education. As much as it was possible, we were invited to participate in international and Romanian meetings on this subject organized by ABA, and monitored by the ABA representatives in Bucharest, as follows:

In January 1998, Mr. Gary Marek visited our Juridical Clinic. During the time he was the ABA representative in Romania, we had the pleasure to be invited and to participate in the Regional Legal Education Workshop "Strategies for implementing practical legal education programs", which took place in Opatija, Croatia, March, 25–27, 1998. Both coordinators from Cluj-Napoca Law Faculty, dr. Gidro Romulus and dr. Rebreanu Veronica, participated in this Conference, where we met other coordinators of Clinical Legal Education, from Romania[7] and from other academic centers in the South-East of Europe.

The participation to this Conference was very helpful to us because it showed us that all the Clinical Legal Education coordinators had almost the same questions and difficulties. Also, we had the occasion to learn from other clinicians' experience and to avoid making the beginners' mistakes.

7 *Bucharest and Timisoara.*

The next visit by an ABA representative was in September 1998 when Mrs. Laura Bucher, Mr. Gary Marek's successor, visited our Faculty, together with professor Rodney Uphoff – from Clinical Legal Education, Oklahoma University. Both were delighted with our Juridical Clinic Room for simulating trials. We analysed the way our programme was developing and our way of implementing it was appreciated. They suggested a few ways in which we could make our programme functional and we put these into practice, as much as our legislation permitted it.

In October 1998, prof. Rodney Uphoff visited our faculty again, when he presented the history of Juridical Clinic in the United States of America and the different types of Juridiccal Clinic which exist and function in USA. His talk had a greate impact over our staff and especially on the students: the number of those who chose this optional discipline was subsequently greater than the previous academic year, 1998–1999. Mr. Uphoff was very impressed by the great number of questions which proved that our students were extremely interested in knowing more about the discipline and about the Common Law system of law, which is very different from the Romanian one.

In May 1999, the ABA representative organized in Sibiu a Romanian Conference on Clinical Legal Education, in which Mr. Gidro Romulus participated. Many written and video materials were given to us for our Juridical Clinic. The Romanian experience in implementing this discipline was discussed and analysed.

The ABA representative in Bucharest during 1999–2000 Academic year was Mrs. Irene Banias. She visited us in September 1999 and was satisfied with the way we implemented and adapted Clinical Legal Education to our teaching system and our Law system within the limits of the Romanian laws. The last Romanian meeting of the Clinicians, organized by the ABA representative in Bucharest – Mrs. Irene Banias, was in October 1999. Unfortunately, none of the Cluj-Napoca coordinators were able to participate.

The Bucharest ABA representatives sent us some written materials and video tapes, a few issues of the "Clinical Law Review".[8] The Cluj Faculty of Law made sustained efforts to ensure the infrastructure needed for the course: a special room arranged like a trial court room; a video recorder; a TV set; a video camera.

4. How it functioned

Once accepted and put into practice, this new discipline – even though an optional one – had a lot of success with the students and most of them have chosen it as the optional discipline.

The members of the staff who were in charge of the implementation of Clinical Legal Education were dr. Romulus Gidro and dr. Veronica Rebreanu. It is obvious why: because the Dean knew their activity in this field and considered them the best qualified people to do it, instead of some other persons who did not experience at all the trial simulations. They organized it, kept in touch with the practitioners who helped us implement it. In the first two years, they also participated directly during courses and seminars until there a way of working with the students was formed.

8 *They forgot to send us the number (1999) in which Prof. Rodney Uphoff wrote an article in which he made some remarks about the Romanian Juridical Clinics. Prof. Uphoff visited the Cluj Juridical Clinic in 1998 and, although he showed himself very well impressed about our project and the way we just started to implement it officially, and the Clinical Law Room was already arranged as a court room, what he wrote in the article was not reflecting our discussions. Unfortunatelly, he did not understand that we had to adapt the Juridical Clinic course to Romanian legislation and possibilities.*

Taking into consideration the coordinators' proposal, the Dean approved and supported us, to set up a special room for trial simulations, which was the exact replica of the real ones. This made the students feel very close to real trials, respectig the places of the participants and experiencing the official character of being a judge, a lawyer, a prosecutor etc.

After this new course was integrated into the curricula of the Faculty and having a special room for it, we paid a great deal of attention in organizing and developing this course. We kept in touch with the practitioners who agreed to help us and we were also attentive to supply it with suitable equipment so as to make it competitive with the western ones.

Right from the start, there was a lot of enthusiasm on both sides: that of the practitioners who still remembered how hard it had been for them at the beginning, when they had no idea of how to practise law. They immediately replied positively and proposed a lot of methods for working with the students; on the other hand, the students also replied positively by choosing this optional course.

But too much enthusiasm in the beginning does not always bring immediate happiness! And we say that, having in mind the analysis of the discipline from the two perspectives:

– firstly, soon after the meeting with the practitioners we were asked by some of them what their benefits were from the participation in this course (the only possibility to pay them was by the hour and in a State university the salaries are much lower than a lawyer gains mabey in one week; none of our colleagues which are also practicians aggreed to participate). The other question was if they had any chance of going to the USA!;

– secondly, it cannot be denied the fact that most of the students have chosen this course wanting to acquire more information; These were prepared to work hard for that. But there were also students who came just thinking that they would manage somehow without working very hard and very seriously – this is why in the first two years we had more than 100 students per semester. Yet it was not very easy for them to fulfil the professors' requirement that each of them should complete a juridical file and have an active presence during the simulations.

That made our mission very hard: on the one hand, because it is not too easy to work a certain number of hours with more than 100 students at each meeting. We had no possibility to increase the number of hours because nobody would have accepted to work without being pai. On the other hand, we had no possibility to stop them choosing this discipline. In this respect, we tried to find a way to select them, but none of our proposals was aggreed: upon jus as we could not make them choose an optional discipline, we cannot stop them choosing it. This was a "problem" for years, not only as far as "Juridical Clinic". So, all our projects and ideas for finding ways to select the students for this course failed and we had to accept all the students who chose it as an optional discipline. As time settles everything, so it did with our course: in time, the offer for optional disciplines increased up to four and our students began to choose the other disciplines as well; during the last two years the number of students who have chosen our course was perfect, without causing any trouble and all the students could participate more during the simulations and express their skills for being a lawyer, judge, prosecutor etc.

