

Editorial

Walking the talk: clinic and our values

Elaine Hall

Northumbria University, UK

Elaine.Hall@northumbria.ac.uk

Is clinical legal education an inherently moral undertaking? In this issue of the IJCLE, we have three papers linked by their focus on the underpinning values of CLE: whether we can transmit our values through the clinic experience; whether we can most effectively teach ethics through clinic and whether our commitment to and belief in clinic should be expressed by bringing it from the margins to the centre of legal education.

There is a common perception amongst educators that we transmit our values tacitly through the curriculum and that, by providing students with a particular kind of learning experience, we create in them specific dispositions. The logical formula appears to run:

1. We embed the values in the structure of the curriculum (e.g. by running a pro bono clinic)
2. We engage students in the activity
3. They absorb the values and become active agents pursuing those values in future activities.

Once written down in this way, the potential for diversion from this programme becomes more apparent, not least the likelihood that

We had the experience but missed the meaning,

And approach to the meaning restores the experience

In a different form, (T.S Eliot).

In his paper, drawing on empirical research conducted at Northumbria University, Paul McKeown reflects on the evidence for 'values transfer' and looks critically both at the complex ecology of what students might take from experiential learning in a capstone¹ clinic and how that data can be captured.

Anna Cody takes up the baton in her discussion of the teaching of ethics. Her paper provides a detailed engagement with what constitutes ethical and professional identity, developing a social constructivist frame for understanding how ethical cultures are formed and sustained. She develops this into an argument for 'applied ethics' teaching through a clinical element within the curriculum and provides a detailed analysis of how this operates in practice for students, supervisors and curriculum designers.

Finally, Neil Gold gathers together many years of clinical education experience to give an extended reflection on the untapped potential of clinic. Using a detailed analysis of educational standards, assessment and learning outcomes, he challenges

¹ A clinic experience placed at the end of a degree programme in which the prior academic and skills learning is operationalised.

the marginal status of clinic within the legal curriculum, advancing the argument not just that CLE *can* deliver all the learning outcomes but that it is *best* suited to do so.

These debates continue, are enriched by more participants and on that note I would like to draw your attention to a series of upcoming events. Firstly, the forthcoming European Network for Clinical Legal Education (ENCLE) workshop which is being held at Northumbria University on 15th and 16th April 2015 and which is supported by the Open Society Initiative for Europe (OSIFE). The workshop will aim to generate discussion, through themed sessions, as to how clinicians can prepare their students for a clinical experience. Delegates will be able to share their own ideas and experiences and learn from others. Session facilitators will be drawn from a range of jurisdictions to enhance the discussion and draw out ideas for best practice².

On 4th June 2015 Northumbria will host an interactive seminar and discussion forum, *Problematizing Assessment in Clinical Legal Education*³, featuring Professor Beryl Blaustone (City University of New York); Professor Jose Garcia Anon (Valencia University); Richard Grimes (University of York); Professor Judith McNamara (Queensland University of Technology) and Cath Sylvester (Northumbria University).

² For details of how to apply, please contact ustege@iutorino.it or paul.mckeown@northumbria.ac.uk

³ <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/law-research/legal-education-and-professional-skills/problematizing-assessment-in-clinical-legal-education/>

After that, we look forward to the next IJCLE conference, held jointly with the Global Alliance for Justice Education at Anadolu University in Eskişehir, Turkey between 22nd and 28th of July, 2015 (<http://www.gaje.org/8th-worldwide-conference/>). We are delighted to have contributions in the IJCLE stream addressing:

1. *The Map for Learning Law: clinic and curriculum design*

papers considering the place of clinics in the wider law curriculum, the connections between legal knowledge and skills taught before, during and after the clinical experience and the specific goals of the clinic.

2. *Collaborative Learning: comparative perspectives on clinic*

papers involving two or more settings, focusing on how differences of context and ecology have shaped specific elements of practice locally as well as linking core practice and beliefs about clinic, education and outcomes for students and clients.

3. *How do we know?: research, evidence and impact in clinical education*

papers focusing specifically on methods of evaluation and the nature of the evidence that we use to understand and assess our clinics, representing a range of philosophical and methodological approaches.

Please let me know about CLE events and I will publicise them here – do bear in mind our approximate publication dates of February, July and November.

I hope to see many of you at these events!

References

Eliot, T.S. (1941) *The Dry Salvages*. Published in the *New English Weekly*, collected in *The Four Quartets* (1943) New York: Harcourt

Reviewed Article: Clinic, the University and Society

Law student attitudes towards pro bono and voluntary work: The experience at Northumbria University

Paul McKeown, Northumbria University, UK

paul.mckeown@northumbria.ac.uk

Abstract

This study considers whether participation in pro bono legal work during a programme of academic study at Northumbria University increases the likelihood of future participation in pro bono activity amongst law students.

This was a quantitative study in which an online survey, measuring altruistic attitudes, was sent to students enrolled on the M Law Exempting degree programme at Northumbria University. The author analysed the data by comparing the attitudes of those students who had engaged in pro bono activity during the fourth year of the programme against those students who had yet to engage in pro bono activity, being those students in Years 1, 2 and 3 of the programme.

The data suggests that whilst the students value engagement in pro bono activity, this is principally due to the personal benefits which they gain. In particular, respondents reported improvement in legal skills and enhanced employability as a consequence of participation in pro bono work. The data indicates that there is an increased awareness of social and economic issues whilst engaged in pro bono work but this does not translate into a desire to continue pro bono work after graduation.

It was therefore concluded that participation in pro bono work during the course of academic study does not increase the likelihood of future participation in pro bono activity following graduation.

INTRODUCTION

The availability of public funding in the UK in relation to legal disputes has significantly reduced following the changes to the scope of legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 coming into force on 1 April 2013.¹ As many areas of law have been taken out of the scope of legal aid, individuals who previously qualified for legal aid will either be required to represent themselves or seek an alternative source of funding in relation to their case.

It has been reported that the number of UK-based universities engaging in pro bono work has increased. 53% of respondent law schools stated they ran a pro bono programme in 2006² increasing to 91% of respondent law schools

¹ The scope of legal aid was limited by the Access to Justice Act 1999. Areas such as personal injury (other than clinical negligence), business cases, boundary disputes, company and trust law were removed from the scope of legal aid. Despite this most areas of law remained within scope although funding for representation at most tribunals was not available. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 reduced the scope of legal aid further with the default position that all areas were excluded from scope with only a limited number remaining within scope.

² Grimes, R. and Musgrove, J. (2006) LawWorks Students Project Pro Bono – The Next Generation. [Online] Available at: <http://www.probonogroup.org.uk/lawworks/docs/Student%20report%20Final.pdf> (last accessed: 28 January 2015) p.6

in 2010³, and 96% of respondent law schools in 2014.⁴ The 2014 report suggests that 70% of law schools offer pro bono opportunities, assuming those that did not respond do not offer any opportunities.⁵

As more universities develop pro bono work programmes, and more law students have the opportunity to engage in pro bono work, it is plausible to suggest that future participation in pro bono activity might increase in the profession.

This study will consider whether participation in pro bono activity whilst at law school influences future participation in pro bono activity following graduation and in their future careers. The study will be in the context of the M Law Exempting degree programme at Northumbria University.

ALTRUISM AND PRO BONO

To understand the concept of pro bono and the motivations for individuals to undertake pro bono activities, it is necessary to understand the concept of altruism as pro bono work is a manifestation of altruism in the legal

³ Grimes, Richard and Curtis, Martin, *LawWorks Student Pro Bono Report 2011*, LawWorks [online] Available at: http://lawworks.org.uk/tmp_downloads/x63c118c111s132z58f116a76p34d16m64y22v10i24l80g83/lawworks-student-pro-bono-report-2011.pdf (last accessed: 28 January 2015) p.10

⁴ Carney, D. Dignan, F, Grimes, R. Kelly, G and Parker, R (2014) *The LawWorks Law School Pro Bono and Clinic Report 2014* [online] Available at: http://lawworks.org.uk/tmp_downloads/k150c69y95y80r23d40x93s30c57g25v44t110q78i113t5/1014-033-lawworks-student-pro-bono-report-web.pdf (last accessed: 28 January 2015) p.10

⁵ *Ibid.*

profession. Pro bono, or 'pro bono publico', literally means 'for the public good'. However, beyond the literal translation there are many definitions.

One definition of pro bono comes from the Pro Bono Protocol:

'Legal advice or representation provided by lawyers in the public interest including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public funding and alternative means of funding is not available.

Legal work is Pro Bono Legal Work only if it is free to the client, without payment to the lawyer or law firm (regardless of the outcome) and provided voluntarily either by the lawyer or his or her firm.'⁶

If we consider this definition, pro bono work requires lawyers to act without charge or expectation of charging their clients. As such, it is arguable that in the provision of pro bono work, lawyers are displaying altruistic behaviour that is 'generally understood to be behaviour that benefits others at a personal cost to the behaving individual.'⁷ Gleitman et al state that '[o]ne of our great sources of pride as a species is our ability to exhibit *prosocial* behaviors [sic], behaviors [sic] that help others – assisting them in their various activities, supporting and aiding them in their time of need. But, of course,

⁶ LawWorks. (2013). Protocol text. [Online] Available at: http://www.lawworks.org.uk/protocol_text (Last accessed: 18 January 2015)

⁷ Kerr, B. Godfrey-Smith, P. Feldman, M.W. (2004). 'What is altruism'. *TRENDS in Ecology and Evolution*. 19(3): 135-140 [Online] DOI:10.1016/j.tree.2003.10.004 (Last accessed: 18 January 2015)

we don't always help.'⁸ When we do help, it is often based on some 'expectation of later reciprocation.'⁹

Gleitman et al are of the opinion that true acts of altruism, those acts where there is no personal benefit at all, are fairly rare.¹⁰ When people are asked why they engage in such activities, most state that 'altruistic actions make them better people'.¹¹ It could be argued that this, in itself, could be seen as a benefit to the individual concerned.

Bateson and Shaw have written that understanding altruism from a psychological point of view has been dominated by the 'universal egoism hypothesis', that is, persons act altruistically primarily for egotistical reasons. Their work suggests a complementary hypothesis, the 'empathy-altruism hypothesis' that suggests the notion that both egoism and altruism operate simultaneously. It is also suggested that people can act for personal benefit, the benefit of others or, indeed, a combination of both.¹²

It must therefore be considered whether it is possible to teach or instil a sense of altruism through education.

⁸ Gleitman, H. Gross, J. and Reisberg, D. (2011). *Psychology*. 8th edn. London: W.W.Norton & Company Ltd p.532

⁹ Ibid. p.534

¹⁰ Ibid.

¹¹ Piliavin & Callero, 1991; M. Snyder & Omoto, 1992 as cited in Gleitman et al, 2011 (See note 6)

¹² Ibid, pp.341-342

‘Where Socrates appeared to argue that *no one* teaches virtues, Protagoras argues that *everyone* teaches them’¹³

Aristotle drew a distinction ‘between self-control and virtue applied primarily to moral dispositions as honesty, temperance, courage, justice, liberality and so on.’¹⁴ Values as principled commitments are rules which are followed although not wholeheartedly committed. Values as virtues are exhibited and embodied as at least a matter of second nature.¹⁵ This is an important distinction within the context of this study. We can teach students the rules, such as the professional code of conduct, but can we teach or instill a moral commitment to pro bono work, meaning that it becomes second nature to our students.

It has been a matter of some debate as to the role of higher education in teaching students not just knowledge but also social virtues. Heuser argues that ‘when moral and ethical considerations are built into every aspect of the primary activities of higher education—research, teaching and public service—the ability of colleges and universities to create academic social cohesion is greatly amplified, as is their propensity to generate social cohesion in

¹³ Pence, G.E. (1983) ‘Can compassion be taught’. *J Med Ethics*. 9(4):189-91 [Online] Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1059297/pdf/jmedeth00011-0005.pdf> (Last accessed: 18 January 2015) p.189

¹⁴ Carr, D. (2011), ‘Values, virtues and professional development in education and teaching’, *International Journal of Educational Research*, 50(3), pp.171-176, [Online] DOI:10.1016/j.ijer.2011.07.004 (Last accessed: 18 January 2015), p.172

¹⁵ *Ibid.* p.173

society.’¹⁶ Lewis observes that ‘universities have forgotten their larger educational role... that the fundamental job of undergraduate education is to turn eighteen- and nineteen-year-olds into twenty-one- and twenty two-year-olds, to help them grow up, to learn who they are, to search for a larger purpose for their lives, and to leave college as better human beings.’¹⁷

CLINICAL LEGAL EDUCATION AND PRO BONO

There are many academic articles considering Clinical Legal Education and Pro Bono. McCrimmon states that ‘while clinical courses and pro bono projects share common attributes, they are separate and distinct entities.’¹⁸ McCrimmon draws upon the Association of American Law Schools Pro Bono Project Report, *Learning to Serve*, to illustrate his point. In particular, the Report states:

‘Both clinics and pro bono programs serve important educational values. They each provide students an opportunity to learn about the legal needs of people who are poor. They each provide an opportunity to learn about the satisfactions of serving a client. But the principal goal of most clinics is to teach students lawyering skills and sensitivity

¹⁶ Heuser, B. L. (2007) ‘Academic social cohesion within higher education’, *Prospects* 37, pp.293-303. [Online] DOI 10.1007/s11125-008-9036-3 (Last accessed: 18 January 2015)

¹⁷ Lewis, H. R. (2007) *Excellence without a Soul: Does Liberal Education Have a Future?* United States: PublicAffairs p. xiv

¹⁸ McCrimmon, L. A. (2003) ‘Mandating a Culture of Service: Pro Bono in the Law School Curriculum’, *LegEdRev* 4 [Online] Available at: <http://www.austlii.edu.au/au/journals/LegEdRev/2003/4.html> (Last accessed: 18 January 2015)

to ethical issues through structured practice experiences and opportunities to think about and analyze those experiences. By contrast, the most important single function of pro bono projects is to open students' eyes to the ethical responsibility of lawyers to contribute their services.'¹⁹

Whilst the Report states there are similarities between clinical legal education and pro bono, it states that they are different in their objectives. However, Bloch identifies that the 'original "subject matter" of clinical legal education was essentially legal aid and public interest practice'²⁰ whilst Ellman et al state that 'one goal of clinical teaching is to foster, and to carry on, legal practice in the public interest. But our understanding of this goal is changing, and so is our understanding of the means by which it might be achieved.'²¹ It appears the objective of clinical legal education has historically been public interest practice and therefore clinical legal education is a form of pro bono practice. However, Bloch goes on to identify that '[s]ome have felt recently that a more deliberate skills orientation is needed in clinical scholarship.'²² It appears that it is this focus on skills development that differentiates clinic from pro bono. However, it is also arguable that

¹⁹ Association of American Law Schools Commission on Pro Bono and Public Service Opportunities, (undated), 'Learning to Serve: The Commission's Findings and Proposed Actions', [Online] Available at <http://aalsfar.com/probono/report2.html#findings> (Last accessed 18 January 2015)

²⁰ Bloch, F.S. (2004) 'The case for clinical scholarship' 4 Int'l J. Clinical Legal Educ. pp.7-21. HeinOnline [Online] Available at <http://heinonline.org> (Last accessed: 18 January 2015) p.12

²¹ Ellmann, S. Gunning, I.R. and Hertz, R (1994), 'Why not a clinical lawyer-journal?', 1 Clinical L. Rev. pp.1-7, HeinOnline [Online] Available at: <http://heinonline.org> (Last accessed: 18 January 2015)

²² Op.cit. note 18, p.13

individuals conduct pro bono work for reasons other than altruistic reasons of benefiting society.

Setting aside the definition of clinical legal education and pro bono, clinical legal education has the potential to be used as a tool to increase a student's sense of social awareness. Grose identifies clinical education as having 'three broad goals: providing learning for transfer; exposing students to issues of social justice; [sic] and offering opportunities to practice lawyering skills.'²³ For the purposes of this study, it is the second goal, namely the exposure to social justice, which the author was interested in exploring and the extent to which this goal is being achieved. However, it will be necessary to include the other goals in order to consider whether there is more than one motivating factor.

It is suggested that 'encouraging law students to become involved in pro bono work is likely to develop their commitment to, and understanding of, professional values, which should in turn lead to their active involvement in pro bono work later in their professional lives.'²⁴

Giddings comments that clinics 'are often identified as important in enhancing the commitment of students to professional ideals and values,

²³ Grose, C. (2013) 'Beyond Skills Training, Revisited: The Clinical Education Spiral' *Clinical L. Rev.* 19, pp. 489-515 HeinOnline [Online]. Available at: <http://heinonline.org> (Last accessed: 18 January 2015) p. 493

²⁴ Op.cit. note 2

fostering the values that promote pro bono contributions.’²⁵ However, Giddings goes on to recognise that these claims are difficult to support with empirical data.²⁶

In considering whether clinical programmes influence students’ sense of ethical and social awareness, Schrag and Meltsner recognise that there are no empirical studies that compare law graduates who took clinic with those who did not.²⁷ However, they go on to state that ‘many thousands of lawyers have begun their careers much better able to take responsibility for helping clients, with much greater understanding of how social institutions really work, and with greatly heightened awareness of ethical issues and how to address them.’²⁸ Palermo and Evans recognised this issue and stated ‘a central motive for undertaking [their] study was the need for empirical information about lawyers’ responses to ethical challenge over time’.²⁹ Interestingly, and contrary to the stated aims of clinical legal education, Palermo and Evans study suggests that students who had a clinical experience were less interested in pro bono work over time.³⁰

²⁵ Giddings, J. (2013) *Promoting Justice Through Clinical Legal Education* Melbourne: Justice Press, p. 64

²⁶ *ibid*

²⁷ Schrag, P.G and Meltsner, M. (1998) *Reflections on Clinical Legal Education* Boston: Northeastern University Press, p.9

²⁸ *ibid*

²⁹ Palermo, J. and Evans, A. (2008), ‘Almost There: Empirical Insights into Clinical Method and Ethics Courses in Climbing the Hill towards Lawyers’ Professionalism’, 17 *Griffith L. Rev.*, pp.252-284, HeinOnline [Online] Available at <http://heinonline.org> (Last accessed 18 January 2015) p.253

³⁰ *ibid.* p272

There have also been a number of studies, conducted in the United States, regarding the impact of pro bono programmes at law schools.