For teaching Clinical Legal Education one must be entirely dedicated to it. I would consider this dedication from two points of view:

– firstly, one must be dedicated in the sense of having the proper skills to show and introduce the students to that kind of knowledge. Students must acquire the art of knowing how to react and deal and treat the people involved in a certain situation. We usually "steal" this knowledge attitude by observing our master, how he/she deals with delicate situations for which nobody prepares you in advance; even though most of the situations can be anticipated, we cannot expect to be told about all of them;

– secondly, one must be dedicated in the sense of finding pleasure in teaching and initiating the students in the secrets and tricks of how to behave in simple simulated situations, so that later they should be able to be at their best in complicate and delicate or peculiar real situations or with difficult clients.

5. Method of work

The methods of work used in Cluj-Napoca Juridical Clinic were a combination between the "clinicians'" experience and the vision of the practitioners who helped us to develop this discipline. We also took into consideration what the students should know when finishing the faculty, in order not to be surprised by the practice, the way we were before them.

Students were given two cases: a civil one and a criminal one. They studied them and each of them chose a role in the civil trial and another one in the criminal trial. So everyone got a chance to be could have been judge, lawyer, prosecutor, clerk, even witness.

It was established that every student participating in the Juridical Clinic course, no matter what role he had chosen, must have a complete court file with all the papers a trial file should have: the writ of summons, public prosecutor's charge, the writ against smb., the proof by witness, other proofs according to the type of the trial, the minutes of the meeting, the sentence etc.

The trials were simulated in a succession at the students' request, irrespective of the order, so that they were able to get used with civil and criminal procedures.

After one of the participants to the trial spoke, the trial was stopped and there followed observations, comments, completions, rectifications. This means that even though not all the students had the chance to be a lawyer, a prosecutor or a judge, at least they had the possibility to comment on others' work and to contribute with the way they would have done the same "job".

Especially in the last two years while the authors of this article worked as coordinators on this course, all the students in Juridical Clinic had the chance to participate directly in the simulated trials, having an active role: they were one of the participants to the trial in a certain role and also had the possibility to intervene with comments and suggestions about the way they were understood the trial and the doctrine as well.

When the students have been marked, the following aspects have been taken into consideration:

- the way the simulated file was completed with the procedural papers and the quality of their work;
- each student's contribution in the simulated trials – as participants or as "active public", commenting and correcting the others' activity;
- the way they used the legislation, interpreting it and applying it correctly to the given cases;

- the way they knew how to do their research into jurisprudence and use it;
- also, the way they showed interest in knowing and using the doctrine.

At the beginning of the 2002–2003 academic year the best conditions were provided to continue teaching Juridical Clinic course:

– there was a well-equipped court room;

– there were a TV set, a video recorder, a camera and enough video cassettes.

This means that this course could have been taught at a higher level than before and could have competed with any other western Clinical Legal Education course.[9]

6. Regrets

During the five years when we worked as the coordinators of this course, there were several aspects which raised question marks, but some of them were eventually solved as time passed. With others we dealt by taking what we considered to be "the most rational decision" for the moment. We consider at least two of them worth being mentioned here.

One of the first issues[10] we had to deal with was to find a way of selecting the students for this course, without causing any inconvenience. This was hard to do because of various reasons. Here are some of them:

- it was an optional[11] course – this means that theoretically we cannot obstruct the students to choose it in any way; we thought that any way to select them could be considered by the students a source of "injustice", as long the course was optional;
- in the beginning, the Juridical Clinic was taught for students in their 3rd and 4th year of study; in the third year of study, second semester, they were taught civil and criminal procedures, in parallel with our optional course. This meant we could not condition the choosing of the course by the marks they had to the disciplines we mentioned. Neither could we condition their admittance by the marks the students obtained to other disciplines;[12]
- after two years, the course was restrained to the 4th year of study. The reason for this change was the students' best interest: it was considered that in order to follow this course they needed

9 *We knew that in USA Juridical Clinic courses it is used the system of recording the students' performance on tape because we received such cassettes from ABA. The idea of providing our Juridical Clinic course with a camera was strengthened during a visit in 2000 to the Exeter University School of Law where Veronica Rebreanu had the pleasure of exchanging some experience with the coordinator, at that time Mrs. Sue Prince. She also participated in a simulation of a trial where the students were recorded on video tape with the camera and could observe their performance.*

10 *We refused to call them "problems" and preferred to consider them as being "issues", thinking that we would soon find a way to answer them and make our job easier.*

11 *Romanian curricula of the disciplines taught in faculties has three kind of courses: compulsory courses which every student has to pass; optional ones – there are several optional courses offered in any academic year for each year of study they are in and the students cannot be obstruct to choose one or another (sometimes some of these optional courses are not taught because the students did not choose them); facultative courses where they can participate or not, but the marks obtained to these disciplines are not taken into consideration for the credits. Only the marks obtained at the compulsory and optional courses are taken into consideration for obtaining the scholarships, places in the campus, marks (credits) to pass in the following year of study etc.*

12 *Sometimes students with low marks prove to be better practitioners than some of the best marked ones which, with time, prove to remain only good theoreticians.*

to have some knowledge of civil and criminal procedures, instead of studying them in parallel;

- the idea of selecting the students by their skills it was taken into consideration but the first reason came up again: optional course – anyone can choose it.

This was one of the aspects which was solved by the passing of time: now four optional courses are offered in the first semester of the 4th year of study; students have been told what each course is about and the methods of work. They realized that if they are too many most of them will be only passive participants to the simulations and won't have the occasion to show what they can really do. So, in a "spontaneous" way, we can say that everything was solved and in the academic years 2000/2001 and 2001/2002 the number of the students was perfect and covered exactly the number of the participants for the civil and the criminal simulated trials.

The other issue we had to answer to was related to the name to be given to this course. Some of the proposed names were: "Juridical Clinic", "Clinical Law", "Legal Clinic", "Clinical Legal Education", 'Practical Legal Education", "Laboratory of Legal Education", "Experimental Legal Education".

The first three titles were proposed by the ABA initiators and we decided to use the title Juridical Clinic.

Firstly, because we considered that this name could very well cover the methods used in simulating the trials, the juridical theory and the procedures students have to know and achieve during the course.

Secondly, it was a decision in which we took into consideration the ABA initiators' proposals.