Granfield states that:

‘While there has been anecdotal evidence supporting the value of law school pro bono, no institution has taken an empirical examination of the impact of pro bono participation on law school graduates. This seems to suggest that many proponents of law school pro bono view such policies as an unqualified public good that is consistent with the service ideals of the legal profession.’³¹

Rhode undertook what may be considered the first empirical analysis of lawyers and their attitudes towards pro bono work.³² Rhode reports that 59% of the lawyers surveyed cited a desire for a financially rewarding and secure career as the reason for choosing a legal career. The next most common motivations were finding intellectual challenges (52%) and keeping options open (41%). Only 31% of the respondents indicated a desire to promote social justice whilst 29% stated that they wanted to prepare for public service.³³

Rhode goes on to state that fewer than a third of the respondents had changed their objective during law school. Of the respondents who did

³¹ Granfield, R. (2007). ‘Institutionalizing Public Service in Law School: Results on Impact of Mandatory Pro Bono Programs’ *Buff. L. Rev.* 54: 1355-1412 Heinonline [Online] Available at: <http://heinonline.org> (Last accessed: 18 January 2015), p.1372

³² Rhode, D L. (2003) ‘Pro Bono in Principle and in Practice’. *J. Legal Educ.* 53:413-464 HeinOnline [Online]. Available at: <http://heinonline.org> (Last accessed: 18 January 2015)

³³ *Ibid* p. 454

report a shift in attitude, a 'significant number' reported a change in attitude concerning pro bono and public interest work. A fifth (22%) of these respondents reported that a positive law school experience had encouraged involvement in pro bono activity, whilst about a fifth (19%) reported a negative law school experience had 'dampened' their desire to do pro bono work. Other factors steering lawyers away from public interest work included student loans and differential salary levels.³⁴ Rhode states that her study fails to confirm the belief that a law school pro bono experience increases the likelihood of continued pro bono contributions. A positive experience with 'public interest work' can have a significant impact, but such an experience need not come from a 'pro bono placement' nor does a pro bono placement ensure a positive experience.³⁵

Granfield reports that 58% of respondents to his survey believed they had acquired valuable legal skills from their participation in pro bono activity at law school whilst 28% report that their pro bono experience helped them acquire their initial job after graduation.³⁶ Further, Granfield also comments that, 'contrary to anecdotal evidence, half the respondents did not believe

³⁴ Ibid p. 455

³⁵ Ibid p. 457

³⁶ Op.cit. note 29 p.1379

their law school pro bono experiences made them more committed to doing pro bono work as a practicing attorney.’³⁷

Both Granfield³⁸ and Rhode³⁹ cite commitment to public service and a sense of personal satisfaction as the principle motivations for conducting pro bono work whilst factors such as enhancement of legal skills were of secondary importance.

The data from the studies carried out by both Granfield and Rhode produce very similar conclusions, both casting doubt on the notion that you can promote pro bono work in the legal profession by exposing law students to pro bono during law school. However, in Granfield’s opinion it is ‘still too early to perform a post-mortem on the law school pro bono movement.’⁴⁰ He goes on to state that ‘[m]any respondents... reported that their law school pro bono experiences were not well integrated into their overall education... For the law school pro bono movement to have an impact, the pro bono experiences of law students must be better integrated into the general law school curriculum.’⁴¹

Whilst the studies of Granfield and Rhode provide substantial evidence for the proposition that law school pro bono programmes do not influence the

³⁷ *ibid*

³⁸ *Ibid* p. 1399

³⁹ *Op.cit.* note 30 pp. 446-447

⁴⁰ *Op.cit* note 29 p. 1412

⁴¹ *ibid*

attitudes of students in relation to their future career, it is noted that both studies consider data drawn from practising lawyers rather than current students. It is arguable that in both studies, respondents' answers may have varied had they taken the survey whilst at law school or shortly after leaving law school. It is plausible to consider that their attitudes have been shaped by their experiences since leaving law school.

Additionally, as Granfield recognises himself, the respondents' attitudes could be shaped by their experience at law school.⁴² In particular, Granfield refers to better integrating the pro bono experience into legal education.⁴³ Schmedemann has also considered whether a pro bono participation in law schools encourages future participation whilst in practice. This study, which considered a voluntary pro bono programme, found a significant correlation between participation in a law school pro bono programme and participation in practice. A further correlation was shown between attitudinal dispositions related to pro social values and pro bono involvement in practice.⁴⁴

The research indicates that there is no definitive answer to which clinical and pro bono programmes enhance students.

⁴² *ibid*

⁴³ *ibid*

⁴⁴ Schmedemann, D. (2009), 'Priming for pro bono: The impact of Law School on Pro Bono Participation in Practice' in Granfield, R. and Mather, L. (eds) *Private Lawyers in the Public Interest*, New York: Oxford University Press, pp.73-94, p.79

ALTRUISM AND OTHER PROFESSIONS

It may also be useful to consider attitudes towards altruism in other professions as altruistic attitudes are often seen as 'a defining characteristic of professionalism.'⁴⁵ Of note is a study by Coulter et al that compared the altruistic attitudes of business, law and medical students.⁴⁶ Coulter et al report that 3% of business students and 17% of law students felt that working with the poor was important to their careers. However a significantly higher percentage (33% of business students and 40% of law students) 'felt that doctors should be required to provide medical care to the poor.'⁴⁷

Cruess, states that altruism is thought to be a defining characteristic of professionalism and a key feature of medical practice.⁴⁸ However, Roche et al, drawing upon Coulehan and Williams, state that 'in medical education, students go through a maturational process that some claim undermines any idealism they may have had upon entering.'⁴⁹ They go on to state that 'some

⁴⁵ Cruess and Cruess, 1997 as cited in Coulter, I. D. Wilkes, M. Der-Martirosian, C. (2007). 'Altruism revisited: a comparison of medical, law and business student' altruistic attitudes' *Medical Education*. 41: 341-345 [Online] DOI: 10.1111/j.1365-2929.2007.02716.x, (Last accessed: 18 January 2015) p.342

⁴⁶ Coulter, I. D. Wilkes, M. Der-Martirosian, C. (2007). 'Altruism revisited: a comparison of medical, law and business student' altruistic attitudes' *Medical Education*. 41: 341-345 [Online] DOI: 10.1111/j.1365-2929.2007.02716.x (Last accessed: 18 January 2015)

⁴⁷ Ibid p. 345

⁴⁸ Ibid p. 342

⁴⁹ Roche III, W. P., Scheetz, A. P., Dane, F. C., Parish, D. C. and O'Shea, J. T. (2003). 'Medical Students' Attitudes in a PBL Curriculum: Trust, Altruism, and Cynicism' *Academic Medicine* 78(4):398-402. p. 398

educators note that some students who enter medical school with compassion and altruism become more cynical.⁵⁰

Problem based learning and an early introduction to clinical medicine were considered two possible changes that could address the cynicism observed in medical students.⁵¹ It is reported that the effect of problem-based learning curriculum has been seen to prevent a more cynical or less altruistic attitude from developing in medical students and has in fact had a positive effect on their attitudes towards altruism.⁵²

Wear and Zarconi highlight the effect of role modelling on the attitudes of students.⁵³ They draw upon the work of Coulehan that urges an environmental change via role modelling:

'The first requirement for a sea change in professionalism is to *increase dramatically* the number of role model physicians at every stage of medical education. By role model physicians I mean full-time faculty members who exemplify personal virtue in their interactions with patients, staff and trainees; who have a broad, humanistic perspective; and who are devoted to teaching and willing to forego high income in order to teach...[sic] Their presence would dilute and diminish the conflict between tacit and explicit values, especially in the hospital and the clinic. The teaching environment would contain fewer hidden

⁵⁰ *ibid*

⁵¹ *Ibid* p. 399

⁵² *Ibid* p. 402

⁵³ Wear, D and Zarconi, J. (2008) 'Can Compassion be Taught? Let's Ask Our Students' *J Gen Intern Med* 23(7):948-953. [Online] DOI: 10.1007/s11606-007-0501-0 (Last accessed: 21 August 2013)

messages that say “Detach” while at the same time overt messages are saying “Engage.” What trainees need is time and humanism’⁵⁴

This argument puts forward the idea that students can learn virtue through role modelling and therefore if they are taught by individuals who themselves exhibit virtues, and as such are positive role models, then this will in turn have a positive effect on the students. However, Wear and Zarconi also recognise that having ‘a few positive role models in a clinical setting will not do the trick.’⁵⁵ Pence states:

‘Morality is not learned the way one learns to play a flute or to do a tracheotomy by observing a ‘master’ proficient in a certain craft or technique. Compassion similarly is not learned from a Master of Compassion (or the chief role-model thereof). Instead it is developed or not by the ‘shape’ of the medical environment in which students learn medicine. The overall medical context in which students thrive or stagnate is more important than the efforts (however noble) of any one individual.’⁵⁶

The literature above suggests that one must look at the whole educational institution. Whilst the empirical evidence to date suggests that pro bono and clinical legal education does not instil a sense of public service, or altruism

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ *Op.cit* note 11 p. 190

within law students, there is explicit criticism of the programmes that students perceive as 'not well integrated into their overall legal education.'⁵⁷

It is clear from the literature that there is little empirical evidence regarding the participation in pro bono and clinical legal education programmes, or indeed other altruistic activities, and the influence this has on students' altruistic attitudes and their participation in altruistic activity during their career. The literature in relation to legal education, particularly with reference to clinical legal education and pro bono, suggests that altruism is considered a key aim. However, the empirical research by Rhode and Granfield does not support this assertion.

There have been small-scale studies within medicine suggesting that altruism can be instilled through role modelling and the environment in which students learn. The study carried out by Roche et al concludes that students were not any less altruistic than their junior counterparts as a consequence of problem-based learning.⁵⁸ This study relates to retaining altruistic attitudes rather than instilling them. This can therefore arguably be distinguished from the present study on the basis that it is about instilling altruism rather than retaining it. Further, despite the conclusions, the authors could not establish whether the results were as a consequence of more women

⁵⁷ Op.cit note 29 p. 1412

⁵⁸ Op.cit note 47 p. 402

attending medical school rather than the introduction of problem-based learning into the curriculum.

The study by Wear and Zarconi utilised a qualitative approach and as such it is difficult to generalise the findings. The authors identify a limitation in their own research that only 46% of potential respondents gave permission to participate in the study. Again, this limits the generalisation of the results.

METHODOLOGY

Whilst the above-mentioned studies each have their limitations, the data drawn from each is useful in designing the research for this study. The model of legal education at Northumbria University, and in particular the M Law Exempting degree is an integrated model with clinical legal education at its core. The programme is described as one where '[s]tudents are introduced to legal rules and concepts on both their theoretical and practical contexts from day one. They engage in clinical and experiential learning throughout the course culminating in full case work on behalf of real clients in the final year.'⁵⁹ As such, it is arguable that the M Law Exempting degree is the integrated model described by Granfield.

⁵⁹ Northumbria University. (2012) LLB (Hons)/M Law Exempting Full-time. Available at: <http://www.northumbria.ac.uk/sd/academic/law/courses/ug/innovative/mlawexempting/> (Last accessed: 18 January 2015)

In the fourth year of the programme, students participate in the Student Law Office module. This is a credit-bearing module where students advise and represent real clients. Students can also participate in extra curricula activities such as StreetLaw throughout any year of the programme. The programme integrates problem-based learning and clinical elements in earlier years which, as identified above, have the potential to mean students are less cynical and have a positive effect on their altruistic attitudes.

The model of legal education adopted by Northumbria University also appears to align with the models discussed above in medical education. Northumbria University has arguably created an environment where students are taught by lawyers, from whom they can model themselves. It is therefore to be seen whether the Northumbria University model, integrating legal education and pro bono work can instil a sense of altruism in students and encourage participation in future pro bono activity.

This study received ethical approval from Northumbria University.

A questionnaire (see Annex A) was sent electronically to all students studying on the M Law Exempting Degree programme at Northumbria University in the academic year 2012/13. Respondents to the survey were anonymous.

The survey was designed to elicit information regarding students attitudes to pro bono work at university, whether mandatory or voluntary. 'Pro bono' was defined in the survey as 'the provision of legal services without charge to the client'. This is a wide definition and encompasses the clinical legal education module carried out in the Student Law Office as no charge is made to the client. However, students were also asked about their volunteering outside of university. 'Voluntary work' was defined as 'work without reward other than expenses'. Voluntary work could be either legal or non-legal. This study considers the altruistic ethos of the students and therefore, it does not matter whether this is manifested by legal or non-legal work. Voluntary work is unlikely to fall within any definition of clinical legal education as it is not conducted through the university. However, it may fall within the definition of pro bono if the provision of legal service is not mandated. The survey utilised Likert scales, rankings and free text boxes to elicit to attitudinal responses.

The questionnaire was sent to a total of 1010 students. The breakdown of student numbers by year group:

Year 1 – 348 students

Year 2 – 288 students

Year 3 – 198 students

Year 4 – 176 students

A descriptive statistical analysis was used to provide a profile of the respondents, outlining their experiences and their attitudes towards pro bono and voluntary work. A Mann-Whitney U-Test⁶⁰ was conducted to determine statistical significance of the relationship between students' pro bono experience and their altruistic attitudes as well as their attitudes towards future participation in pro bono activity.

The survey had a low response rate with a total of 44 questionnaires returned. 7 questionnaires were returned from each of the Year 1, 2 and 3 groups whilst 23 questionnaires were returned from Year 4.

DISCUSSION

Data analysis suggests that the primary motivation behind both pro bono work and voluntary work is for personal benefit. Respondents also valued the skills development and enhanced employment prospects rather than the altruistic benefits of carrying out such work.

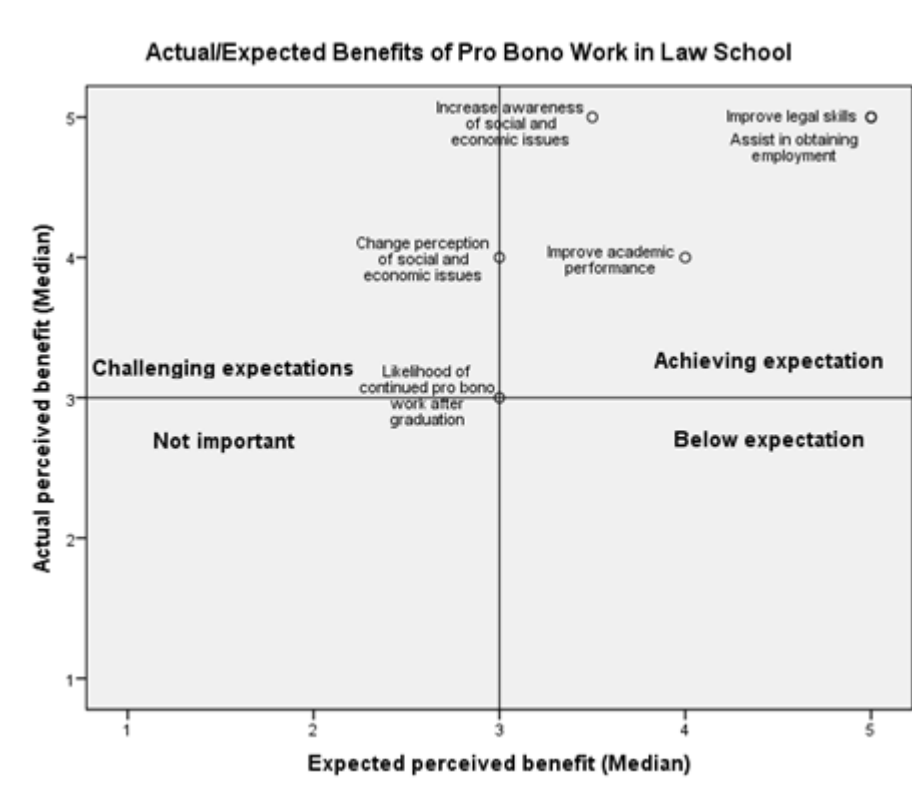
⁶⁰ There is debate as to whether parametric tests, such as t-tests, are appropriate for ordinal data. See Jamieson, S. (2004) 'Likert scale: how to (ab)use them' *Medical Education*. 38:1212-1218 [Online] DOI: 10.1111/j.1365-2929.2004.02012.x (Last accessed: 18 January 2015) and Norman, G. (2010) 'Likert scales, levels of measurement and the "laws" of statistics' *Adv in Health Sci Educ* 15:625-632 [Online] DOI: 10.1007/s10459-010-9222-y (Last accessed: 18 January 2015). As the data collected was ordinal, it was deemed a non-parametric test was deemed the appropriate statistical test for this study.