The fourth title, *Clinical Legal Education*, is used in United Kingdom Law Faculties. For some reason we avoided to use "legal education" because we considered this to refer to the whole period the students study in the law faculty they are legally educated. Still, this possibility of changing the name into Clinical Legal Education might be an option in the future.

The last two titles resulted from a discussion about this course with the coordinators from Timi_oara Faculty of Law (prof. dr. Gheorghe Mihai). We considered these proposals as being too technical, too close to engineering.

Two of our greatest regrets were:

- that most of our colleagues who are also practitioners (lawyers, notaries, judges, prosecutors) avoided to get involved with some activity in this new discipline;
- at the beginning of the academic year 2002–2003 our main collaborator could not continue to help us because of some objective reasons. Both of the coordinators had to give up coordinating this course[13] – even though now it was on the way of becoming even more interesting. We suggested that this discipline should be coordinated by members of the staff who are also practitioners.

13 *Each of them is teaching two disciplines: dr. Romulus Gidro is teaching Labour Law and Social Security Law and dr. Veronica Rebreanu is teaching General Theory of Law and Environmental Law.*

7. Conclusion

The Cluj-Napoca Juridical Clinic course presented above can undoubtedly be considered as a success from many points of view: from the initiators' point of view because it was accepted and put into practice so soon and with a valuable collaboration between the Bucharest ABA representatives and the coordinators; from the students' point of view because they had the occasion to simulate juridical practice according to the theoretical knowledge they had achieved; from the coordinators' and practitioners' point of view because is was a real pleasure to observe the students during this course, how, step by step, they became more skillful in one or another of the "juridical roles" they had chosen and doing it with so much pleasure and abnegation.

Duty Bound? Court Possession Schemes and Clinical Education

Carol Boothby[1]

'At the heart of clinical legal education is a real client. It is the presence of a real client that distinguishes (it) both from traditional legal education ..and from practical legal skills training...'[2]

'My times at the rent court have been the most satisfying of the course. It has made me feel that I am really on my way to becoming a barrister and has given me much greater confidence in my advocacy skills'

Northumbria Bar student, July 2004

Introduction

The opportunity to take part in the local County Court hearings of repossession cases arose around 3 years ago, the same time as I joined the University of Northumbria as a solicitor/ tutor working in the Student Law Office. I wanted to keep up my own hands-on skills as a solicitor, and so grasped this opportunity with enthusiasm. It has been an invaluable teaching tool as part of student's experiences within the student law office, but only recently have I stopped to take stock of the nature and value of this experience, and to consider more carefully the aims and objectives, from the Student Law Office point of view, in taking part in this.

This paper looks at experiences with students at court repossession days, and the messages we are giving students when we expose them to this type of work – are we moving closer towards clinical legal education with a social justice agenda? And what do we get out of these court days as a student learning experience.

Clinical legal education with a reformist or social purpose?

Clinical legal education in both Australia and the United States has always been imbued with the concept of the lawyer as having a public service role.[3] In the United States, as early as 1968, when the Ford Foundation set up CLEPR (the Council on Legal Education for Professional

1 *Carol Boothby is a Senior Lecturer and solicitor/ tutor in the Student Law Office at Northumbria University.*

2 *Watterson, Cavanagh and Boersig "Law School Based Public Interest Advocacy: An Australian Story" (2002) 2 International Journal of Clinical Legal Education 7.*

3 *Judith Dickson – "CLE in the 21st Century: Still Educating for Service?" (2000) 1 International Journal of Clinical Legal Education 36.*

Responsibility), and provided funding to the value of $6 million dollars, this was focussed on introducing clinical legal education in law schools in a way that involved students in providing services to the poor. In Australia, the growth of free services through community legal centres and clinics in the 1970's offered an opportunity for clinical legal education programs to then integrate with them, and this model is characteristic of Australian clinical programmes. The Faculty of Law at Monash University in Australia for example are well known for their clinical work and have extensive experience both in conjunction with generalist clinics and more recently, specialist clinics such FLAP (the Family Law Assistance program.)

However, in the UK there has not been an overt commitment to issues such as social reform, or pro bono activities. In the past there has been no requirement, or even specific encouragement from the professional bodies to promote student participation for the wider benefit of the community. This may be changing – sceptics may say as a result of the restrictions on the legal aid budget. With the onerous administration requirements, low levels of remuneration and demanding quality standards involved in gaining a franchise, many solicitors firms have felt unable to justify a continuing commitment to areas such as welfare benefits and housing. As a result, there have been warnings from solicitors that this has created 'advice deserts' where no specialist advice is available, leading many to challenge the reality of 'Access to Justice'. In 2003, of the 421 bid zones used for Community Legal Service contracting, 45% had no specialist Housing Law provider.[4]

But there are perhaps the winds of change blowing – the pro bono movement in the UK seems to be gathering momentum and, perhaps seeing the potential benefits offered by law clinics where there is input from academic establishments in terms of both staffing and funding.

There is no over riding social lawyering agenda permeating the provision of clinical legal education in the UK, but rather a symbiotic one where diverse groups are coming together where there is mutual gain. Taking the duty possession scheme as an example, the focus for us is still very much on the intellectual skills, and the student learning to be gained, with any spin off in terms of benefiting the needy being seen as incidental.

Duty possession schemes

These are court-based free housing advice and representation schemes that aim to provide last minute help to homeowners and tenants who are facing repossession of their homes. They exist in around one-third of county courts. The growth of these schemes has been rapid, but ad hoc. They are normally staffed by local advice agencies and/or local solicitors, on a voluntary basis. There is no other provision because, even if the client qualifies for public funding (under the limited Legal Help scheme) this may not cover representation at court and they will not obtain a full legal aid certificate covering them for representation unless there is an arguable defence. In the majority of cases, arrears are owed, and there is no complete defence – it is usually more of a mitigating role, seeking to argue reasonableness, i.e. that it would be reasonable for the court to make a suspended possession order, on specific terms of rent plus a sum towards arrears, rather than an absolute possession order whereby the tenant has to leave their home, normally within 28 days.

4 *[2003] Legal Action January, 9.*

How the scheme arose in Newcastle

In 2000/2001 the local Community Legal Service sought bids for a court-based representation scheme. However, local housing advice groups and the few solicitors with housing franchises were concerned that the contract would have onerous requirements, in terms of attendance at court and administration, for potentially very small financial return. Instead of this formalised scheme, local housing groups came together to provide their own rota of cover for the court dates, which are around once a fortnight. There was no direct funding for this – and the only financial incentive was the possibility of picking up clients who might then be eligible for limited funding under the Legal Help scheme. The scheme has run successfully since then, and a rota is circulated by e-mail well in advance of the court hearing dates, requesting volunteers. These volunteers are a mix of local law centres, citizens' advice bureaux, and solicitors. Interestingly the local branch of Shelter, a national housing charity, declined to take part.