Generally, students in Year 1 (n=6), Year 2 (n=7) and Year 3 (n=5) stated that they did not currently undertake any pro bono work as part of their programme of study. One Year 1 (n=1) student stated that they did not know whether they undertook pro bono work as part of their programme of study whilst one Year 3 (n=1) student stated they did not know and one Year 3 (n=1) student stated they did undertake pro bono work as part of their programme of study. Nineteen Year 4 (n=19) students responded to the question, all of whom undertook pro bono work as part of their programme of study. Four Year 4 (n=4) students did not respond to this question.

Figure 1 below illustrates the perceptions of students who had undertaken pro bono work as part of their programme of study compared with those who had not. Students were asked whether they agreed or not with the following statements in relation to pro bono work as part of their programme of study:

- Pro bono improves legal skills;
- Pro bono assists in obtaining employment;
- Pro bono work improves academic performance;
- Pro bono work increases awareness of social and economic issues;
- Pro bono work changes perception of social and economic issues; and
- Pro bono work increases likelihood of continuing pro bono work after graduation.

Figure 1



It can be seen that the respondents expected pro bono work to provide a personal benefit to them; such as improved legal skills and enhanced employability, and further, the respondents who have engaged in pro bono work perceive that they have been rewarded with these benefits. This perhaps supports the educational imperative of pro bono work as part of a programme of study but does not assist in determining whether students are instilled with a sense of altruism.

Figure 1 also suggests that there was marginally more appreciation of social and economic issues. It is plausible that this is due to the fact that students are faced with real legal issues and therefore have a greater appreciation of

the problems society faces. However, further research of a qualitative nature would be required to investigate this.

Despite an apparent greater appreciation for social and economic issues, it is highlighted that respondents were neutral to the statement as to whether they would participate in future pro bono activity following graduation. This may indicate that participation in pro bono activity at law school may not encourage future participation in pro bono activity. Further research is required to establish why respondents are of this view.

89% (n=34) of respondents reported that they undertook, or had undertaken, voluntary work. Further, there appears to be no correlation between students participating in pro bono work at university and an undertaking of voluntary work outside their programme of study as 76% (n=16) of respondents from Years 1, 2 and 3 stated they undertook, or had undertaken, voluntary work whilst 78% (n=18) of respondents from Year 4 undertook voluntary work. This may suggest that the respondents had an altruistic ethos and supports the view that individuals with an interest in the subject matter of the survey are inclined to respond. This may highlight the problem of non-response bias, and in particular that because those responding are self-selecting, their views are unlikely to represent the views of the population as a whole. This is particularly so given the low response rate to the survey. As the independent variable in this study is whether or not

students have participated in pro bono work at law school, it is irrelevant that the survey is unlikely to represent the views of the whole student cohort on the M Law Exempting degree.

In any event, when the rationale behind the voluntary work is analysed, this suggests that respondents may not be so altruistic. Only 26% (n=8) of the respondents who provided a reason for undertaking voluntary work reported a reason without personal benefit to themselves such as helping people or 'giving something back'.

Whilst it is acknowledged that a higher percentage did provide some altruistic motive, many of these respondents also provided a reason encompassing some personal benefit such as enhanced employability. 36% (n=12) of respondents did not cite any altruistic motive for undertaking voluntary work.

The reasons for engaging in both pro bono and voluntary work appear to show that respondents generally have a desire to attain some personal gain from their altruistic actions, and results are therefore consistent with the empathy-altruism hypothesis espoused by Bateson and Shaw, as cited in Coulter et al.⁶¹

⁶¹ Op.cit. note 44

This concept must therefore be borne in mind when considering whether conducting pro bono work at law school can instil an altruistic ethos in students.

If we first consider the perceived benefits of undertaking pro bono by those students yet to undertake pro bono work against the those students who had undertaken pro bono work, it is apparent that the common expected benefit is some form of personal gain. This includes improved legal skills, enhanced employability and improved academic performance. The respondents were in general agreement that they do or will benefit from the pro bono experience.

When considering the altruistic benefits, respondents who had not undertaken any pro bono work did not really consider these benefits to be an issue, providing neutral responses to the statements. However, respondents who had undertaken pro bono work at law school did report a change in attitude. They strongly agreed that pro bono work had increased their awareness of social and economic issues. They also agreed that pro bono work had changed their perception of social and economic issues. This is indicative that whilst students may not undertake pro bono work for altruistic reasons, the work they carry out can potentially influence their attitudes going forwards. Whilst the primary motivation for engaging in pro

bono activity is personal, it is plausible to conclude that students, through exposure to social issues, do gain a degree of altruistic appreciation.

Whilst many law schools engage primarily in clinical legal education and pro bono work due to the educational value, there are other benefits associated with the provision of pro bono work for society as a whole.

The data suggests that it is the personal benefits of clinical legal education and pro bono work that students value more than any social benefit. When asked to rank statements, respondents ranked enhanced employment⁶² and enhanced legal skills⁶³ as the most important reasons to undertake pro bono work at law school. Statements reflecting altruistic motives, such as improving awareness of social issues⁶⁴ and encourage future involvement in pro bono activity⁶⁵ were ranked lower by both groups.

Whilst the work may increase a student's social awareness, it may not influence their future behaviour. Respondents, whether having carried out pro bono work or not at law school, were neutral when it came to the statement as to whether they would carry out pro bono work following graduation as shown in *figure 1* above. As such, this suggests that the benefit to society as a whole may be of limited value. The provision of pro bono and clinical programmes at law school is unlikely to result in a generation of

⁶² Both groups, Years 1, 2 and 3 and Year 4 students, gave a median rank of 2

⁶³ Years 1,2 and 3 gave a median rank of 2 whilst Year 4 gave a median rank of 2.5

⁶⁴ Both groups gave a median rank of 4

⁶⁵ Both groups gave a media rank of 5

altruistic lawyers providing free legal advice in the future. However, by utilising the educational value of this activity, law schools can go some way towards meeting the needs of society themselves. In essence, if more law schools adopt a mandatory pro bono/clinical programme, this will create capacity for the public to obtain free legal advice from the law school itself and as such go some way towards filling the legal advice gap.

However, attitudes did differ in relation to whether law schools should offer mandatory or voluntary pro bono opportunities. Respondents who had not undertaken mandatory pro bono work as part of their programme were neutral as to whether law schools should offer mandatory pro bono programmes. Respondents who had undertaken pro bono work expressed a stronger opinion that students should undertake pro bono work as a mandatory part of their programme of study; the difference between the two groups of respondents was statistically significant.⁶⁶ Whilst the median suggested both groups agreed that there should be voluntary pro bono opportunities at law school, those respondents who had not undertaken a mandatory programme held a stronger opinion. However, this difference was not statistically significant⁶⁷. The data suggests that whilst students do value pro bono work within their programme of study. Students who have not had the opportunity to undertake pro bono work want voluntary

⁶⁶U=102.000, p=.022

⁶⁷ U=158.500 p=.534

opportunities to do so, whilst students who have done pro bono work state that students should do so. It is likely that this is due to the personal benefits that the students gain as a consequence of pro bono work rather than the social benefit of such work.

The data appears to be consistent with the earlier studies carried out by Granfield and Rhode. In particular, it is noted that the data suggests students are not more inclined to engage in future pro bono work if they have participated in pro bono activity whilst at law school.

LIMITATIONS

The low response rate is a clear limitation in relation to this study. The principle issue relates to external validity of the results as clearly it is difficult to generalise to results across all students enrolled on the M Law exempting degree. As Norman points out, '[i]t is difficult to argue that 2 physicians or 3 nursing students are representative of anything...'⁶⁸ However, this study does not purport to generalise the views of all students on the M Law Exempting degree. This study is principally concerned with establishing whether there is a link between pro bono engagement in law school and the likelihood of future pro bono activity. As this research has elicited a similar

⁶⁸ Norman, G. (2010) 'Likert scales, levels of measurement and the "laws" of statistics' *Adv in Health Sci Educ* 15:625-632 [Online] DOI: 10.1007/s10459-010-9222-y (Last accessed: 18 January 2015), p.628

number of responses from those students engaged in pro bono activity, and those students who are yet to engage in pro bono activity, a comparative descriptive analysis can still be made. Moreover, whilst it has been suggested that the response rate was linked to the attitudes of the student towards pro bono there are a number of alternate and non-exclusive explanations. For example, the students may have had other commitments such as exams or coursework. Alternatively there may have been survey fatigue as they are faced with numerous surveys at the end of the academic year.

A further limitation of this study is that it relates to students studying on the M Law Exempting degree at Northumbria University. The author makes no claims regarding the application of the data to other students or institutions and it is recognised that further research is required although the findings cannot be generalised.

Norman also highlights a further issue with small sample sizes, namely that there may be concern about normal distributions.⁶⁹ By utilising the Mann-Whitney U-test, there were no presumptions that the data was normally distributed in the performance of the statistical analysis. Likert scales often have skewed or polarised distribution⁷⁰ and this was considered at the

⁶⁹ Ibid.

⁷⁰ Jamieson, S. (2004) 'Likert scale: how to (ab)use them' *Medical Education*. 38:1212-1218 [Online] DOI: 10.1111/j.1365-2929.2004.02012.x (Last accessed: 18 January 2015) p.1218

design stage as outlined above. However, by utilising the Mann-Whitney U-test, it is acknowledged that it is not as sensitive to statistical significance and therefore it may be that the data has not been tested as robustly as it might otherwise have been. However, for the reasons outlined above, it was deemed inappropriate to use alternative tests such as the t-test.

There is a further issue relating to the internal validity of the research. In so far as any causal relationship between the independent and dependent variables are suggested, it is noted that correlation does not necessarily mean causation. This study merely aims to establish a potential relationship between pro bono activity at law school and the likelihood of future pro bono activity.

A further limitation of this study relates to the reliability of the data, and in particular, reference should be made to the stability. The author highlights above that identifies respondents answers can change over the course of time. This is seen as an inherent issue within social research concerning attitudes as individual attitudes can alter over the course of time. However, with this in mind, the data is consistent with the studies of Granfield (2007) and Rhode (2003) suggesting that it should be considered reliable.

CONCLUSION

Whilst acknowledging the limitations of this study and that there is scope for further research, it does suggest that participation in pro bono work whilst at Northumbria University is not likely to increase the likelihood of future participation in pro bono activity following graduation.

The study supports the limited literature currently available indicating that law school pro bono programmes do little, if anything, to instil a sense of altruism in law students. However, the data further suggests that students value pro bono programmes and it is perceived that they carry substantial personal benefits. In particular, students report improved legal skills and enhanced employability. It is suggested that for these reasons, pro bono programmes are worthwhile and it is plausible to conclude there is value to society in adopting such programmes through the provision of free legal advice.

Annex A

Student attitudes towards pro bono and voluntary work

I am researching student perceptions of pro bono and voluntary work whilst at Law School. The aim of this research is to better understand how pro bono work in law schools and other voluntary work influences student attitudes.

Please note that the definition of 'pro bono' for the purposes of this survey means the provision of legal services without charge to the client. The definition of voluntary work is to engage in work without reward other than expenses.

As a student at Northumbria University, your participation in a survey would be appreciated. You will not be asked to provide any personal information and your answers will remain anonymous. To assist in maintaining anonymity, please do not include any identifying information in your answers such as names and places of work. The survey should take no more than 10 minutes to complete. You can exit the survey at any time by clicking on the 'Exit' button.

The information will be used to complete my dissertation module for an MA in Academic Practice. The information may also be used for publication in journal articles and conference papers.

Further information about this research can be found in the leaflet entitled 'Information about Research' attached to the invitation e-mail.

This study has ethical approval by the ethics committee of Faculty of Health and Life Sciences at Northumbria University.

The study also complies with the Data Protection Act 1998.

If you are happy to continue, please click next.

1. Which year of the MLaw degree are you currently in?

- Year 1
 Year 2
 Year 3
 Year 4

2. Are you male or female?

- Male
 Female

3. Please state why you chose to study law?

Student attitudes towards pro bono and voluntary work

4. Do you intend to pursue a legal career?

- Yes
 No
 Don't know

5. Please state why you wish to pursue a legal career?

6. If you known, please state your intended career aspirations and the reasons for these:

7. Do you currently undertake any pro bono work as part of your programme of study?

- Yes
 No
 Don't know

8. What pro bono work do you undertake as part of your programme of study?

- Student Law Office (live client)
 Street Law
 Other

Other (please specify)

Student attitudes towards pro bono and voluntary work

9. Approximately how many hours per week do you engage in pro bono as part of your programme?

- Less than 1 hour
 1-3 hours
 3-5 hours
 5-7 hours
 more than 7 hours

10. Please state whether you agree or disagree with the following statements

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
Pro bono work will assist in improving my legal skills	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work will improve my academic performance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work will assist me in obtaining employment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work has increased my awareness of social and economic issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work has changed my perception of social and economic issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am likely to continue undertaking pro bono work after I graduate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

11. Do you intend to undertake pro bono work in the future as part of your programme of study?

- Yes
 No
 Don't know

Student attitudes towards pro bono and voluntary work

12. What pro bono work do you intend to undertake as part of your programme of study?

- Student Law Office (live client)
- Street Law
- Other

Other (please specify)

13. Please state whether you agree or disagree with the following statements

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
Pro bono work will assist in improving my legal skills	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work will improve my academic performance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work will assist me in obtaining employment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work has increased my awareness of social and economic issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work has changed my perception of social and economic issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am likely to continue undertaking pro bono work after I graduate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

14. Would you like to undertake pro bono work as part of your study programme?

- Yes
- No
- Don't know

Please specify a reason for your answer

Student attitudes towards pro bono and voluntary work

15. Outside of your programme of study, do you undertake or have you previously undertaken any voluntary work?

- Yes
 No
 Don't know

16. What type of voluntary work do you undertake?

- Legal
 Non-legal
 Both

Please specify your voluntary work

17. Please state why you undertake voluntary work?

18. On average, how many hours per week do you engage in voluntary work?

- Less than 1 hour
 1- 3 hours
 3-5 hours
 5-7 hours
 more than 7 hours

Student attitudes towards pro bono and voluntary work

19. Please state whether you agree or disagree with the following statements

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
Voluntary work is important to support the wider community	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Voluntary work improves my legal skills	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Voluntary work will assist me in obtaining employment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Voluntary work has increased my awareness of social and economic issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Voluntary work has changes my perception of social and economic issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I am likely to continue with voluntary work after I graduate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

20. If you have not undertaken any voluntary work, would you like to in the future?

- Yes
 No
 Don't know

Please specify a reason for your answer

Student attitudes towards pro bono and voluntary work

21. Please rank the following statements in order of importance with 1 being the most important and 5 being the least important

<input type="text"/>	Pro bono in law schools improves access to justice
<input type="text"/>	Pro bono in law schools improves students' legal skills
<input type="text"/>	Pro bono in law schools improves students' employment prospects
<input type="text"/>	Pro bono in law schools improves students' awareness of social issues
<input type="text"/>	Pro bono in law schools encourages students to engage in pro bono following graduation

22. Please state whether you agree or disagree with the following statements

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
The legal profession has a duty to undertake pro bono work	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There should be a minimum number of pro bono hours for lawyers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro bono work should be compulsory for all lawyers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lawyers should voluntarily undertake pro bono work	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Law schools should make pro bono work a compulsory part of their programmes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Law schools should offer voluntary pro bono opportunities to their students	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Law students should undertake pro bono work at law school	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Thank you for completing this survey.

Please note that by clicking on the 'Submit' button, you consent to the data you have provided being used by the University of Northumbria at Newcastle in accordance with the information on the first page of this survey.

Reviewed Article: Teaching and Learning in Clinic

What does legal ethics teaching gain, if anything, from including a clinical component?

Anna Cody¹

University of New South Wales, Australia

acody@unsw.edu.au

In some law schools legal ethics have been taught very conservatively, focussed on the law of lawyering with a heavy emphasis on ‘professional rules’ and how to ensure solicitors and barristers behave within the professional rules². Others however have proposed different models for thinking about lawyering, lawyers’ ethical duties and the role of lawyers within the legal system. In this article, legal ethics, ethical decision making and values are explored. I ask what value can be gained by including a clinical component within a standard legal ethics course even when it is a short exposure experience. I explore the range of meanings ascribed to ethics and professional responsibility, and the connection between personal and professional identities. Finally using three vital elements within the definition of an

¹ Anna Cody is an Associate Professor of Law at University of New South Wales and Director of Kingsford Legal Centre, Australia. I would like to acknowledge the insights and assistance from Professor Judith Welch Wegner, Professor Alex Steel, Meena Sripathy and the two blind peer reviewers in writing this article.

² Australia now has Model rules of legal practice which are being used throughout each State and Territory.

ethical legal professional, I evaluate whether the clinical component contributes to teaching students about how to be an ethical legal professional. I draw from the Best Practices of Australian clinical legal education³ to assist with this process, and discuss some additional learnings which students gain from seeing legal practice modelled for them in a community legal centre, located within a university faculty of law. Some of the challenges of developing an effective clinical component are explored such as the importance of training volunteer lawyer supervisors and how to assess the learning by students. The ways of sharing the individual learning across the student cohort is also a further challenge.

DEFINING LEGAL PROFESSIONALISM

In England⁴, as well as in Australia, there is frequently a lack of clearly defined goals about the teaching of ethics, nor are there clearly defined values to teach. This is in part due to the fact that the “written ethics are found in what are essentially disciplinary, as opposed to aspirational, codes.”⁵ Ethics teaching frequently focuses

³ Best Practices in Australian Clinical legal education, , <http://www.olt.gov.au/project-strengthening-australian-legal-ed-clinical-experiences-monash-2010>, Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice. *Office for Learning and Teaching*, 2013.