At the Newcastle upon Tyne County Court scheme, two rooms are normally set aside for interviewing, as normally two advisers attend and the court clerk asks every defendant whether they need free legal advice, in which case they are pointed in the direction of the advisers. In each list, which is a morning session running from 10 a.m. to 1 p.m., there will be between 60 and 90 cases listed, out of which only around a quarter are likely to attend, the rest being dealt with by the court on the papers alone. Advisors normally deal with around 8 cases each, interviewing and then representing the client before the court.

How the Student Law Office is involved

The Student Law Office has a Community Legal Service Specialist Quality Mark in Housing Law. This recognises that a high standard of advice is available, as well as allowing the Student Law Office to offer Legal Help funding to those who qualify financially.[5]

There are in excess of 120 students working within the Law Office. The students are grouped into "firms" of about six students, with each "firm" supervised by a practitioner member of staff. The Law Office takes on a huge range of different kinds of work, but two of the firms specialise in Housing Law. The students in these firms may or may not have covered Housing Law as an academic topic prior to starting in the Law Office, but the firms are supervised by staff with experience in housing law. These staff take part in the court duty representation scheme rota and during the academic year, are accompanied by small groups of these students.

Student involvement

Initially, the students attend essentially as observers. Normally, only one or two student will attend with their supervisor. The court will normally allow students to sit in the public area if there are no objections from the parties. However, over the two years since this began, student involvement has increased to a level where this year, students carried out interviewing and advocacy for the first time, under close supervision.

5 *In theory it also means that the Law Office can get paid for some of the work it does on these cases. In practice the number of claims for payment are small, and are outweighed by the sheer cost of administering the scheme. However the fact of having the Quality Marks is an indication that the Law Office can offer a high quality legal service – which is, for us, an important message to the public.*

Lawyering in a microcosm

Attending possession hearings as part of the duty advisers scheme enables students to see many aspects of lawyering in a microcosm; it is a fast learning curve – clients are introduced to the adviser, and they are interviewed. This can be demanding, as clients often have little perception of the relevant parts of their case. The interview has to be closely controlled to focus in on the relevant and not to waste time on the irrelevant – as there is no time. The court will rarely allow additional time for instructions once the case has been called. Any paperwork the client has managed to bring has to be scanned, digested and a decision made with the client about what realistic outcome there may be. Brief representations are put together, to argue either for an adjournment, a suspended possession order, or for the case to be dismissed depending on the circumstances. Sometimes it may be a case where we are suggesting that there is a defence (these are usually where there have been allegations of anti social behaviour breaching the tenancy) in which case directions need to be considered.

The court setting is a formal courtroom, not the small informal chambers. If it is the local council as landlord, there is no opportunity to discuss or agree anything about the cases at the court door, as the council's representative will remain in the court throughout. If it is a mixed list including housing associations, then there may be some opportunity for negotiation at the court door. After the hearing, the client is advised of the outcome, and a letter confirming this is sent out to them. We will also refer clients on to obtain debt or benefits advice where appropriate.

Skills developed?

The intellectual skills developed in this environment are manifold – the ability to distinguish the relevant from the irrelevant, to identify issues through appropriate questioning, the ability to construct and present an appropriate argument. However, the wider learning these hearings encompass cannot be undervalued. 'An understanding of the law is worth very little unless that understanding can be used respond to people's needs'[6] Students come into contact with people from very different backgrounds, often struggling with multiple social problems relating to unemployment, illness, and frequently the frustration of an unresponsive benefits system. They soon realise that their learning to date has been only the first step towards becoming an effective lawyer. They begin to appreciate the complexity of their role – as suggested by Professor Hugh Brayne, 'good judges and good lawyers use a combination of legal knowledge, analytical powers, insights experience and understanding of human nature to make difficult decisions in a practical and wise way.'[7]

Selecting cases – sink or swim?

The prospect of someone being ordered to leave his or her home within 28 days is daunting. Normally supervisors will represent those clients at high risk of being repossessed before the court, as this is placing considerable responsibility on the shoulders of students in this situation. This will however depend on the individual student and the amount of time we have had to

6 *"CLE: Bridging the Gap between study and legal practice" Jessica Kaczmarek and Jacquie Mangan – (2002) 2 International Journal of Clinical Legal Education 86.*

7 *Hugh Brayne, 'A Case for getting Law Students Engaged in the Real Thing – the Challenge to the Sabre Tooth Curriculum' (2000) 34 The Law Teacher 17.*

prepare. In other cases, if the level of arrears is low and there are good prospects of an adjournment on terms of rent plus a sum towards arrears, or a suspended order, the supervisor will assess the ability of the individual student, and decide if they should represent, discussing it with the student. I will normally sit beside the student in court to enable me to assist them if required. There is little time for discussion immediately after the hearing, but once the list is finished, we will discuss the cases we have dealt with. I will also ask the students to reflect on the experience at the next meeting with their firm.

In some cases, clients will contact us before the hearing date, and in this situation, students have more time to prepare, and to get to grips with the issues. They often have to act quickly to gather information form the clients, try to negotiate with the landlord and chase up outstanding housing benefit to reduce outstanding arrears.

A case study – success stories

Mrs S had lived in her council owned home for nearly 30 years. Her adult son who had been living with her intermittently was convicted of a burglary offence and a minor drugs offence in the local area, and received a short jail sentence. The council, treating this as a breach of her tenancy, sought to evict Mrs S, who was in poor health, and who was adamant that her son no longer lived with or even visited her. The council offered to agree a consent order based on a lifelong exclusion of the son from visiting the property. This was clearly unreasonable, and the SLO student eventually negotiated an 11th hour consent order, based on a short period of exclusion of the son. The client represented in court by an SLO student also argued successfully and vigorously against a costs order of over £1000 sought by the council, reducing this to the court issue fee of £130 only.

In this case, the student met the client well before the hearing, took detailed instructions, carried out detailed research, negotiated with the very difficult opponent, redrafted the proposed consent order, attended the possession day hearing and explained the amendments before the court and argued against costs – therefore applying all five DRAIN skills (drafting, research, advocacy, interviewing and negotiation) on which much emphasis has been placed as a cornerstone of the Legal Practice Course. This student also experienced all the difficulties of assessing clients for legal aid and applying for a representation order from the Community Legal Services – an eye-opener to someone unused to the vagaries of public funding.

Typical cases where students have assisted on the day have included refugees from the Ivory Coast who have been granted asylum but struggled to deal with the benefits system; tenants with learning difficulties who have been unable to interpret the correspondence warning them of the arrears problem; as well as those tenants who simply struggle to make ends meet and fail to prioritise their debts. A common pattern is that, as tenants move in and out of employment, the benefits system does not keep step, leading to a build up of arrears.

Students' perspective

All students, but perhaps particularly Bar students, have grasped this opportunity enthusiastically. The Law Office is compulsory for Bar and solicitor students on our four year Exempting Law degree, and this year for the first time we have allowed the LPC and freestanding Bar students to join the SLO.[8]

> *'It was a really good experience especially for us on the BVC course. It gave me a taste of what working life/pupillage would be....it can be quite stressful trying to retrieve all the relevant information so quickly. All in all, it was a fantastic experience.'*
>
> *'I found the experience really exhilarating all three times. It is a very challenging forum to work in ...the difficulties are made up for by the thrill of representing real people in a real court ...fortunately I have never had a case where no absolute possession order was made, as I think I would have found this quite difficult to handle.'*
>
> *'One thing which I did learn very quickly was to avoid confrontation with the Judge as much as possible. One judge in particular was extremely combative at times and it was very difficult to resist getting into an argument with him. I had to learn some fast lessons in diplomacy and how to take hearings in my stride and not to take them personally. If I had a bad hearing early in the day, I could not let that interfere with the conduct of the rest of the hearings I was involved in that day.'*

What is it about the court duty possession days that make this a special experience?

Repetition:

There are a number of cases in short succession – so students can see the supervisor deal with one case, then if the supervisor feels it appropriate, the student can deal with the next client under the watchful eye of the supervisor, and hopefully build some confidence in their ability to deal with the court situation.

A mentoring and collaborative relationship – not hierarchical:

It is stressful – one cannot predict what might happen once in the courtroom – but I feel this changes the normal teaching dynamics where students are looking to please their teacher so that they get a high mark – here one huge step made by students is the realisation that this is not all about them – this is about what the skills they have learnt can do to help solve someone's problem. They will then work with their supervisor who acts in a mentoring role rather than in a hierarchical 'teacher is all knowing' role. This transition for the student, in stepping from a self-centred role to an enabling, advising role is almost palpable to the supervisor, and it is very noticeable when with some students, the transition never seems to happen – so that they stay in that hinterland where the acquisition of knowledge seems enough, and they never seem to take responsibility for the

8 *The exempting law degree is so-called because, although an undergraduate law degree, it incorporates the requirements of the one year vocational-stage graduate programmes – and so exempts the students from further post-graduate study, enabling them to enter straight into the work-based training stages. The University also provides the free-standing vocational courses, the Legal Practice Course (LPC) and Bar Vocational Course (BVC): these are primarily taken by students who have taken an undergraduate law degree elsewhere and so are not exempted, or who have taken the law conversion course (CPE) having originally taken a degree in a non-Law subject.*

case. However, the demands of the possession day are such that it can make it happen for many of the students – they can achieve that synthesis and analysis required to 'take responsibility for the resolution of a potentially dynamic problem'.[9]

Disadvantages?

Limited availability:

The numbers of students able to participate is small – I took around 18 students over around 10 hearing dates – one Bar student enjoyed it so much he filled in for anyone at short notice and as a result attended on three court dates, representing around 8 clients in total.

Staff resourcing:

The work is intensive on staff time – the morning lasts around three hours, (but has on occasions lasted longer) of non-stop interviewing and advocacy, when only three students at most can accompany a supervisor. It is therefore very staff intensive.

Can all students cope?

It is important that a judgement is made by the supervisor. If there is doubt that the student will be able to deal effectively with the situation before the court, the client must come first – we can't allow clients to be sacrificed on the altar of student learning! Usually, this is discussed with the student, and the supervisor will then represent. Whilst the hearings don't always run according to plan, it is very rare to have a situation where a client has been worse off as a result of being represented by a student, and in many cases, we have helped them to avoid a suspended order or worse.

The Future

Feedback from students helps to inform and improve the experience for future students. Work to build up a picture of the benefits perceived by students has begun – the data collected at present through questionnaires is too small to provide a statistical data at present but the idea is to look at student experiences, and also to seek the views and feedback of the District Judges before whom the supervisors and the students appear. In addition, feedback from clients would provide an insight into their experience of the service offered, and a suitable questionnaire is being prepared.

The teacher hat or the solicitor hat?

I am motivated by a combination of my own wish to provide a really worthwhile service to a sector of the population who otherwise would be left to fend for themselves in an intimidating court environment, and my belief that there are fantastic learning opportunities for students, who have to be able to synthesise the academic intellectual skills they have learnt with the practical requirements of the often stressful situation. It is hard to place a value on the insights they gain into another world – one of poverty, social deprivation and powerlessness.

9 *A. Boon, "Making Good Lawyers – Challenges to Vocational Legal Education", Opening address, UKCLE Vocational Teachers Forum, 26 September 2001 at http://www.ukcle.ac.uk/resources/vtf/boon.html.*

Students have expressed amazement at the human tragedy which unfolds in the telling of how the client, perhaps suffering an injury or loss of an elderly parent slips into a depression, loses their job and falls into the benefit system, where it is only too easy to fail to fill the necessary forms in, leading to arrears and inevitably the threat of eviction. As part of their assessment, students prepare a portfolio reflecting on the various aspects of their Student Law Office work, and their comments and observations on their experiences in the possession courts are enlightening. In addition, students prepare an essay of 3500 words and a number have tackled topics related to and inspired by these experiences – one student (the one who dealt with the court case referred to earlier where a draconian order excluding the tenant's son was sought) explored the topic of the role of alternative dispute resolution in housing and in particular in repossession cases.