⁴ Kevin Kerrigan, ‘How do you feel about this client?’- A commentary on the clinical model as a vehicle for teaching ethics to law students. 2007 *Int’l J Clinical Legal Educ* 7 2007.

⁵ Julian Webb, ‘Conduct, Ethics and Experience in Vocational Legal Education’ in *Ethical Challenges to Legal Education and Conduct*, Hart publishing, Oxford 1998 quoted in Kerrigan ‘How do you feel about this client?’-A commentary on the clinical model as a vehicle for teaching ethics to law students. 2007 *Int’l J. Clinical Legal Educ* 7 2007.

on professional responsibility rules⁶ or law rather than a discussion of the sort of lawyers we want to produce in our law schools, and the ethical frameworks to use when making decisions.

Frequently students say that they want to be 'professional' and yet when probed, can't really describe what this means. They will often respond using words such as 'objective', 'skilled', 'experienced'. Sometimes they will recognise that a professional has a responsibility not just to themselves but to the community also. They frequently refer to the importance of professional work and the relatively high status attached to it. It is a challenge for students to be specific in their definitions.

There is an interesting tension between what it means to be 'professional' and at the same time, being yourself within your work. Many have explored the tension between being a lawyer, a mouthpiece or advocate for someone else, arguing the law on behalf of someone and this being professional. But this can create tensions for those whose personal values may clash with the position they are arguing⁷. Webb⁸ has explored in depth the concept of 'ethics' and 'being' and the importance of measuring who you are as a lawyer, as well as what you do. As discussed below, in order to ensure a happy, well functioning legal professional, the person you are as a lawyer is also important, in line with what you do.

⁶ In England ethics are frequently taught through rules and in Australian and the USA this is similarly the case. Nigel Duncan and Susan L. Kay, 'Addressing Lawyer Competence, Ethics and Professionalism', in Frank Bloch ed, *The Global Clinical Movement*, 2011 London OUP.

⁷ Christine Parker and Adrian Evans, *Inside Lawyers Ethics*, 2nd Ed. Melbourne, Cambridge University Press 2014.

⁸ Julian Webb, *Being a Lawyer/Being a Human Being*, 5 *Legal Ethics* 130 2002

Professional identity highlights social responsibility or ethics but also includes creating competent⁹ legal professionals who are responsible to the individual client as well as the community.¹⁰ Each of the professions recognises that in addition to the individual relationship with a client or a patient, a professional also has a responsibility to the community to contribute to it in some form, to provide a service. The Carnegie Foundation for the Advancement of Teaching has reviewed the education of various groups of professionals and discusses “professional formation toward a moral core of service to and responsibility for others”¹¹.

A number of attempts have been made to try to define professionalism in light of these tensions. The MacCrate Report identified key values which are essential to lawyers. These include :

- a) Provision of competent representation;
- b) Striving to promote justice, fairness and morality;
- c) Striving to improve the profession;
- d) Professional self development.¹²

⁹ In the workshop given on the theme of clinical components within ethics subjects at the 2014 ICJLE conference, participants included ‘competence’ as one of the key ethical teachings which should be included within even a short clinical component.

¹⁰ William M Sullivan et Al, *Educating Lawyers: Preparation for the Profession of Law* (2007) (hereinafter the Carnegie report), as quoted in Tony Foley, Margie Rowe, Vivien Holmes and Stephen Tang, “Teaching professionalism in legal clinic- what new practitioners say is important” *International Journal of Clinical Legal Education*, Vol. 17, 2012.

¹¹ Neil Hamilton and Verna Monson, ‘Legal Education’s Ethical challenge: Empirical research on how most effectively to foster each student’s professional formation (professionalism)’ *University of St Thomas Law Journal*, Vol9:2 2012 p 332

¹² Report of the Task Force on law Schools and the Profession, *Narrowing the Gap: Legal Education and Professional Development-An Educational Continuum* (American Bar Association July 1992), (the MacCrate Report”)

Noone and Dickson have defined their requirements for a professionally responsible lawyer as someone who:

- 1.) fulfils the duties attached to a fiduciary relationship;
- 2.) is competent in the work they perform;
- 3.) communicates often, openly and clearly with their client;
- 4.) does not encourage the use of law to bring about injustice, oppression or discrimination;
- 5.) identifies, raises and discusses ethical issues with current/potential clients;
- 6.) seeks to enhance the administration of justice and actively engages in serving the community¹³.

Hyams builds on the Noone and Dickson definition, specifically adding to their six points, with three additional points of his own. These are:

- 1.) the lawyer should be able to work in an autonomous way-in an independent, self-sufficient and self-directed fashion;
- 2.) the lawyer should be able to exercise judgment-not only relating to how to resolve a client's problems, but reflective judgement of their own behaviours and actions;
- 3.) s/he should have an ongoing commitment to lifelong education-over and above that which is required by continuing professional development points.

Hyams describes this last point as requiring two things--first, an understanding that good lawyering and professionalism require an ongoing process of understanding personal limitations and a commitment to remain fresh, innovative and knowledgeable in professional work. Second, it requires the tools to put this

¹³ Mary Anne Noone and Judith Dickson, 'Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers' *4 Legal Ethics* 127 2001, 144

understanding and commitment into action¹⁴. Hyams refers to the understanding that all professionals have an obligation to contribute to the community in some form¹⁵.

Each of these definitions includes the key aspect:

- working towards or contributing to justice, fairness and the improvement of the legal system and serving the community, as part of the role of a lawyer.

The other two aspects which are used in this article as a framework of analysis are:

- gaining a sense of autonomy and self direction; and
- ongoing reflection and continual improvement.

The last two points are key aspects of an ethically responsible lawyer as the ability to reflect on oneself, how you are and what you do as a lawyer, is vital to being able to improve and be a competent lawyer. Ongoing reflection on how a lawyer contributes to the legal system and its ability to deliver justice is also necessary for any lawyer to be able to contribute to the justice system and serve the community. Autonomy and self direction is only an element in the Hyams definition and yet if autonomy is understood as being connected to motivation theory and an expression of self (discussed below), then it unites individual values with professional work and is thus a vital element of a responsible lawyer. These 3 points that I have identified

¹⁴ Ross Hyams, 'On teaching students to 'act like a lawyer': What sort of lawyer?'. *13 Int'l J. Clinical Legal Educ.* 21 2008, 44.

¹⁵ Ross Hyams, "On teaching students to 'act like a lawyer': What sort of lawyer?". *13 Int'l J. Clinical Legal Educ.* 21 2008, 21.

also fit within a community legal centre practice. They will be used to evaluate whether or not a clinical component, based in a community legal centre¹⁶, where students interview disadvantaged clients, can impact on and develop these 3 key aspects of professional identity, even where it is a brief exposure experience. The 3 elements are interconnected and contribute to each other.

The choice of any 3 elements is therefore always going to be arguable. I choose these 3 elements because they are vital to a lawyer being an ethical legal practitioner and because a clinical component within a community legal centre has the potential to teach these 3 key elements.

INDIVIDUAL VALUES AND PROFESSIONALISM; ETHICAL DECISION- MAKING

In addition to the difficulties in defining what professionalism means in a legal context, a further significant issue exists in negotiating the connection between individual values and professionalism. There are deep concerns about the ways in which legal education, and legal practice can be alienating for law students¹⁷ and

¹⁶ There are over 200 community legal centres in Australia which provide free legal help (advice, casework, community education and law reform services) to disadvantaged members of the community.
www.naclc.org.au

¹⁷ Larry Krieger "The Inseparability of Professionalism and Personal Satisfaction: perspectives on Values, Integrity and Happiness, *11 Clinical L.Rev.* 4125 (2005), and Tony Foley, Margie Rowe, Vivien Holmes and Stephen Tang, "Teaching professionalism in legal clinic- what new practitioners say is important" *International Journal of Clinical Legal Education*, Vol. 17, 2012

lawyers. Students in the common law jurisdictions, learn law largely through the Socratic method. This involves using cases to demonstrate the development of law and legal principle. The rich complexity of facts and people's lives are largely extracted out of the Socratic method¹⁸ and thus in large part, the human depth is also removed. Students are taught to argue a legal principle and doctrine, through case and statute law, and while their views of the particular legal doctrine may be sought at some point, they are secondary to being able to argue the development of the law. This way of constructing argument can be alienating to students. Some have argued that, "legal education and early lawyering experiences can tend to erode integrity by separating people from their personal values and beliefs, conscience, truthfulness, and intrinsic needs for caring and co- operation"¹⁹.

Others frame this a little more mildly, as the importance of a 'value-match' between a lawyer's own values and the values of their firm.²⁰ Or that even earlier, it is important to find a value match within the law school experience before entering practice²¹.

¹⁸ UNSW doesn't teach in a pure Socratic method and there is a range of practices that are more contextualised – such as structured class participation. See Alex Steel, Julian Laurens and Anna Huggins, *Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students' Engagement, Skills Development and Deep Learning (2012) 36(1) UNSW Law Journal 30*

¹⁹ Larry Krieger, 'The Inseparability of Professionalism and Personal Satisfaction: perspectives on Values, Integrity and Happiness, *11 Clinical L.Rev. 4125 (2005)*

²⁰ Tony Foley, Margie Rowe, Vivien Holmes and Stephen Tang "Teaching professionalism in legal clinic- what new practitioners say is important" *International Journal of Clinical Legal Education, Vol. 17, 2012*

²¹ Paula Lundstad, *Walk the Talk: Creating Learning Communities to Promote a Pedagogy of Justice, 4 Seattle J. Soc. Just. 613 2005-2006;*

The notion of 'values' has an obviously wide meaning. Some refer to it meaning a person's individual, personal and professional values, others refer to it as purely professional values²². This debate connects to the debate around professionalism. If one considers professionalism to be 'objective', without judgement, then personal values should not come into professionalism. However in this article, professionalism is defined to include recognising a responsibility to the community in the practice of law. This inevitably means more than just professional values and includes a person's sense of who they are, and what it means to them personally to be a lawyer. This is a view expounded by law and ethics teachers who connect the two²³. Many argue that the 2 cannot be separated as a lawyer is more than what they do but also who they are²⁴.

The connection between self and professionalism is something which theorists Christine Parker and Adrian Evans²⁵ have explored. They posit a theory of ethical frameworks with 4 key frameworks within which lawyers make ethical decisions. A lawyer may choose to use different frameworks at different times, or regularly feel more comfortable in one framework than another. Rarely does a lawyer always

²² Larry Krieger 'The Inseparability of Professionalism and Personal Satisfaction: perspectives on Values, Integrity and Happiness', *11 Clinical L.Rev.* 4125 (2005), and Tony Foley, Margie Rowe, Vivien Holmes and Stephen Tang 'Teaching professionalism in legal clinic- what new practitioners say is important'. *IJCLE*, Vol 17 2012.

²³ Julian Webb, Being a Lawyer/Being a Human Being, *5 Legal Ethics* 130 2002, Catherine Klein, Leah Wortham and Beryl Blaustone, Autonomy-Mastery-Purpose: Structuring Clinical Courses To Enhance These Critical Educational Goals, *17-18 Int'l J. Clinical Legal Educ.* 105 2012, Paula Lundstad, Walk the Talk: Creating Learning Communities to Promote a Pedagogy of Justice, *4 Seattle J. Soc. Just.* 613 2005-2006; Neil Hamilton and Verna Monson, 'Legal Education's Ethical challenge: Empirical research on how most effectively to foster each student's professional formation (professionalism)' *University of St Thomas Law Journal*, Vol9:2 2012.

²⁴ Julian Webb, Being a Lawyer/Being a Human Being, *5 Legal Ethics* 130 2002, Adrian Evans and Christine Parker, *'Inside Lawyers' Ethics'*, 2013, Cambridge University Press, Ch 2.

²⁵ Christine Parker and Adrian Evans, *'Inside Lawyers' Ethics'*, 2nd ed. 2014, Cambridge University Press, p32.

operate out of one framework. The 4 frameworks are: *adversarial advocate* in which a lawyer's role is to advocate zealously for the client's interests within the bounds of the law. Another is that of *responsible lawyer* who is seen predominantly as an officer of the court and the lawyer is responsible for making the law and the legal system work as fairly as possible. A *moral activist* model of ethics emphasises the importance of lawyers' position within society and their role in engaging in law reform activity to make law fairer and also to advise clients about a moral course of action. The fourth model is the *ethics of care* lawyering. In this the lawyer's responsibility to other people and to maintain relationships, and to avoid harm is the key consideration²⁶.

Students have the opportunity to explore ethical frameworks through the clinical component of their legal ethics course.

HOW THE CLINICAL COMPONENT WORKS

The clinical component functions as a part of the normal operations of a functioning community legal centre. This Centre, Kingsford Legal Centre²⁷, sees over 1800 clients each year providing free legal advice to them, as well as undertaking casework for over 300 clients each year and engaging in community education and law reform and policy work. The Centre runs 3 evening advice clinics each week

²⁶ *ibid* 7.

²⁷ www.kingsfordlegalcentre.org.au

with 10-12 clients given advice at each advice clinic. Each evening advice clinic is supervised by a staff clinical supervisor/solicitor with up to 6 volunteer solicitors and barristers who give their time voluntarily (pro bono).

All the students who participate in the clinical component are studying the course Lawyers, Ethics and Justice. Some are undergraduate²⁸ students completing a combined degree and so are mostly in their 3rd year of a 5 year program. Other students are Juris doctor²⁹ students who are studying law as a graduate degree and these students are generally in their first or second semester of a 3 year degree program. Students, before coming to the Centre are given a 2 hour class on the functioning of the Centre and an introduction to interviewing skills in their regular class time of Lawyers, Ethics and Justice. On arrival at the Centre before their assigned evening advice clinic a clinical elective student (who is studying an elective clinical course over the whole semester at the Centre) and a clinical supervisor teach them about the internal processes of the Centre, how to check for conflict of interest, give them a further explanation of the duty of confidentiality and teach them key points about working with interpreters. They also explain the support mechanisms available to students and give them a basic safety training.

After this 2 hour induction, students begin to take instructions from clients. After they have taken initial instructions from their first client, they leave the client waiting, go and discuss the case with a volunteer lawyer/supervisor and the

²⁸ <http://www.handbook.unsw.edu.au/undergraduate/courses/2015/LAWS1230.html>
²⁹ <http://www.handbook.unsw.edu.au/undergraduate/courses/2015/LAWS1230.html>

supervising solicitor/clinical supervisor, devise the legal advice in collaboration with the volunteer lawyer/supervisor, then return with the volunteer lawyer/supervisor. The volunteer lawyer gives advice while the student makes notes of the interview, and records the advice given. The student and volunteer solicitor have a short debrief after the interview, before the student sees another client to take instructions.

This article examines whether a brief, intense clinical component of a substantive ethics course can teach key aspects of ethics. As mentioned above, these are:

- working towards or contributing to justice, fairness and the improvement of the legal system and serving the community, as part of the role of a lawyer;
- the students/lawyers development of autonomy and self direction; and
- the need for ongoing reflection on their role, and continual improvement.

Such a component, even if only short, can give students a sense of how law can impact on disadvantaged people. It contributes to students' understanding of HOW they can use their law degrees to improve justice and the legal system as well as giving them a sense of autonomy. By providing a clinical component with real clients early in a law degree, students are exposed to a particular area of legal practice with which they must align their own values. Each decision on a case, will affect the life of the client as legal issues have a deep impact on the lives of

disadvantaged clients³⁰. Working with disadvantaged clients, students see the ways in which law can impact harshly in people's lives and thus their questioning of 'justice' and the 'law' is enlivened. The framework for thinking about ethical decision making and their role as future lawyer, is therefore particularly relevant.

Additional learnings gained by students will be explored. In addition, attention will be given to whether the clinical component meets the Best Practices in Australian Clinical Legal Education.³¹ This report was the first of its kind in Australia, documenting each of the clinical programs in place over the period 2009 to 2011³². It was guided by an international reference group of clinical legal education experts, and an Australian advisory council. It documented existing practice across all clinical programs through a survey and interviews with every program. From this empirical research, the research group developed the Best Practices in Australian Clinical Legal Education as a guide for those reviewing clinical programs and creating new ones, in order to develop high quality, rigorous clinical programs.

³⁰ NSW Law and Justice Foundation research on the impact of legal problems on disadvantaged clients. Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, Legal Australia-Wide Survey: legal need in Australia, Law and Justice Foundation of NSW, Sydney.

³¹ Best Practices in Australian Clinical legal education, , <http://www.olt.gov.au/project-strengthening-australian-legal-ed-clinical-experiences-monash-2010>, Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice. *Office for Learning and Teaching*. 2013.

³² Regional reports and final report Best Practices in Australian Clinical legal education, <http://www.olt.gov.au/project-strengthening-australian-legal-ed-clinical-experiences-monash-2010>, Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice. *Office for Learning and Teaching*. 2013.

TEACHING ETHICS THROUGH A CLINICAL COURSE: WHY THIS IS A VALUABLE WAY TO TEACH ETHICS

Ethics have mostly been formally taught in the classroom. However whenever law³³ is taught through clinical subjects, it is unavoidable that ethics issues and therefore ethics teaching³⁴ occurs. Additionally there are some law schools which have chosen to teach ethics either wholly through a clinic, or incorporating clinical components. For example, at the Catholic University³⁵ in Washington DC elements of clinical teaching are incorporated into their Professional Responsibility course. In many clinical courses, learning about ethical responsibilities is one of the learning objectives of the course.³⁶ There are also clinical courses whose specific aim is to teach legal ethics and professional responsibility³⁷. An alternative is to include a clinical component in an ethics course and this approach may be equally effective.

³³ Historically, law teaching has passed through many permutations. After the division between the academe and professional practice, Jerome Frank proposed in the early 20th century that law could be taught through a clinical law school. Some law schools have modelled themselves on being 'clinical law school' (Newcastle University NSW and Northumbria University) but this is not the norm.

³⁴ See the entry for Latrobe University at p 15 and the entry for University of New South Wales at page 36. Clinical Legal Education Guide, *Your guide to courses offered by Australian Universities in 2014*, Kingsford Legal Centre. 2014.

http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/55386_clinical_legal_education_guide_web.pdf

³⁵ Leah Wortham, interview with the author, December 2014 and Leah Wortham, *Thanks for the Book and the Movie*, 10 Clin. L. Rev. 399 (2003) (invited submission to symposium honoring the 25th anniversary of publication of Gary Bellow & Bea Moulton, *The Lawyering Process* (1978)).

³⁶ Clinical Legal Education Guide, *Your guide to courses offered by Australian Universities in 2014*, Kingsford Legal Centre. 2014.

http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/55386_clinical_legal_education_guide_web.pdf

³⁷ The course run by Latrobe University focuses on professional responsibility and has been run at a range of legal services including West Heidelberg Community Legal service, Preston Legal Aid among others. Best Practices Australian clinical legal education, Regional report Victoria and Tasmania 2011 page 5.

<http://law.monash.edu.au/about-us/legal/olt-project/regional-reports/index.html> Clinical Legal Education Guide, *Your guide to courses offered by Australian Universities in 2014*, Kingsford Legal Centre. 2014. page 16. http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/55386_clinical_legal_education_guide_web.pdf

“Once they encounter a client, the blind faith that there is a ‘truth’ or a ‘law’ that can be applied must give way to a more sophisticated understanding. Clients’ cases rarely present simple facts that lend themselves to right and wrong answers. It is the complexity and unpredictability of working with real people that makes clinical legal education so rich.”³⁸ This complexity of clients’ cases is rich ground for learning about ethical decision- making and the widespread occurrence of ethical issues.

However it cannot be assumed that simply by placing students in a clinic, they will learn ‘ethics’ and ethical decision- making. This does not occur via a process of osmosis. It has to be consciously planned and incorporated³⁹. The literature on such clinical approaches highlights a number of important pedagogical matters that are necessary to achieve fuller learning outcomes. Rather than assume that experience itself will teach students, the importance of de-brief and reflection is essential. Students need the opportunity to talk with each other about what they are learning and reflection is a key part of the learning process⁴⁰. The groundedness of teaching professional responsibility or ethics through a clinic, allows discussions such as the importance of cultural competence⁴¹. The diversity of clients, client

³⁸ Jane Aitken, ‘Provocateurs for Justice’, 7 *Clin.L.Rev.* 287 at page 292.

³⁹ Some have argued that a clinic is not the best place to teach ethics because the ways in which ethical issues arise are unpredictable which means that students will have varying experiences of ethical issues and range of different issues. Despite this, ethical issues can be shared and the learning spread amongst a group of students through class discussions, class presentations, group debriefs. Margaret Martin Barry and Peter A. Joy, ‘Clinical Education for This Millenium: The Third Wave’, 7 *Clinical L. Rev.* 1 2000-2001

⁴⁰ Margaret Martin Barry and Peter A. Joy, ‘Clinical Education for This Millenium: The Third Wave’, 7 *Clinical L. Rev.* 1 2000-2001

⁴¹ Antoinette Sedillo Lopez, Teaching a Professional Responsibility Course: Lessons Learned From the Clinic, 26 *J. Legal Prof.* 149 2002.

experience and the legal issues clients face, provide rich learning for students around cross cultural communication and the importance of working effectively with a broad range of culturally diverse clients. Class-room components of clinical subjects should therefore also include training on cultural competence.

Conceptualising the role of a clinical office as a role model in legal practice about how a legal practitioner should behave and what ethical decision-making means, is also highly significant. There are legitimately a range of views about what is ethical legal practice and appropriate lawyering styles and approaches. The individual behaviour of the clinic lawyers which students observe, give students rich material to critique, analyse and reflect on how to be a lawyer. As Noone et al note, 'Through working with solicitors and being able to observe first hand different lawyering styles, students will begin to develop a deep understanding of ethical practice'⁴².

Clinics can also highlight the public nature of the work of lawyers and therefore, the public responsibility that lawyers also hold⁴³. When the Latrobe University ethics course was offered through West Heidelberg Community legal service it included a component which encouraged clinical students to recognise the limitations of the law and develop law reform solutions to problems which they identified through their work on client cases⁴⁴. Students, by identifying problems with the law and

⁴² Mary Anne Noone, Judith Dickson and Liz Curran, 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice' (2005) 8 *International Journal of Clinical Legal Education* 104, 111.

⁴³ Parker, S 2001, 'Why Lawyers Should do Pro Bono work' 19 (1 and 2) *Law and Context*.

⁴⁴ Liz Curran (2004) 'Responsive Law Reform Initiatives by Students on Clinical Placement at La Trobe Law' 7(2) *Flinders Journal of Law Reform* 287.

then by taking an active role in coming up with solutions, were already in the role of responsible lawyer or moral activist lawyer, responsible for ensuring that law and the legal system operate as fairly as possible. Thus the model of ethical lawyering which Parker and Evans discuss⁴⁵ was actively structured into the clinical course.

Other clinical courses generally aim to teach ethics as one of their principal learning objectives. This is defined as being about teaching law in context and the role of law in society as well as the role of lawyers in society.⁴⁶ These learnings are possible within a full clinical course spanning over a semester, with students attending between 1 and 2 days a week at their clinical site, whether it be a community legal centre, a law reform agency or legal regulation authority.

EMBEDDING CLINICAL COMPONENTS WITHIN COURSES.

Having outlined the key issues around professionalism and legal ethics and how clinical courses have the potential to explore these issues, this section discusses the extent to which it is possible to teach the 3 key elements, when a clinical component is embedded within an ethics course⁴⁷, using the example of the clinical component at University of New South Wales, Australia, Kingsford Legal Centre.

⁴⁵ Parker and Evans identify the model of 'responsible lawyer' who is an officer of the Court and who is concerned to make the legal system function smoothly and fairly. Table 2.2 Chapter 2, Adrian Evans and Christine Parker, *Inside Lawyers Ethics*, 2nd ed, Melbourne, Cambridge University Press 2013.

⁴⁶ Kevin Kerrigan, 'How do you feel about this client?'- A commentary on the clinical model as a vehicle for teaching ethics to law students. 2007 *Int'l J Clinical Legal Educ* 7 2007, p16.

⁴⁷ Other Australian courses which include a clinical component in Australia are the family law and dispute resolution courses developed by Charles Darwin University in the Northern Territory. This clinical component involves students studying in Darwin the theoretical component of Family law or Dispute resolution over a period of 10 weeks, then travelling over 5000 km south to work for 2 weeks in a community legal centre in

1. Working towards or contributing to justice, fairness and the improvement of the legal system and serving the community, as part of the role of a lawyer;

In this post client interview debrief, and also in the initial briefing of the volunteer lawyer by the student there are a range of issues which often emerge. These include:

- a). a solicitor must act on the instructions of a client and if a client has a disability how do lawyers deal with the client? Does a psychiatric disability impact on how a lawyer thinks about a client's ability to give instructions? What is disability? How are clients impacted within the legal system by having a disability?
- b). Who are the legal profession? Who are clients? Does the limited diversity of the legal profession impact on the experience of disadvantaged clients seeking legal help?
- c). What are conflicts of interest? How should a legal practice manage conflicts of interest within families?
- d). What does acting on instructions mean?
- e). What is a lawyer's responsibility when asked for advice about doing something which is illegal?
- f). What is the role of a lawyer and the limit on students who cannot give legal advice?

Northern Victoria which specialises in family law. The other course in Australia as discussed in the Best Practice research project is the LaTrobe Judicial mentoring component which is a component of Family, Society and law; and Criminal Procedure and Evidence. www.OLTC Regional reports, Northern Territory, and Victoria and Tasmania.

g). How much information should lawyers give clients about why they don't have a good case, taking into account issues of client autonomy issues versus complexity/paternalism/disadvantage?

This range of issues is indicative of the type of issues that arise. It is very wide ranging and depending on the clients who seek legal advice, the issues they raise vary. Additionally the discussion which ensues about these issues can vary, depending on the volunteer lawyer/supervisor who is working with the client and student. The strategy the Centre has developed for ensuring that some of these issues are discussed is to encourage volunteer lawyers/supervisors to analyse with the student any issues which arose during the interview process. The staff clinical supervisor/solicitor may also participate in these discussions. The two challenges with this approach are: the variability of the issues which arise, and the ability of volunteer lawyers to identify issues and discuss them appropriately.

CHALLENGES IN STUDENTS THINKING ABOUT THEIR ROLE AND CONTRIBUTING TO THE COMMUNITY

Some of the volunteer lawyer/supervisors come from a legal services/legal aid background and are accustomed to working with disadvantaged clients. These lawyers have, for example, thought through issues of working with clients with disability whose ability to give instructions may be challenged in some way, or issues of working with culturally diverse clients. There are also lawyers from large

commercial firms and small suburban practices. Each volunteer lawyer/supervisor brings their perspective on the issues named above. Because of this, each student will experience a different debrief also, not only because they see different clients but because each lawyer will approach the client uniquely. Some may be able to see structural injustices more readily, others not. This variability is both a weakness of the clinical component and a strength.

It is a strength because it demonstrates to students that each lawyer has to grapple with issues themselves individually, with support, but that there isn't a 'one right answer' to ethical issues. Each lawyer brings their experience, individual values and perspectives to the discussion. Often the most interesting discussions will be among the group of lawyers and the staff clinical supervisor about how to deal with an issue, and students observe these and can also participate in them. Students may observe disagreement or robust discussion about how to deal with a particular client. This emphasises to students that ethical issues are not clear cut and there are a range of ways of dealing with issues.

Because the issues which arise from each clinical experience vary so substantially between students, it is a challenge to ensure these individual issues can be shared within a larger group. The lessons which are available to be learnt from each of the issues are not made available to *all* students, rather they are only available to a few students, those present at the evening advice session. This is a weakness of the

clinical component as the full learning potential of the issues which arise in each evening advice session, is not fully developed across the cohort of students.

Two ways of deepening and sharing the individual learning would be to ask some students to present verbally on their specific experiences during their interview session, to the larger class, and also draw on student's individual experiences when discussing broader ethical issues such as the duty of confidentiality or fiduciary relationships. Students could also gain points in their grades for class participation⁴⁸ for using anonymised examples from the interviewing clinical component. These would be two mechanisms to draw greater learning from the clinical component. The added benefit of these approaches would be that it would also enable peer to peer learning, beginning the process within the formal class setting, of drawing on peers to explore and resolve ethical issues. This would have substantial benefit for the students' later legal practice⁴⁹. Another method for ensuring peer to peer learning would be to require students to comment on 3 other student assignments.

By requiring students to complete a set reflective assignment which asks students to reflect on any ethical issues which arose during their interviewing session, students are all asked to identify specific issues, even though they will have experienced different issues. In this way the experience is assessed equally among the group,

⁴⁸ At UNSW students are graded for their class participation including preparation for class, ability to identify issues and contribute to discussion among other criteria.

⁴⁹ Alex Steel, Julian Laurens and Anna Huggins, 'Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students' Engagement, Skills Development and Deep Learning' (2012) 36(1) *UNSW Law Journal* 30

although the insights that students gain are not shared with the group, limiting the potential of peer to peer learning.

RESPONSIBILITY TO CONTRIBUTE TO THE LEGAL SYSTEM TO MAKE IT FAIRER

The other implicit message which is given by incorporating a clinical component within a core course on legal ethics, is that universities and law faculties have a responsibility to respond in some way to unmet legal need. Students contribute actively in providing legal services to disadvantaged people. By situating a clinical component within an 'in house' clinic it gives the clear message to students that this is the core work of the law faculty and integrates students into this role. It communicates to those students that they are part of the legal system, participating in it and they are giving help to people who need legal help and who can't afford to pay for it. It then prompts the question, what responsibility does each lawyer have, within the legal system, with their skills and training, to provide legal help to disadvantaged people.

The law school simultaneously answers that question implicitly by funding an in house clinic and requiring all students to complete the clinical component. 'Law school clinics continue to play an important role in making access to justice a reality for many low-income people. They do so not only by exposing law students to the

legal problems that the poor face but also by allowing students to experience what amounts to a "tactile" connection with the obligation to find substantive and creative ways to respond to unmet legal needs.⁵⁰

This is another aspect of this first point which students learn through their clinical component. The law school models the answer to the question of what responsibility does each legal practitioner have to the law and the legal system.

2. Student autonomy

This is the 2nd element of the ethical legal professional which is taught through the clinical component.

Students do not observe interviewing of clients with legal problems, or only role play it, rather they actually interview real clients. This ideally supports a sense of purpose in students' lives. According to Ryan and Deci 'the needs for autonomy, competence, and relatedness "appear to be essential for facilitating optimal functioning of the natural propensities for growth and integration, as well as for constructive social development and personal well-being."'⁵¹ They developed self-determination theory which explains what 'helps people to thrive and maximize positive motivation'. Experiences of autonomy and relatedness, such as interviewing clients in a supportive environment, is the type of experience which

⁵⁰ Margaret Martin Barry and Peter A. Joy, 'Clinical Education for This Millenium: The Third Wave', 7 *Clinical L. Rev.* 1 2000-2001.

⁵¹ Leah Wortham, Catherine Klein and Beryl Blaustone, Autonomy-Mastery-Purpose: Structuring Clinical Courses to Enhance These Critical Educational Goals. 17-18 *Int'l J. Clinical Legal Educ.* 105 2012, p 113, quoting Ryan and Deci, Self Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well Being, 55 *Am. Psych.* 68 68 (2000) Rev

would maximize positive motivation in students and help them to thrive. This is an issue which would warrant further research with the student group.

Students comment informally about the impact of being responsible for interviewing the client, finding out what the client needs help with and how they can contribute to that. For many it is their first experience of seeing how law can help people and how impenetrable the legal system can be for disadvantaged people. Most students are very nervous about whether they will be able to successfully interview clients before they interview. Almost all students feel a sense of accomplishment at the end of the evening advice clinic when they have interviewed clients. In their reflection assignment they readily identify areas for improvement but also refer to what they are able to achieve in their interview. Through this it appears that the clinical component builds students' sense of autonomy and builds their motivation. These accounts are anecdotal and warrant further empirical research.

3. How does the clinical component teach students the importance of reflection and ongoing improvement?

This is the 3rd of the key elements found in the various definitions of what makes an ethical legal professional. Rather than assume that experience itself will teach students, the importance of de-brief and reflection is essential. Students need the

opportunity to talk with each other about what they are learning and reflection is a key part of the learning process⁵².

This occurs both formally and informally through the clinical component in ethics at UNSW. Students are encouraged to discuss their experiences informally in a group setting at the end of, and during the interview advice clinic. They are also asked to complete a formal assignment reflecting on their interview experience. There are two aspects of reflection which should be addressed here.

One is the student's self reflection, about how the interviewer conducted the interview, areas for improvement and issues which arose between the interviewer and interviewee. The other area for reflection is about ethical issues which may have arisen or broader issues around the law and legal system and the client's participation within it. Both these areas of reflection are included in the reflective assignment. Generally students are able to effectively answer the question reflecting on their own interviewing practice⁵³. Their ability to reflect on the legal system and the law varies.

The Best Practices include reflection as a vital element within clinical components stating:

In all clinical courses and components, debriefing and discussion that encourages reflection are emphasised. Further structured opportunities for reflection are a

⁵² Peter Joy, The Ethics of Law School Clinic Students as Student-Lawyers, *45 South Texas L.Rev* 815 at 839

⁵³ There is no empirical evidence of the students' ability to reflect, however the clinical component has been in place for over 14 years and a large number of reflective assignments, demonstrating reflective ability have been submitted for assessment.

*clearly articulated and important part of any clinical course. Reflection is informed by relevant literature and incorporated into every clinical course in a structured, planned and thoughtful way*⁵⁴.

In this way the clinical component is structured to meet the best practices. The assessment of reflection will be discussed further below.

There are additional learnings that students gain from their clinical component and these will now be discussed.

MODELLING COLLABORATIVE TEAM WORK AND DEMONSTRATING A PARTICULAR TYPE OF LEGAL PRACTICE

In addition to teaching ethics and ethical decision making formally, the methodology of teaching is equally important. If one of the values which is sought to be taught, is collaborative team work, then this must be modelled⁵⁵. It is vital therefore that in supervision the clinical supervisor demonstrates respectful and mutual relationships with volunteer supervisor solicitors. The relationship between clinical supervisor and volunteer solicitor supervisor must use clear communication.

⁵⁴ Best Practices in Australian Clinical legal education, , <http://www.olt.gov.au/project-strengthening-australian-legal-ed-clinical-experiences-monash-2010>, Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice. Office for Learning and Teaching, 2013. p 58.

⁵⁵ Lustbader, Walk the Talk: Creating Learning Communities to Promote a Pedagogy of Justice 4 *Seattle J Soc Just* 613, 628.