There are underlying concerns, and frustration, at the failure to properly fund legal services to provide advice and representation to those who need it. I am saddened by the falling away of the provisions of legal aid in many areas. Expecting clients to represent themselves in a formal courtroom environment where their home is at stake can seem barbaric, particularly those who suffer mental illness, or where English is their second language. I do worry that there is an increasing reliance on pro bono work as a replacement for a properly funded system. The question has been posed by the Monash clinicians, Susan Campbell and Alan Ray[10]: Should we be filling the gap in public legal aid and letting the government off the hook? However, the possession days offer the combination of the opportunity to do good – to do some really worthwhile pro bono work, at the same time as offering students a unique opportunity for learning essential practical skills, and for many students, it may instil a sense of responsibility to assist not just the privileged and wealthy, but the less advantaged.

However, in the final analysis, our current focus at Northumbria is on the learning opportunities – the chance to consider the law in context, what Richard Grimes has described as a holistic approach. Without doubt, there is the opportunity to move towards a deeper learning approach, based on the understanding and not just the acquisition of knowledge. To see students take these steps towards deeper learning before your very eyes is something I see as a privilege.

10 *Susan Campbell and Alan Ray, "Specialist Clinical Legal Education: An Australian Model" (2003) 3 International Journal of Clinical Legal Education 67.*

Student Contributions

Exchanging Places: Experiences of the First Irwin Mitchell International Clinical Scholar

Martin Wilson[1]

What do most people think of a law degree – plentiful amounts of hard work, endless reading, an expensive Legal Practice Course or Bar Vocational Course followed by an extremely competitive application process to secure a job in the graduate's respective field of work? What if students were given the opportunity to work in another jurisdiction, such as Australia, for one month in a student-run law office during the summer, with £1000 to get them on their way? 'Sounds good', I thought. 'So what do I have to do to get the chance'? And then the one catch is divulged – the student must complete a compulsory piece of coursework and achieve one of the top 10 marks in their year. (The writer expects a few raised eyebrows at this stage!)

Last summer, Northumbria University in partnership with Irwin Mitchell[2] and Monash University, in Melbourne Australia, offered one Year 3[3] Northumbria student a pro bono scholarship to work in the Springvale Monash Legal Service (SMLS) for one month. Irwin

1 *Martin Wilson graduated from the Northumbria University Exempting Law Degree in July 2005 with First Class Honours. The previous summer he had been the first Irwin Mitchell International Clinical Scholar, undertaking a month's experience at the Springvale Legal Service at Monash University in Melbourne.*

2 *Irwin Mitchell are a leading national law firm in the United Kingdom, with a long-standing commitment to the support of pro bono work.*

3 *The Northumbria Exempting Law Degree is a four year undergraduate programme. The compulsory one year clinical module (the Student Law Office) is in the final (fourth) year. The IM Scholar therefore has the opportunity to undertake a month's clinical work-experience at Monash before starting their clinical work in the Northumbria clinic.*

Mitchell kindly sponsored this scholarship and provided £1000 to the lucky student. To get the chance of participating in this pro bono scholarship, the chosen student had to complete a compulsory piece of legal research coursework and attain one of the top ten marks in the year. The top students were then invited for interview before a panel of three comprising two Northumbria Student Law Office staff and one partner from Irwin Mitchell, whose selection criteria proved to be which student demonstrated a commitment to pro bono work in the Student Law Office.

Technically, when I was selected for the scholarship, I should not have been anxious at all. I had spent a great deal of my undergraduate studies in preparation for working in Northumbria University's pro bono Student Law Office and besides, Australia's legal system is a common law system partly based upon our system, what could be so different? But I was about to travel to the other side of the world alone and work in a completely different jurisdiction where I knew nobody. The experience however proved to be very different to my anxieties. Working in the Springvale Monash Legal Service was unique in terms of the diversity of experience I managed to encounter and the skills I acquired regarding working in a law office, client care and giving advice to live clients.

Each day provided a different experience to any other. For two days of the week, I worked in the Springvale Monash Legal Service in a client drop in session, in which four hours student time was dedicated to meeting members of the community on a one to one basis. The legal problems that students were confronted with proved to be more extensive than those that a busy high street law firm would be presented with daily. These ranged from fencing disputes, matrimonial matters, child residency issues, minor criminal offences, employment matters, through to a request to complete a change of address form due to language difficulties. Springvale Monash Legal Service, in terms of the diversity of legal and non-legal matters presented on a daily basis had similarities with a Citizens Advice Bureau in Britain. Moreover, a significant proportion of clients required the assistance of a telephone interpreter due to language difficulties, which posed its own interesting problems when interviewing and advising a client.

During another day in the working week, I had the opportunity to work at the Family Law Courts in a suburb in Melbourne through another Monash University pro bono programme aptly named the Family Law Assistance Programme (FLAP). Students and qualified solicitors provided a mainly advisory service to any Family Court attendees who required it and this could occasionally extend to representation if circumstances so required. Through this programme, students not only had to deliver immediate advice on a quick turnover basis but also had the opportunity to observe the procedural workings of the Family Courts.

During the fourth day of the weekly programme, I was sent to participate in Monash's Intervention Order Support Scheme (IOSS) at the Criminal Law Courts in another suburb in Melbourne. Through this excellent programme students and qualified solicitors manned a drop in session for unrepresented applicants who often found the entire experience of applying for an intervention order extremely distressing and traumatic. It was through this scheme that I gained the greatest amount of personal accomplishment specifically when I sat with an applicant in court providing emotional support for her in the traumatic experience of meeting the respondent in open court.

The final day of the week saw me engage with other students in various lectures and seminars regarding their pro bono course of studies.

Overall, the Monash pro bono programme, encompassing SMLS, FLAP, IOSS and other schemes, proves to be of significant value to both the local community and students who participate in it. Irrespective of the warmth and friendliness of the staff and students at Monash, the programme of events that I experienced during the scholarship were excellent in terms of the professionalism of those involved, the sheer diversity of experience one can take from it and the benefit to all who came into contact with it. However, to make a like-for-like comparison between Northumbria University's pro bono programme and that at Monash University would ignore the fact that the two programmes seem to be aimed at achieving different objectives and are situated in two wholly different legal climates.