Discussing professional values in a clinical setting can assist students to begin to identify their own professional sense, and so be better able to assess in the future whether a particular practice will suit their professional identity⁵⁶. The role of a clinical office being a role model in legal practice about how a legal practitioner should behave and what ethical decision making means, cannot be overrated. By providing the opportunity to *all* 1st or 2nd or 3rd year students to participate in the clinical component situated at a functioning community legal centre, students are given the chance to participate in a particular type of legal practice and begin thinking about whether that type of legal practice is one which would suit their values, and their approach to law. It shows other legal professionals volunteering their time, and so, by example they are shown that other legal professionals believe they should contribute to the community with their legal knowledge. It indirectly addresses the issue of ‘what responsibility does each legal professional have to contribute to the community?’

Students have modelled for them, ways of being a lawyer with disadvantaged clients. They also have collaborative team work modelled as the supervising clinical supervisor solicitor works with the volunteer supervisor solicitors. They are given a high degree of responsibility through actually taking instructions from clients, briefing the supervising solicitor and researching the law and writing up the advice given. Through the reflection assignment and informally at the advice session,

⁵⁶Tony Foley, Margie Rowe, Vivien Holmes and Stephen Tang “Teaching professionalism in legal clinic- what new practitioners say is important” *International Journal of Clinical Legal Education*, Vol. 17, 2012, 26.

students reflect on aspects of the law, the legal system, their own interviewing skills and the experience of the client. This aspect, teaching student autonomy, is another critical learning.

TRAINING OF SUPERVISORS WITHIN THE CLINICAL COMPONENT AND ASSESSMENT

As discussed above under the first point, students are expected to be able to reflect on a range of issues, including the client's and their own place in the legal system and ethical issues which arise. Ideally students during the evening advice clinic discuss with their volunteer lawyer supervisors aspects of their experience. The volunteer lawyer supervisors should also be able to give them formative feedback about their performance. This capacity will vary substantially among the volunteer lawyer supervisors. The Best Practices Report discusses the importance of assessing reflection, using a criterion-based approach that focuses on both the reflective process, the content of the reflection, and the linkage to learning outcomes⁵⁷.

Currently students' interviews are not formally assessed using criterion-based standards although ideally volunteer lawyer supervisors are expected to give formative feedback. Students will often raise difficulties they faced while

⁵⁷ Best Practices in Australian Clinical legal education, , <http://www.olt.gov.au/project-strengthening-australian-legal-ed-clinical-experiences-monash-2010>, Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice. *Office for Learning and Teaching*, 2013. P59.

interviewing and the volunteer lawyer supervisors, as well as the supervising clinical solicitor, give feedback about how to improve the interviewing practice. The reflection assignment, which follows the interviewing experience, is the summative assessment of the clinical component, which assesses the students' ability to evaluate their own interviewing, as well as their thinking about their own current and future contribution to the law and legal system. There are 3 questions within this assignment and the mark contributes to 15% of the overall grade students receive for the course. There is a published assessment⁵⁸ rubric which outlines which aspects are assessed⁵⁹. Students ideally draw on set readings about good interviewing practice⁶⁰ and identify how they were or were not able to use good interviewing practice. Students must identify how they can improve in the future. They don't have the opportunity to interview further clients.

In this way the clinical component reflects the insight from Stuckey et al that 'optimal learning from experience involves a continuous, circular four stage sequence of experience, reflection, theory and application.'⁶¹ By including a

⁵⁸, Formal assessment, using publicised criteria, is combined with informal feedback delivered when opportunity presents itself or necessity requires it', Best Practices in Australian Clinical legal education, <http://www.olt.gov.au/project-strengthening-australian-legal-ed-clinical-experiences-monash-2010>, Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice. *Office for Learning and Teaching*, 2013.

⁵⁹ The rubric informs students that their identification of ethical issues is assessed, the ability to apply ethical frameworks to real life situations, their reflection on experience, their identification of good interviewing technique and their ability to incorporate theory from readings into reflection on practical experience.

⁶⁰ These are readings which are assigned for the formal class on interviewing including Kay Lauchland, Ch 3, 'The Importance of good communication', *Legal Interviewing: Theory, Tactics and Techniques*, KA Lauchland and MJ Le Brun, Butterworths Australia, 1996 ; Chapter 2, 'Interviewing-Listening and Questioning', Ross Hyams, Susan Campbell, Adrian Evans, , *Practical Legal Skills: Developing New Clinical Technique*, 4th ed, Oxford University Press, Australia and New Zealand 2014.

⁶¹ Stuckey and Others, *Best Practices for Legal Education, A Vision and a Road Map*, Clinical Legal Education Association, 2007.

reflective assignment, which draws on theory, the clinical component teaches students the significance of that circular process.

Within the clinical component delivered through Kingsford Legal Centre at UNSW, volunteer supervisor solicitors who are actively working with students, guide them in taking client instructions, work with them to develop legal advice for the client, supervise their note taking and written summaries of client advice. These volunteers are not given formal training for their role teaching students. There are also clinical supervising solicitors who *are* trained in clinical supervision who supervise the volunteer supervisor solicitors and who provide on-the-job training through modelling appropriate student teaching and supervision. The volunteer supervisor solicitors *do* get training in relevant areas of law within a community legal practice, but no training on *how* to supervise students. One of the concerns has been that it may be too taxing on volunteer supervisor solicitors to require them to also gain training in supervision skills when they are donating their time to the Centre for disadvantaged clients. Anecdotally however, many of the volunteer supervisor solicitors also comment on the pleasure they gain in working with law students and supervising their work⁶².

At the very least, training in supervision skills should be offered to *all* volunteer solicitor supervisors. Even if they don't immediately identify the usefulness of

⁶² Each year there is an annual dinner to thank volunteer solicitors at Kingsford Legal Centre, at which many of the volunteer solicitors offer their observations of the sense of worth and pleasure they gain from supervising law students.

receiving training in their supervising of students, supervision skills will be transferable to their workplaces where they may supervise other employees.

The Best Practices make clear that:

“All supervisors, including short-term, locum and agency-employed supervisors, [should be] trained in the process of supervision and provided with the time and resources to fulfil their responsibilities.

Supervisors [should be] able to participate in specific supervision training courses and skills development processes. Universities [will] give ongoing commitment to the professional development of supervisors”⁶³.

If the aim of the clinical component is to teach the 3 elements outlined above, then it is key that the volunteer lawyer supervisors are trained *how* to teach these elements. Due to the differences among the group of volunteer lawyers, some from private practice, others from large commercial law firms, others from legal aid practices, they would need an opportunity to reflect themselves on the sorts of issues which arise in interviewing disadvantaged clients. Training would provide opportunity for the volunteer lawyer supervisors to reflect on these issues. They could also be asked for their views on ‘good interviewing practice’. As they are experienced lawyers, there would be room for ample discussion of both these issues in the

⁶³ Best Practices in Australian Clinical legal education, <http://www.olt.gov.au/project-strengthening-australian-legal-ed-clinical-experiences-monash-2010>, Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice. *Office for Learning and Teaching*, 2013. P56.

process of teaching them to teach the students how to reflect on their role as future lawyers contributing to the community and the need for continual improvement and ongoing reflection. At a base level, due to each lawyer volunteering their time, at the least, these lawyers/supervisors believe they have a responsibility to contribute in some form to the community. Small group discussion about both of these aspects would be an effective mechanism to train them. The volunteer lawyer supervisors may then need further support during the advice clinics in encouraging students to think critically about their role, and their interviewing.

In order to train the lawyers to teach student autonomy it would be useful to outline some of the history of clinical legal education methodology and the importance of giving students responsibility⁶⁴ for their work within that. From this a range of ways of encouraging autonomy could be discussed such as students participating in researching advice, students' views being sought about clients' issues, students writing up of the advice being constructively critiqued. The broader linking between personal values and self motivation could also be taught with some references provided to the volunteer lawyer supervisors for their further reading. Another aspect of developing student autonomy is giving effective and timely feedback. This is also recognised in the best practices which state that:

“frequency of feedback [should be] planned before the use of clinical components to ensure

⁶⁴ Simon Rice, (1996), A Guide to Implementing Clinical Teaching Method in the Law School Curriculum; Jeff Giddings, Clinical Legal Education in Australia: A Historical Perspective, 3 Int'l J. Clinical Legal Educ. 7 2003; Catherine Klein, Leah Wortham and Beryl Blaustone, Autonomy-Mastery-Purpose: Structuring Clinical Courses To Enhance These Critical Educational Goals, 17-18 Int'l J. Clinical Legal Educ. 105 2012

that such feedback is consistent across the student body; and supports the clinical process.”⁶⁵

To train the lawyers to teach ongoing reflection, ideally the volunteer lawyer supervisors would be trained to ask at the end of each interview “What did we do well? And what could we do better?”. This could then model to the student the importance of self assessment and critique on an ongoing basis. The volunteer lawyer supervisor could also be encouraged to reflect on their interviewing of the client and model the analysis of what worked well, and what could be improved with the client. The volunteer lawyer supervisors could engage in role plays in training in order to develop their skills in these areas.

After this training, the following challenge would be to measure whether the students are learning these 3 elements. Currently the only way of measuring this is through the content of the reflective assignment completed by each student. These demonstrate that most students *are* able to reflect on their future role as a lawyer and critique their own interviewing. To assess whether they are learning autonomy is more difficult. The only mechanism is the student’s own evaluation of their sense of growth and learning through the experience. Learning about the need for ongoing improvement and self reflection can probably be measured through the reflection assignment and also a student’s before, and after, self evaluation. Empirical research on each of these aspects, asking students to give their views on each aspect both

⁶⁵ Best Practices in Australian Clinical legal education, , <http://www.olt.gov.au/project-strengthening-australian-legal-ed-clinical-experiences-monash-2010>, Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice. *Office for Learning and Teaching* ,2013, p 57.

before, and after their clinical component may provide a means to measure the impact of the learning through the clinical component.

CHALLENGES OF A CLINICAL COMPONENT WITHIN A SUBSTANTIVE LAW SUBJECT

From this brief discussion, it is apparent that there are valuable learnings on ethical practice and decision making for students, even within a brief 5 hour, interview advice session, clinical component. Integrating clinical experiences and methodologies into the substantive curriculum has been discussed and generally recognized as a valuable innovation within legal education⁶⁶. Other law schools have attempted to incorporate clinical elements within substantive courses such as at the University of Maryland, University of New Mexico and New York University.⁶⁷ Working with actual clients within the first or second year is not widely adopted and yet has distinct advantages.

There are 2 distinct areas for improvement and growth within the clinical component.

The integration between the clinical component and the substantive ethics subject at UNSW Law can be challenging. While the 3 specific elements discussed are taught

⁶⁶ Margaret Martin Barry and Peter A. Joy, 'Clinical Education for This Millenium: The Third Wave', 7 *Clinical L. Rev.* 1 2000-2001

⁶⁷ Margaret Martin Barry and Peter A. Joy, 'Clinical Education for This Millenium: The Third Wave', 7 *Clinical L. Rev.* 1 2000-2001, p44.

within the clinical component, the greater challenge is 'how to get the most' out of a valuable and rare clinical component within a substantive law subject across the cohort of students. A community law centre, which is largely in-house, cannot offer a clinical learning experience in a range of substantive law subjects especially when there are over 180 students each semester. It is too resource intensive. As some of the learning is individually based, ways to encourage peer-to-peer learning, and deepen the learning from the clinical component, should be explored. These possible approaches could include introducing an individual oral presentation to the class, as an assessment alternative, and attributing marks for class participation where students use their clinical component to describe or analyse ethical issues in discussions occurring during the course.

The second area for growth is in training volunteer lawyer supervisors to teach the 3 elements more effectively and to explore effective assessment of these. This has been discussed at length above.

CONCLUSION

From this discussion, it is apparent that ethics training and awareness is a vital part of any legal education and career. Rather than focus on disciplinary consequences of malpractice, it is key to recognize that an ethical lawyer will identify their responsibility to contribute to the community, to the legal system and to improving

justice for the community. They will also be committed to competent, self directed and autonomous lawyering. Ongoing reflection and continual improvement in their work will be a further aspect of their work. These 3 elements of what makes an ethical legal professional are developed, even in a short, sharp clinical component within a broader ethics course. Clinics have particular riches to offer the teaching of ethics. A relatively short clinical component within a substantive ethics subject will provide deep learning for students including these 3 key elements, as well as modelling teamwork and modelling the role of other legal professionals contributing to the community. The challenges include ensuring the training of all volunteer lawyer supervisors in supervision skills. As the supervisors will have varying skills and perspectives on the law and their role in the legal system, it is essential to provide a forum in which to explore their own interviewing practice, and values and beliefs around the role of lawyers in contributing to the community. Training in giving effective feedback, including using role plays will be an essential way to improve the clinical component. The other area for improvement is to gain as much from the individual experience and reflections of students, across the student cohort through some additional assessment options and sharing of individual experience in class time. Finally, it strengthens clinical components to use the best practices in clinical education to assist in their design.

Extended Reflection: Teaching and Learning in Clinic

Clinic is the Basis for a Complete Legal Education: Quality Assurance, Learning Outcomes and the Clinical Method

Neil Gold¹

University of Windsor, Canada

INTRODUCTION

Clinic is the basis for a complete legal education.² The time has come to stop treating clinic as a marginal, alternative approach to learning some but not all things requisite for a sound legal education aimed at producing capable practitioners. It is a powerfully effective, experiential and varied, comprehensive approach to the structure and contents of a legal education. I will argue that given a full interpretation of the term “Clinical Legal Education” (CLE), CLE in its many forms can serve as the model for a legal education. Also, in this paper I will examine the relationship between the learning outcomes we have for a legal education and the learning methods characteristic of a

¹ Neil Gold is Professor Emeritus in the Faculty of Law at the University of Windsor, Canada.

² There is a discussion of the meaning of the term Clinical Legal Education, as I use it, in Section 6. Some readers may wish to come back to the beginning after reading the section entitled “What is clinical legal education?”.

variety of forms of clinical legal education. At another time it will be useful to show how assessment of learning through clinic suits the full range of outcomes as well.

1. LEARNING OUTCOMES

In Australia, Canada, Europe, New Zealand, UK, and in many regions of the USA, outcomes oriented programme planning, delivering, assessing and evaluating govern tertiary³ education quality assurance. While no two jurisdictions are the same, those conforming to recognized quality assurance models require institutions to demonstrate that graduates have achieved, or are likely to have achieved, a specified range of learning outcomes organized within an acceptable taxonomy or classification system.⁴ Tertiary

³ In some places, “post-secondary” education.

⁴ 1. Quality Assurance Authority for Higher Education, *UK Quality Code for Higher Education, Part A: Setting and maintaining threshold academic standards; Chapter A1: The national level*. (December 2011)(See p. 9 ff. for outcomes)

<http://www.qaa.ac.uk/Publications/InformationAndGuidance/Pages/quality-code-A1.aspx>

2. Australian Qualification Framework Council, *Australian Qualifications Framework*, First Edition. (July 2011) (See pp. 11-18 for learning outcomes)

http://www.aqf.edu.au/Portals/0/Documents/Handbook/Greyscale%20-%20AQF_HndBkjul2011_LOCKED_PrintableVersion.pdf

3. Council of Ministers of Education, Canada, *Ministerial Statement on Quality Assurance of Degree Education in Canada*. (2007)

<http://www.cmec.ca/Publications/Lists/Publications/Attachments/95/QA-Statement-2007.en.pdf>

4. Campus Alberta Quality Council, *HANDBOOK: Quality Assessment and Quality Assurance*, First Edition. (February 2009, with revisions to December 2011)

(Council adopts Ministerial Statement on QA –above)

http://www.caqc.gov.ab.ca/media/1102/handbook_december_2011_revised_2012_04.pdf

5. New Zealand Qualification Authority, *The New Zealand Register of Quality Assured Qualifications*. (October 2007) (See pp. 8/11 re need to establish outcomes for programs)

<http://www.nzqa.govt.nz/assets/Studying-in-NZ/New-Zealand-Qualification-Framework/theregister-booklet.pdf>

systems tend to apply the same schema to all baccalaureate programs, preferring professional programs to add anything that they believe the general set of expectations for university graduates may be lacking.

Many professions have long recognized outcomes orientations that aim for professional competence. Competencies and abilities, profession-agreed learning outcomes, are at the heart of accounting, business, nursing, social work, medical, engineering and many other professional education and accreditation models in numerous jurisdictions.⁵ Outcomes, or competency-based approaches, to university legal education and the professional preparation of lawyers exist in some places but are less prevalent than in other professions. Discussion in much of the recent legal education literature moves or aims to

6. Middle States Commission on Higher Education, *Characteristics of Excellence in Higher Education: Requirements of Affiliation and Standards for Accreditation*. 2006

(See pp. 40-44 - Standard 11: Educational Offerings re need to establish learning outcomes)

<http://www.msche.org/publications/CHX-2011-WEB.pdf>

7. WASC (Western Association of Schools and Colleges) Accrediting Commission for Senior Colleges and Universities, *Handbook of Accreditation* (2008 , with Revision to Commission's Decisions, 2012)

(See pp. 14-15 – Achieving Educational Objectives Through Core Functions: Teaching and Learning- discusses use of learning objectives)

http://www.wascenior.org/findit/files/forms/Handbook_of_Accreditation.pdf

8. Lumina Foundation, *The Degree Qualifications Profile* (2011)

(See pp. 11-20) http://www.luminafoundation.org/wp-content/uploads/2011/02/The_Degree_Qualifications_Profile.pdf

⁵ Stuckey, R. and others, *Best Practices for Legal Education*, CLEA (2007) (Stuckey) The full volume is available on line as a pdf at http://law.sc.edu/faculty/stuckey/best_practices/best_practices-cover.pdf

move legal education closer to the mainstream of professional, competency-based⁶ education, generally.⁷

Applying a Canadian (Ontario) model of learning outcomes, as well as specific legal professional views of desired law learning outcomes, this paper will seek to demonstrate that clinical legal education's aspirations are traditional and mainstream: properly deployed conventional learning outcomes can be achieved through clinic⁸. As well, clinic learning outcomes are for the most part coterminous with current learning expectations of professional, legal and tertiary education.⁹ Given its role in facilitating the achievement and assessment of key learning outcomes, clinic's methods and outcomes play a major role in aiding law schools to demonstrate academic quality to regulators, to establish

⁶ Distinctions are often made between "competency-based" and "outcomes-based" on the theory that a competency is a narrow ability that is a part of an outcome. By using the term "competency-based" I mean to focus on professional abilities, and of course these are outcomes.

⁷ See Stuckey *op. cit.* There is an interesting discussion on competence-based approaches to professional preparation in the current Legal Education and Training Review in England and Wales <http://letr.org.uk/publications/briefing-and-discussion-papers/>

⁸ There may be arguments about the feasibility of using clinic as a central, overarching, teaching approach or strategy. Some would doubt CLE's financial viability; others would question whether there are sufficient clinicians to carry the curriculum; still others would argue that for many subjects conventional teaching approaches work just fine; and others may claim in cannot meet the demand of learning outcomes and subject matter coverage. No doubt there will be other issues and answers. IF CLE is given the wide definition I suggest in this paper I believe all of the negative arguments can be met, except perhaps finances, depending on the model employed. Innovative approaches may overcome financial challenges: How might senior and post-graduate students contribute to the learning and teaching agenda? To what extent can able and interested practitioners be drawn into effective clinical teaching roles? Can online learning, as it has at the University of Windsor, supplement experiential learning? See for example the use of online learning to support CLE at the University of Windsor's city centre live-client clinic:

<http://www.uwindsor.ca/law/2014-08-24/online-learning-launched> and www.clinicallaw.ca Not every learning opportunity will be a live client instance, but it will meet the definition others and I offer for CLE at page 13 and elsewhere in this paper. As an example, England's University of York employs a mix of clinic methodologies. <http://www.york.ac.uk/law/current-students/learning-teaching/> January 15, 2015.

⁹ The Council of Ministers of Education of Canada, *op. cit.* draws heavily on the Ontario scheme and has been formally adopted by Alberta, see *op. cit.*

graduate competence to professional bodies, and to assure graduates' readiness for multiple law and non-law career opportunities.

2. WHY LEARNING OUTCOMES?

The inevitable move towards outcomes oriented higher education in Canada has been in process for some time. In some jurisdictions it is still an idea worth considering. In at least two, Ontario and Alberta, it is the way ahead. It is astonishing, though explicable, that it has taken so long for this approach to win a place in tertiary Canadian education.¹⁰

Quality assurance systems and professional/vocational preparation models insist on an outcomes-based approach for several reasons.¹¹ They seek to accomplish a number of co-existing or sometimes overlapping ends.¹² This paper focuses on the contention that

¹⁰ The irony will not go unmissed. Most higher education leaders and instructors are not trained or educated as educators. Until relatively recently there was little interest in the work of post-secondary education researchers among university practitioners, such as presidents, provosts/deputy vice-chancellors, deans, etc. The accountability movement has thrust higher education in Canada into the midst of the research outputs of educationists, chiefly for the better. Quality assurance schemes are at various stages of development around the developed world, with Canada among the last to subscribe. American regional accreditation schemes were largely input oriented until recently; now outputs, particularly student learning outputs, both intended and realized, have come under scrutiny.

¹¹ The following list of purposes provides examples from both the literature and my own experience of the use of learning outcomes in higher education:

to provide students with clear statements of what is expected of them and therefore what they will be tested on. This enhances clarity for those who are uncertain about

1. their abilities and knowledge and provides a more comprehensible set of expectations from arrival at university to graduation;
2. to provide quality assessors with clear, coherent and complete statements of the capabilities of graduates, in terms of the minimum criteria and standards of knowledge, skills and attitudes required for the level of the award (degree, diploma or certificate) offered;

clinic, a methodology for the promotion of learning, can serve to support student achievement of all learning outcomes, though some more readily.

While there are many reasons for outcomes-oriented education (at least 13)¹³, our discussion is limited to the following:

1. to provide quality assessors with clear, coherent and complete statements of the capabilities of graduates, in terms of the minimum criteria and standards of knowledge, skills and attitudes required for the level of the award (degree, diploma or certificate) offered;
-
3. to provide those evaluating and reviewing institutional performance with clear statements by which to assure institutional accountability for learning and teaching both internally and externally;
 4. to assure stakeholders that programs and institutions meet pertinent standards and that student performance according to the standards will be assessed by suitable means;
 5. to provide public information that demonstrates how credentials compare by level and standard to those in other jurisdictions;
 6. to support the continuous improvement of practices in higher education both intra- and inter-institutionally;
 7. to demonstrate the comparability of one jurisdiction's (and institution's) credentials to those of other jurisdictions (and institutions);
 8. to improve student access to further study (post-graduate and professional) by providing post-graduate and professional institutions with a transparent, discernible and comparable set of degree level outcomes;
 9. to clarify to post-graduate and professional education providers the entry-level expectations they may apply to graduates;
 10. to state for the benefit of professional regulators the capabilities of graduates in terms of the minimum standards of knowledge, skills and attitudes to assure them that the institution/jurisdiction has prescribed and graduates have achieved a clear, coherent and complete set of requirements for the level of the award (degree) and/or professional qualification offered;
 11. to provide a means for developing a program evaluation model based in part on student success in achieving specified outcomes;
 12. to identify the learning experiences that are most likely to assist in the achievement of the learning outcomes specified;
 13. to identify the means of assessment most likely to determine whether these outcomes have been achieved.

¹³ *Ibid.*

2. to improve student access to further study (post-graduate and professional) by providing post-graduate and professional institutions with a transparent, discernible and comparable set of degree level outcomes;
3. to state for the benefit of professional regulators the capabilities of graduates in terms of the minimum standards of knowledge, skills and attitudes to assure them that the institution/jurisdiction has prescribed and graduates have achieved a clear, coherent and complete set of requirements for the level of the award (degree) and/or professional qualification offered;
4. to identify the learning experiences that are most likely to assist in the achievement of the learning outcomes specified;
5. to identify the means of assessment most likely to determine whether the outcomes have been achieved.

3. ONTARIO UNIVERSITIES' UNDERGRADUATE DEGREE LEVEL EXPECTATIONS

Ontario and some other provinces of Canada offer both a three-year "general" baccalaureate degree and a four-year "honours" baccalaureate degree.¹⁴ In Ontario, law is a second entry bachelor's degree, as are medicine, dentistry and pharmacy (despite the

¹⁴ Other designations are also possible including 'major' four year degrees and specializations within the honours four year framework

degree nomenclature, suggesting doctoral level studies). Normally, entrants to law study are expected to have an undergraduate degree, though students may occasionally be admitted after only two years of university. The law degree designation is now almost uniformly *Juris Doctor* (JD, just as in Canada medicine offers an MD, dentistry a DDS and Pharmacy often a DPharm). There are no honours-designated law degrees in Canada such as the LLB Hons in England.

The Ontario law schools are in the process of complying with the requirement that they describe the learning outcomes of their graduates in light of the University Undergraduate Degree Level Expectations (UUDLEs). For the sake of this discussion I will assume that the Ontario second-entry law degree is equivalent to an honours level degree (at least) for the purposes of compliance with the UUDLEs. After all, law school, unlike other Canadian undergraduate degree programs, offers a menu of virtually 100% law courses.

A committee of university academic vice-presidents (deputy vice-chancellors; provosts) developed the Ontario UUDLEs based on a model/schema that focuses on six levels of performance expectations.¹⁵ The degree levels are:

1. Breadth and Depth of Knowledge
2. Knowledge of Methodologies

¹⁵ See Schedule 1. for the undergraduate honours degree UUDLEs in full. The complete set of the UUDLES for both undergraduate and post graduate programs can be found at: Ontario Universities Council on Quality Assurance <http://www.cou.on.ca/quality>

3. Application of Knowledge
4. Communication Skills
5. Awareness of Limits of Knowledge
6. Autonomy and Professional Capacity

On the one hand, this is not a taxonomy: there is neither a consistent set of element types nor a classification system among the general categories. These “levels” are really different aspects or elements of the kinds and nature of knowledge, skills and attitudes expected of university graduates. Except perhaps for UUDLE 1. to some degree, the levels are not internally ordered by complexity or some other rationale of a consistently applied, developmental or hierarchical kind. They tend to be compound-complex, made up of knowledge, skills and sometimes attitudes and values. On the other hand, each, or at least some levels, or parts of levels, might have their own taxonomic sub-classification. Level 1., Breadth and Depth of Knowledge, might in part be explicated by reference to Bloom’s Taxonomy in the Cognitive domain (revised).¹⁶ Degree level 6., Autonomy and Professional Capacity, might be understandable by application or extension, at least in part, of Krathwohl’s Taxonomy in the Affective Domain.¹⁷ Each of these taxonomies is

¹⁶ Bloom, B.S., Engelhart, M. D., Furst, E. J., Hill, W. H., & Krathwohl, D.R., *Taxonomy of educational objectives: the classification of educational goals; Handbook I: Cognitive Domain* New York, Longmans, Green, (1956) and revised and updated L. W. Anderson, D. R. Krathwohl, Peter W. Airasian, Kathleen A. Cruikshank, Richard E. Mayer, Paul R. Pintrich, James Rath, and Merlin C. Wittrock (eds) *A Taxonomy for Learning, Teaching, and Assessing: A Revision of Bloom’s Taxonomy of Educational Objectives* Allyn and Bacon (2000)

¹⁷ Krathwohl, D. R., Bloom, B. S., & Masia, B. B. *Taxonomy of Educational Objectives; the Classification of Educational Goals. Handbook II: The Affective Domain*. New York: Longman, Green (1964).

organized by an internal system: either increasing complexity, in the case of Bloom's Taxonomy in the Cognitive Domain, with the lower level's mastery being a prerequisite to the mastery of the next higher level from level 1 to taxonomy level 6, or in the case of Krathwohl's Taxonomy in the Affective Domain, to taxonomy level 5, on a hierarchy of degrees of internalization.¹⁸

As noted above, there are counterpart schemes in many places that rely on outcomes for quality assurance. Some systems appear to require outcomes statements without prescribing a system of degree level expectations.¹⁹ Others stipulate a set of outcomes, while leaving room for institution-aligned variations, usually additions. The Lumina Foundation in the USA has created a degree profile that is to be tailored to institutional mission, mandate and characteristics.²⁰

University law schools in Canada, given the existence of apprenticeships or articles, frequently take the view that their primary, and sometimes only, responsibility is to prepare persons to meet the academic requirements for the conferral of a degree, but not necessarily to meet the legal profession or governing body's expectations for those intending to qualify for legal practice. Although that would be many Canadian law schools' preference, the reality is that they will all conform to the requirements of their

¹⁸ For an application of both Bloom and Krathwohl's taxonomies in the cognitive and affective domain respectively to legal education, see Petter, A. "A Closet Within the House: Learning Objectives and the Law School Curriculum" in Gold, N., ed., Ch. 5 *Essays on Legal Education*. Toronto: Butterworths (1981)

¹⁹ See for example New Zealand *op. cit.*; Western [USA] Association of Schools and Colleges *op. cit.* where only general categories are provided.

²⁰ Lumina, *op. cit.*

local governing body, including the prescription of the Federation of Law Societies of Canada²¹. Given the scope of this paper I have decided not to address this debate in detail. However, nothing in this paper would require a law school or legal educators to diverge from a commitment to a strong, deep and wide academic preparation in the law; the education promoted in this paper not only serves as a firm basis for professional practice but also for post-graduate study, career scholarship, and a host of legal and non-legal careers.

4. UUDLES AND LEGAL EDUCATION

How do these learning expectations mesh with our goals for legal education? In looking for a place that comprehensively describes what law schools should aim to produce, one is led initially to the various legal practice courses and legal professions mostly in Commonwealth countries that have sought to describe their goals. England and Wales has contributed to the discussion in identifying its intended outcomes.²² Australia, urged along by its goal of a national profession and the presence of a highly competitive post-

²¹ <http://www.flsc.ca/en/national-requirement-for-approving-canadian-common-law-degree-programs/>

²² Solicitors Regulation Authority, Legal Practice Course: Outcomes 2011, Version 2. (September, 2011) www.sra.org.uk/documents/students/lpc/Outcomes-Sept2011.pdf

We can expect much more work on learning outcomes in England and Wales as a result of the LETR . Please see <http://letr.org.uk/>

graduate professional legal education sector, has played a part.²³ Canada has contributed in seeking to explicate what it means to be a lawyer.²⁴ New Zealand has produced work with statements of learning outcomes focused on the top up role of the professional legal education providers.²⁵ Then there is the ample American literature produced by clinicians who seek to demonstrate the role clinic has in legal education. Along the way the work of Roger Cramton²⁶ and Robert MacCrate²⁷ helps identify the needs and anticipated goals in American legal education. Finally, and most currently and comprehensively, we are benefited by the thoughtful and deep analyses provided by the *Carnegie Report* (Carnegie)²⁸ and the *Best Practices Report* by Roy Stuckey and others (Stuckey).²⁹

The organizing principles, classifications or schemas used by authors and professions in describing professional capability or competence are often dissimilar to one another. The analytical framework employed or developed does not necessarily emerge from any conventional systematic analytical or synthetic approach. I am aware of one exception:

²³ Legal Profession Admission Board – New South Wales, *Practical Legal Training, Statement of Reconciliation against Competency Standards for Entry-Level Lawyers*.

²⁴ Federation of Law Societies of Canada, *Task Force on the Canadian Common Law Degree, Final Report* (October, 2009) <http://www.flsc.ca/documents/Common-Law-Degree-Report-C.pdf> and <http://www.flsc.ca/en/national-admission-standards/>

²⁵ Institute of Professional Legal Studies, New Zealand, *Graduate Competencies*, <http://www.ipls.org.nz/for-employers>

²⁶ (American Bar Association, *Task Force on Lawyer Competency: The Role of the Law Schools*. (“Cramton Report”) Chicago: American Bar Association (1979) (The chair of the Task Force was Dean Roger Cramton).

²⁷ McCrate, Robert. *Report of the Task Force on Law Schools and the Professions: Narrowing the Gap* (“The McCrate Report”). Chicago: American Bar Association, Section of Legal Education and Admissions to the Bar (1992)

²⁸ Carnegie, *op. cit*

²⁹ Stuckey, *op. cit*.

in 1990 and 1991 in British Columbia (BC), Canada, a group of intrepid course planners carried out a systematic instructional design process for the postgraduate pre-admission mandatory program for intending BC lawyers that entailed job, task and skills analyses. That produced a highly specific “master skills hierarchy” with plentiful sub-skills, but no definition of the knowledge and a limited statement of values and attitudes required. This limits the value of the work for those designing the undergraduate law curriculum.³⁰ The most instructive and insightful work on what lawyers need to know and be able to do to be fully proficient practitioners is found in Stuckey and Carnegie. I have developed a rough concordance at “Schedule 1” that links the Ontario UUDLEs, employed formally for course and program preparation and evaluation, to both the Carnegie apprenticeships and tasks, and Stuckey’s principles³¹ that are each aimed at the design of legal education programs intended to produce legal professionals. In so doing I will demonstrate that the UUDLEs, substantially, but incompletely in important ways, serve the interests of lawyer education and that through their explication one would see a range of outcomes for the ideal law school curriculum and as well as for the even less-than-ideal current commonplace curriculum. Then I will seek to show how clinical legal education as a methodology of teaching and learning serves to facilitate the accomplishment of the UUDLEs as extended and interpreted through the Carnegie and Stuckey lenses. If I am

³⁰ Gold, N. “The British Columbia Professional Training Program: Towards Training for Competence”, 1 *Journal of Professional Legal Education* 1 (1983)

³¹ Stuckey, *op. cit.*, chapter 2

successful, or at least to the extent to which the reader concludes that I am successful, I will have shown how clinical legal education serves the goals of all legal education, including a conventional legal education.

5. A CLOSER EXAMINATION OF THE UUDLES

First then let's take a closer look at some of the Ontario UUDLEs. Here then are the six levels of the UUDLE 1., "breadth and depth of knowledge": a developed knowledge and critical understanding of the key concepts, methodologies, current advances, theoretical approaches and assumptions in a discipline overall, as well as in a specialized area of a discipline

1. a developed understanding of many of the major fields in a discipline, including, where appropriate, from an interdisciplinary perspective, and how the fields may intersect with fields in related disciplines
2. a developed ability to:
 - i) gather, review, evaluate and interpret information; and
 - ii) compare the merits of alternate hypotheses or creative options, relevant to one or more of the major fields in a discipline
3. a developed, detailed knowledge of and experience in research in an area of the discipline

4. developed critical thinking and analytical skills inside and outside the discipline
5. the ability to apply learning from one or more areas outside the discipline

The first element, a), of UUDLE 1. is compound complex. It seeks “a developed knowledge and critical understanding” and thus aspires to the higher levels of Bloom’s Taxonomy in respect of “key concepts, methodologies, current advances, theoretical approaches...” “Remembering” is level 1. of Bloom’s Taxonomy. A reasonable surrogate descriptor of the lowest level of remembering information or facts would be represented by the ability of a person to recall (a sub-level) or restate verbatim (a higher sub-level) a piece of information, what might be called a “fact”. In law this level might be evidenced by the rote restatement of a rule. However, this degree level expectation 1. a) uses the words “developed knowledge” suggesting higher levels of the taxonomy such as at least Understanding (level 2. of Bloom) and perhaps Applying (level 3.). As a rule, legal education would want even early students to be at least analyzing, level 4. of Bloom. However, the degree level expectation goes on to use the words “critical understanding” suggesting the fifth level of Bloom, Evaluating. According to the schema it is necessary to be able to understand, apply and analyze before one can evaluate. And so legal education would pursue all these levels and take, or seek to take, students to the highest level, often but not always, to level (6.), Creating. Certain aspects of legal problem solving

no doubt take the student to Creating, depending on how fresh the problem is or how close it is to problems previously solved.³²

No doubt we would expect law students to be able to achieve higher levels of the taxonomy in first year, though strategic teaching will take students through the levels of remembering, understanding, applying, analyzing, evaluating and creating, not merely to the higher levels without some practice in the middle levels. Not until third year will students be developing their own schemas for critical evaluation thus combining creating with evaluating. In addition students who provide novel, efficient and effective ways forward for clients, public policy development, legislative reform, risk management or project design will be operating at the highest levels of Bloom as well as doing what the UUDLEs, Stuckey and Carnegie would be aiming for.