On the one hand Springvale Monash Legal Service is situated in a suburb in Melbourne and is aimed at providing a high turnover of advice to members of the local community, with varying degrees of language difficulties, and is also intended to take on those more in-depth cases requiring more detailed levels of research and student input. There are numerous similar University-run schemes around Australia, such as those run by neighbouring Melbourne University. Furthermore, Victoria Legal Aid (the Australian state legal aid provider) sees work such as that undertaken by Victorian student-run law offices as strategic in delivering legal services to the general public and consequently appear to be much more involved in the funding of certain aspects of the schemes than occurs at Northumbria's Student Law Office. The students at Monash elect to work in the pro bono law office and spend a period of 3 months in doing so, which differs further from its English counterpart. Students also encounter an exceptionally varied range of legal problems spanning numerous areas of law.

In comparison, Northumbria University's Student Law Office is situated on campus in the City Centre and seeks to serve a very different legal need. Drop-in 'advice on demand' style centres already exist in England and Wales, through organisations such as the Citizens Advice Bureau, and therefore the Student Law Office has not been set up to provide such a service. Another marked difference between the two law pro bono programmes is that the Northumbria model is unique in England and Wales, in terms of the depth of the programme. Australia already has caught onto the idea of student run law offices but England and Wales are yet to follow suit. For students studying on the exempting law degree at Northumbria the Student Law Office is a compulsory and extremely important part of their final year. Cases can be taken on and sometimes followed through to fruition due to the greater time available over the nine-month span of the academic year. Additionally, students are placed into firms of students with one supervisor that specialises in a particular area of law and they subsequently focus on one area of law rather than experiencing the wide-ranging areas that the SMLS students will encounter. This provides a distinctly different educational experience to that gained at Monash and that is the thrust of the writer's conclusion.

Monash and Northumbria University's pro bono programmes are different; they both intend to serve different legal and educational needs. The Monash model is typically Australian in the way that it has a student atmosphere about the law office, but that it still retains its professional outlook. Upon entering the office one can hear the chorus of 'G'day mate' as the customary welcome, along with discussions of where some students intend to go surfing later. Whereas the Northumbria office has a typically English feel to it – a more self-consciously professional outlook coupled with a desire to sound professional and look professional in every task. And it is these closing points that ensured that my experience was so interesting; to be able to see, hear and experience the differences between two student run law offices at opposite ends of the world!

Student Law Office Conference: A Platform for Student Engagement with Clinical Legal Education?

Mark Lynn

Introduction

I was one of a group of students from Northumbria University who organised the first student conference on clinical legal education on Saturday 4th December 2004.[1] This short article is intended to explain why we thought such a conference was necessary and whether it was worthwhile.

Why a student conference on clinical legal education?

Clinical legal education has been established in other legal jurisdictions for decades and is seen as essential in providing the aspiring lawyer with pre-practice experience, yet it is still a relatively recent development in the United Kingdom. It is currently one of the fastest growth areas with increasing numbers of law schools establishing law clinics. However, there has been relatively little input from students regarding the nature of clinical legal education or the costs or benefits it brings.

Northumbria students spend a great deal of time in the Student Law Office, through clinical modules at Northumbria, and constantly reflect on their personal and professional development. Yet relatively little time is spent considering the way our clinical education is structured and delivered and what its aims and objectives should be. We saw the conference as an ideal opportunity to explore these wider issues and, more importantly, to involve students and staff from other institutions in this dialogue. The conference provided a forum for the exchange of ideas and information and provoked debate about the future of clinical legal education. The objective of

1 *The event was kindly sponsored by Ben Hoare Bell solicitors of Sunderland.*

the conference was to obtain the views of different clinics and promote this type of legal education throughout the country.

The Conference proceedings

The conference was opened by Rebecca Barnes of the Solicitors Pro Bono Group and Professor Richard Grimes of the College of Law. Rebecca addressed the relationship between clinical legal education and lawyers' commitment to the principle of pro bono. Richard summarised some of his recent research into models of clinical legal education in the United Kingdom.

This was followed by a plenary session called 'Learning from each other' with a number of short presentations from visiting departments who shared the work of their clinics. Following this, there was a panel discussion on clinical experience and career opportunities with former students who are now in practice and employers who had experienced clinical legal education. This involved discussions of whether the work which students had encountered in their law clinics had been of a benefit to them in practice.

After lunch the conference split into workshops to discuss the dilemmas of working for real people. This workshop was designed by students from the committee and included real dilemmas encountered by students working in the Student Law Office, with due regard to confidentiality issues. The aim of these sessions was to provoke debate about the ethical, moral and practical dilemmas that students face in legal clinics as a result of working for real people. After discussing a number of issues in the various workshop groups, everyone in their group attempted to reach a consensus on two important issues to report back to the whole conference in the next session: (i) Clinics should only work for those who cannot afford a lawyer (ii) Clinics should only work for those who have a deserving case. Each group's feedback was then discussed before the whole conference and a number of ideas were exchanged.

After a mid-afternoon break, the day finished with a session grandly entitled 'The Utopian Clinic' whereby everyone had the opportunity to vote for their ideal clinic using "Who wants to be a millionaire" technology. During the course of this plenary a number of questions were put to the audience. For example: "Should clinical legal education be compulsory?" "Should clinics combine campaigning activity alongside case work?" Or even: "should students be paid for working in law clinics?" There was a resounding 'YES' for the latter!

Themes emerging from the conference discussions

The conference proved to be a huge success. Throughout the day it became very apparent that the amount of law clinics in this country was on the increase. During the workshop 'Learning from each other' everyone gained a deep insight into how far clinical legal education in this country has come. Rebecca Barnes from the Solicitors Pro-Bono Group made the point that when she studied Law there was no such thing as pro-bono and that she only gained experience of this when she began her training. Pro-bono is very important and should be promoted as it provides the chance to help people and solve the imbalance that exists in the law. Richard Grimes has done much research in this area and has found that there has been a steady increase in the amount of law clinics, which are being set up. He emphasised how important this type of education is by stating "Clinical legal education is all about studying the law through exposure to real or realistic case

work with structured reflection'', thus giving students the opportunity to think through what they have done. Only recently, Queen Mary University in London became the latest legal education provider to launch a pro-bono group, which shows that clinical legal education is on the increase. The group has already secured placements for Queen Mary students with Clifford Chance in its Canning Town project and with Allen & Overy with its new twinning project.

As briefly mentioned earlier, the Conference involved a number of short presentations from visiting departments which included students and academics from BPP, Kent, Sheffield Hallam, De Montford, Bristol and Northumbria. This workshop enabled everyone to see how each University's law clinics worked and to assess the differences between them.

The workshop began with James Heward from BPP who is working at a legal advice centre in London, which only started full time operations in clinical work in October 2004. He explained that the advice centre initially learnt from a pilot scheme and that the attending students at the law clinic complete work with the help of a supervisor, similar to that of Northumbria (but the clinic at BPP remains voluntary and does not count towards assessment, unlike Northumbria). Such an idea was initially considered in October 2003 and they subsequently formed a committee to discuss such a possibility. Originally, they felt that it was very important to consider which areas of law they should advise on, taking into account both resources and the needs of the local community. Other issues to be considered included both recruitment and promotion. From his own experiences, he felt that the best route in establishing a clinic was to consider promotion at an early stage, visit conferences on clinical legal education and obtain feedback to assess how the clinic is operating. The law clinic at BPP focuses on housing and employment law, but they are also looking to expand into other areas.

We then heard from Rhona Sharlett from De Montford University who explained that their law clinic has been in operation for the past 15 years. Their law clinic does not advise the general public but instead, focuses on student's related problems. Undergraduates staff the clinic and there are four supervisors who help students with their various legal problems which they encounter. Due to the high profile that clinical legal education is receiving, the University has begun to run a recognised module, which teaches students about ethics, research and advocacy skills. However, De Montford have experienced a few problems recently when Leicester Council closed down the local advice centres, which subsequently meant that there was a surge of referrals to the University law clinic. This illustrates the potential problem of law clinics being seen as a cheaper alternative to properly funded state legal services.

Adam Wilson from Sheffield Hallam's University explained that their clinic is made up of both second and third year law students who deal with work from students and members of staff. The areas of expertise are restricted at Sheffield Hallam; however, they run cases in a similar way to that of Northumbria. The law clinic deals with about 35 cases a year, to enable students to concentrate on reflection. The type of work which they deal with includes personal injury, criminal law, contract, housing and consumer protection. The clinic operates in a similar way to Northumbria University's law clinic in that there are firms consisting of six students with about two to three cases per firm. Their students must initially attend an induction course before commencing work in the clinic. This induction course focuses on interviewing, professional ethics and confidentiality. Students must also compile an experience evaluation form to demonstrate and reflect on how they could have improved on what they have done.

The Conference was also joined by students from Bristol University, who have a law clinic which has been running for nine years. It is an undergraduate programme with about 120 student members. In setting up their clinic, they aimed not to detract from the legal profession but just to be a supplementary facility. They are primarily a community service. Their law clinic recruits people through an application process, which has 30–40 places available. The new members then receive a training programme and new recruits work initially with more experienced advisors.

Two students from Northumbria University, Chris Simmons and Paul Roberts, explained the learning experience in the Student Law Office. They made the point that the Student Law Office is seen as an integral part of the course, which provides a good stepping-stone for the future. Students initially come into contact with the practical elements of the course in first and second year when students experience practical subjects such as litigation and evidence. Proceeding to third year, students concentrate on the Student Law Office on a hypothetical basis, which involves checking a theoretical conflict register and having a simulated interview with an actress. Students are also expected to attend workshops throughout the year whereby they have to conduct research into the relevant areas of law with regards the information obtained from the interview. This experience is intended to give students an idea of what is to be expected in fourth year. In fourth year, students are given their own case files and expected to follow them through the various stages, from the initial interview, to the follow-up advice interview, to representing the client at a court or tribunal if needs be. The benefits of the Student Law Office are that students gain a better understanding of how the law relates to real problems and how to apply this in a practical sense. The law clinic specialises in a number of areas including employment law, housing law, general civil litigation, criminal appeals and welfare benefits, now taking on about 500 cases a year. The University has very close links with local solicitor firms such as Ben Hoare Bell and Eversheds, who seek to help students with their cases.

Kent University students work in an in-house representation clinic at the University, which has over 130 members. Their course contains a clinical option module thereby providing law students with the choice of whether to experience clinical work. At Kent, the students fill numerous roles. For example, if first year law students wish to gain an insight as to how the clinic works, they can apply to be receptionists in the clinic, thus providing them with a feel of the working environment. The cases are dealt with on a 'first come, first served' basis, and they are not means tested. However, they have a general policy of only representing those people who can not afford legal advice. They have taken on 77 cases this term in areas such as employment, consumer protection, housing, immigration and family law. Besides working on individual casework, the students also work on behalf of community groups and carry out legal research and lobbying. The students recently acted for two Afghan youths who were due to be deported. The students gained publicity in the news and subsequently liaised with the Home Office whereby an agreement was reached, and the youths were allowed to stay. Such a case proves what a 'powerful educational tool' clinical legal education is.

Finally, we heard from Martin Wilson, a student from Northumbria University, who won a scholarship from Irwin Mitchell, and was given the opportunity to work in Springvale Monash Legal Service (SMLS) in Melbourne Australia, for one month. He explained the type of work he experienced over there and attempted to make a comparison with clinical legal education in England and Wales. SMLS aims at providing a high turnover of advice to the local community and is required to take on more in-depth cases than English clinics requiring more detailed research.

He served to make the point that there are numerous similar University run schemes around Australia as they see work undertaken by student run law offices as strategic in delivering legal services to the public and as a result, they appear to be much more involved in the funding of certain aspects of the schemes than occurs in England and Wales. Students in Australia are involved in a varied range of legal problems across vast areas of law. However, he made the point that law clinics in the UK seek to serve a very different legal need, as drop in advice centres such as the Citizens Advice Bureau already exist in the England and Wales, and therefore law clinics are not expected to provide such a service.

Did the conference succeed?

Overall, I think that the day provided an excellent platform for student involvement and debate about their clinics. It enabled us to learn from each other's experiences and see how the various clinics differ from one another. We explored wider issues such as the scope and nature of clinical legal education and how the clinics are structured and delivered. One of the major benefits of having academics and students together was that it emphasised that clinical legal education is a partnership and allows us to learn from each other rather than the hierarchical approach that is typical of most learning. It also provided the enthusiasm for another conference next year. An issue that was missing from this conference was the perspective of the client who is advised or represented by the students. How do they feel and are their interests properly considered by clinics that have education as their main objective? Perhaps this is one theme that could be developed at the next conference.

Conferences like this one help us students think more critically and creatively about why we are doing what we do. It helps us see clinical work not just as an obligation or something attractive for our CVs but as part of what makes us understand the law and helps us become more rounded people. It should also make our lecturers see that we have a lot to offer in terms of the future of clinical programmes but this remains to be seen!