Carrying on with the UUDLE, the item “key concepts” recalls the underlying bases and central ideas of and within the divisions of legal knowledge that are undertaken. “[M]ethodologies” suggest *not* the ability to do, *i.e.*, carry out a methodology, in this UUDLE, but rather an understanding of the steps in the operations, procedures, and sequences and perhaps even protocols. The UUDLE refers to “theoretical approaches” which might be coterminous with knowledge of theories, here legal theories, or describable ways of thinking about material presented. The UUDLE insightfully declares

³² See Petter, A. *op.cit.* Andrew Petter examined both the cognitive and affective domain taxonomies and wrote learning objectives for each level and sub-level of both taxonomies. Petter’s painstaking, careful and insightful work has to my knowledge never been advanced. Contrarily, this paper’s current review of these learning hierarchies is cursory and meant to be illustrative.

that disciplines are in effect sub-cultures with “assumptions” of various sorts that at least initially should be made explicit and learned, lest they be passed on as unexplained habits.

This examination of UUDLE 1. a) begins to demonstrate a reasonably sophisticated understanding of the cognitive skill learning requirements of university (law) graduates. The generic UUDLEs do not select content, rather leaving that to the disciplines. Also, the UUDLEs are not structured by level of study (year 1, 2 or 3); rather they are statements of the terminal capabilities of a university graduate. As we progress from level 1. a) to level 1. b) we move from a “developed knowledge” to a “developed understanding” of fields, interdisciplinarity, and field intersection. Perhaps in law this would include subjects and cognate subjects from other disciplines. At 1. c) i) the UUDLE calls for “a developed ability” to collect and assess information, to make sense of it and then in 1. c) ii) students are required to evaluate by comparing the qualities of alternate approaches or options in “one or more” or conceivably all fields or subjects in the discipline. Moving from c) to d) to e) and f) the student’s expected depth and breadth of knowledge increases along with her analytical and critical thinking leading ultimately to being able to apply learning from outside the discipline to the discipline or fields within it. This somewhat detailed review of UUDLE 1 illustrates some aspects of its relevance to law study and its relatively traditional cognitive skill and substantive knowledge elements.

As one progresses to level 2, Application of Knowledge, of the UUDLEs one moves through problem solving, argument as a means of problem solving, and the ability to deal with advanced scholarship and current knowledge development (research) in the field development.

In level 3, Knowledge of Methodologies, the UUDLE takes us to more sophisticated problem solving and the critical assessment of arguments. This is an area rich in aspects relevant to a legal education.

UUDLE 4 is a very brief statement about communications skills, both oral and written. Here the UUDLEs are clearly insufficient for the legal educator leaving practically barren the field of most operational lawyering skills³³ and related subject matters.³⁴

UUDLE 5 is perhaps the most practically important outcome for professionals: “an understanding of the limits to their own knowledge and ability, and an appreciation of the uncertainty, ambiguity and limits to knowledge and how this might influence analyses and interpretations.” Clearly professionals who do not know their limits pose dangers to their clients. They must know how to deal with their limitations both in action and in preparation for their work. Sometimes circumstances leave no option and

³³ E.g., interviewing, counseling, negotiation, mediation, writing, drafting, advocacy, and so on.

³⁴ There is an ample and deep literature on legal skills and lawyering generally. I have taken the core of this literature as read, or at least understood in outline, for the purposes of this paper. The richness of the literature was abetted by the seminal and signal work of Gary Bellow and Bea Moulton in *The Lawyering Process: Materials for Clinical Instruction in Advocacy*. Mineola, N.Y.: Foundation Press (1978). This is a book on the role of the lawyer in the context of advocating a client’s interests. It is not narrowly a book on “advocacy”, as courtroom representation.

professionals must work with what they know and can do; most times they are bound to obtain the knowledge required and to have or somehow acquire the know-how.

UUDLE 6. is Autonomy and Professional Capacity. This UUDLE is concerned with the ability to learn to learn. It is also the UUDLE occupied with integrity and social responsibility. Here again the UUDLEs sorely but explicably understate the requirement for professional learning and practice. There is nothing to stop legal education from expanding the contents of this UUDLE in order to meet the requirements of a (professional) legal education.

Clearly, the UUDLEs do not prescribe the fullest desirable statement for learning outcomes for law students. They miss at least four critical components for legal education. First, professional skills such as interviewing, negotiation, advocacy *etc.* are not treated at all, though oral and written communication could be expanded to fill this need. These operational capabilities are at the heart of carrying out legal work. Secondly, professionalism is only averted to and is really a different subject from UUDLE 6.'s reference to "academic integrity and social responsibility", though professionalism partakes of these two elements. Thirdly, the UUDLEs do not seek to integrate the professional profile elements that, when combined, make up the discipline of lawyering that both Carnegie and Stuckey illuminate. Professional legal practice is complex and artfully coordinates, orchestrates and integrates the full range of learnings from the variety of outcomes described. Fourthly, the understanding of the role that context and

circumstances play in finding approaches to meeting clients' needs is not treated at all in the UUDLEs: the UUDLEs are not organized so as to nuance and texture learning according to context (personal, social, economic, political *etc.*), a major contributor to the implicit perplexity and indeterminacy of legal problem solving on behalf of clients. The Ontario Universities Council on Quality Assurance that oversees the UUDLEs scheme would expect a law school to supplement the UUDLEs with degree level expectations for law graduates of this kind.

I have developed a concordance of the outcomes statements contained in the UUDLEs, Carnegie and Stuckey at "Schedule 1" that shows the equivalence or comparison of the components of one system to the components of another. Given the gaps in the UUDLEs relating to the aims of a legal education, the components of both Carnegie and Stuckey do not line up perfectly with the UUDLEs' levels. However their placement suggests where the UUDLEs might be supplemented for law study, were a law school seeking to comply with the Ontario degree level expectations.

One of the reasons we specify learning outcomes is so we can devise learning activities and assessment techniques that will help us support the achievement of the outcomes on the one hand and tell us to what extent they have been achieved on the other. Can clinical legal education support the achievement of the UUDLEs and of the Carnegie and Stuckey outcomes?

6. WHAT IS CLINICAL LEGAL EDUCATION?

Clinical legal education is frequently described as a methodology for learning and teaching. It is usually defined as a method³⁵ that entails a student undertaking a recognizable and active role within the legal system, under supervision, usually as a lawyer, though other roles such as decider or investigator or law reformer would also be appropriate.

Classically, and some might say necessarily, this involves live client representation or its equivalent in other legal roles.³⁶ The supervisor, as guide and role model, should seek to be: thoughtful; insightful; measured-to-person, need and context; learned; holistic; and above all, constructively helpful. The importance of the role of the clinic supervisor in explicating and supporting student learning cannot be understated.³⁷ This interpretive and reflective modeling and methodology can contribute to students' lifelong habits of learning and problem solving. In engaging the whole student, her thoughts, feelings,

³⁵ Bellow, G. "On Teaching the Teachers: Some Preliminary Reflections on Clinical Legal Education as Methodology, in *Clinical Legal Education for the Law Student*, working papers prepared for CLEPR National Conference, June 6-9, 1973, New York: Meilen Press Inc. (1973)

³⁶ "For the purposes of this Article, the term clinical legal education-including variations such as "clinical programs" and "the clinical method" refers to any law school course or program in which law students participate in the representation of actual clients under the supervision of a lawyer-teacher. Courses limited to simulation and unsupervised placements, therefore, are not included in the definition." Frank S. Bloch, "The Andragogical Basis of Clinical Legal Education", 35 *Vand. L. Rev.* 321 at p. 326. (1982)

³⁷ For an extensive treatment of student supervision in externships (a clinical model employing a placement into a setting not directly controlled by the law school, though the supervisor and student have agreed learning related responsibilities) Ogilvy, Wortham and Lerman, *Learning From Practice: A Professional Development Text for Legal Interns*. 2nd. edition. West Law School, 2007

hopes and fears, the supervisor simultaneously engages the already stimulated affect and intellect of the student in her quest to deliver signal service. In this model, the student's experiences as primary actor and her thinking and feeling about them before action, in action and upon reflection³⁸ are the focal point for guided debriefings and interpretations by the supervisor and often by the student herself once she has been trained to reflect in and on action.

The teacher's role will require her to intervene at strategic moments where learning may be maximized. The special relationship of student and teacher will differ markedly from the traditional one. ... The teacher should be a sensitive and caring individual who is able to empathize with the students' feelings... Also I think it should be noted that clinical work is not *ad hoc*. It depends upon a structured program of seminars and workshops, as well as upon didactic sessions. The clinic class must be given opportunity to organize and structure their experiences and to discuss them in a meaningful way.³⁹

³⁸ The work of Donald Schon is best known for its contribution to learning about the process of reflection with and without supervision and before, after and during the provision of professional service. See Schon, Donald A., *The Reflective Practitioner: How Professionals Think in Action*. London: Temple Smith (1983) and Schon, Donald A., *Educating the Reflective Practitioner*. San Francisco: Jossey-Bass (1987). More recently see Leering, Michele. *Conceptualizing Reflective Practice for Legal Professionals*, 23 J. Law and Social Policy 83 (2014) and Casey, Timothy. *Reflective Practice in Legal Education: The Stages of Reflection*, 20 (2) Clinical Law Rev. 317 (2014).

³⁹ Gold, N. "Legal Education, Law and Justice, the Clinical Experience", 44 *Sask. Law Review* (1978-1979), 98 at p. 99

Richard Grimes takes the following view of what clinic means as methodology: “a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised. ... It almost inevitably means that the student takes on some aspect of a case and conducts this as it would ... be conducted in the real world.”⁴⁰ This would seem to allow for simulation and other methodologies to be included within the working definition of clinic as a methodology of learning and teaching.

Frank Bloch adopted “live client under supervision” as his definition for the purposes of his article on andragogy and clinical legal education.⁴¹ However, on a careful reading of the footnote supporting his adoption of the definition he notes the preference and desirability among some experienced clinicians for the live client under supervision approach: Meltsner and Schrag say that simulation **alone** is not satisfactory. However, even they might agree that a varied clinical model employing several clinical instructional strategies might be satisfactory. Also, Bloch rules out unsupervised

⁴⁰ Grimes, R. “The Theory And Practice Of Clinical Legal Education” in J. Webb and C. Maugham (eds.) *Teaching Lawyers’ Skills* (London:1996) at p. 138

⁴¹ Bloch *op. cit.* at p. 326 footnote 15 “Most clinicians use simulations to some extent as a part of their method of instruction. Indeed, clinical teachers who write on simulation as a teaching technique often include actual client representation as an element in their program. Thus, the authors of a widely circulated text on simulation concluded after experimentation that simulation alone was not a satisfactory clinical experience. See Meltsner, M and Schrag, P. *Toward Simulation In Legal Education: an experimental course in pretrial litigation* (2nd ed.). Foundation Press. (1979) In its recent report the Committee on Guidelines for Clinical Legal Education of the Association of American Law Schools and the American Bar Association concluded “the clinical legal studies curriculum should, if at all possible, include some experience working on live cases or problems.” *Id.* at 65. Cf. *id.* at 20 (The actual guideline for the use of clinical teaching methods states: “Where resources, cases, and law permit, law student work on live cases or problems is a valuable but not an exclusive [clinical] method. ...’

experience. Clearly without supervision there is no instruction; and while there may be learning there is no “teaching”.

In the view I adopt the clinical method requires students to work **as if** representing a client or undertaking some other legal role very broadly defined, at minimum, and not necessarily, though whenever feasible, in conjunction with or in live-client work. I also accept Bloch’s statement, and Stuckey’s as well, that it is not only preferable but also ultimately necessary that students engage actively in live client under supervision activities. Therefore a phased and varied approach including observation, role-playing, problem-based learning, simulation, and practice in numerous contexts and roles is most useful. Simulation activities would be modeled along the lines of common medical, nursing and dental education that makes good use of simulated or standardized clients.⁴²

In these professions students may: encounter problems, actors and others trained and prepared to be patients; be provided with opportunities for observation; engage in structured and less structured case discussion (various forms of “rounds”); and progress through a progression from simpler to more complex tasks and on to full-time, onsite service and learning under supervision known as clerking or simply placements in other cases. Later in the learning program graduates serve as paid and supervised residents.⁴³

These progressive stages structure learning in a more systematic way. Also the model

⁴² See <http://paulmaharg.com>, an interesting blog by Paul Maharg covering a range of legal education topics. The following <http://paulmaharg.com/2011/09/16/standardized-clients-northumbria-university-law-school/> provides insight into his work with standardized patients. A book is expected in a year or two.

⁴³ In Great Britain and Australia the term or a version of the term “registrar” may be employed.

tends to protect clients from overly fresh novices and provides a baseline for supervisor's assessment of the qualities, characteristics and personalities of students for later, on-the-job supervisory interventions. Importantly, a phased approach builds knowledge, skills and confidence, as well as helping to develop the self-concept of the proficient practitioner. Conventionally "clinical" means the direct observation of patients and so a "clinician" is a provider of services to client or patient. In my usage as well as Grimes' it means approximating as closely as possible the clinical incident or problem.

Clinical legal education is learning-centred and sometimes student-centred, depending on the degree of freedom with which the student is provided in the construction of the learning program and its experiences.⁴⁴ It focuses on the learning interests and needs of the student and provides the student with significant control over the learning process. It depends on the student's input developed through investigation, research and problem analysis, among other skills and procedures. Learning centred approaches shift the focus from the teacher to the student and to her needs and interests. Learning centred

⁴⁴ "First, it is important to draw a distinction between student/learner-centred and learning-centred education. (LCE) Unlike student/learner-centred education, a learning-centred approach does not necessarily imply individual learner control over issues such as content coverage, learning strategies and assessment methods. Rather, LCE requires a community of students/learners to make choices within a responsive, carefully structured, and guided learning environment. LCE does focus, however, on what students are expected to know and are able to do (*e.g.*, demonstrate critical thinking, apply ethical principles and problem-solving skills) in the context of a field of study. LCE includes both individual and collaborative learning experiences and places emphasis on the investigation and resolution of authentic problems through interactive and experiential engagement. Thus, by calling the programme "responsive," we mean that it responds to the diverse needs of the learners (in this case, the faculty cohort), critical teaching and learning issues in university settings, and available resources." Harry Hubball and Gary Poole, "Learning-centred Education to Meet the Diverse Needs and Circumstances of University Faculty Through an Eight-month Programme on Teaching and Learning in Higher Education", *International Journal for Academic Development*, Vol 8, No. 1-2, p. 12. (May/November 2003)

approaches tend to produce deeper and more meaningful learning.⁴⁵ By and large they are constructivist, building on previous learning and scaffolding it upon earlier understandings and capabilities, making new and personally unique understandings of the things they have experienced.⁴⁶

This paper contends then that the clinical methodology can and should be both pervasive and the dominant methodology within legal education and that it can, with careful structuring and management, achieve the full range of desired outcomes for the law graduate. There is no room here to elaborate on the diverse clinical methodologies.

⁴⁵ Biggs, J. "What do inventories of students' learning process really measure? A theoretical review and clarification" 83 *Brit. J. Ed. Psych.* pp 3-19 (1993) and Biggs J. and Tang C., *Teaching for Quality Learning at University* (3rd edn) Buckingham: SRHE and Open University Press (2007)

⁴⁶ "The theory of constructivism rests on the notion that there is an innate human drive to make sense of the world. Instead of absorbing or passively receiving objective knowledge that is "out there", learners actively construct knowledge by integrating new information and experiences into what they have previously come to understand, revising and reinterpreting old knowledge in order to reconcile it with the new (Billett 1996). The cognitive structures that learners build include "procedural" knowledge ("how"--techniques, skills, and abilities) and "propositional" knowledge ("that"--facts, concepts, propositions). Often neglected are dispositions--attitudes, values, and interests that help learners decide: Is it worth doing? Knowing "how" and "that" is not sufficient without the disposition to 'do'. ... Using a constructivist approach, teachers facilitate learning by encouraging active inquiry, guiding learners to question their tacit assumptions, and coaching them in the construction process. This contrasts with the behaviorist approach that has dominated education, in which the teacher disseminates selected knowledge, measures learners' passive reception of facts, and focuses on behavior control and task completion. A constructivist teacher is more interested in uncovering meanings than in covering prescribed material." Kerka, Sandra, *Constructivism, Workplace Learning, and Vocational Education*, ERIC Digest, No. 181, 1997 ERIC Identifier: ED407573; ERIC Clearinghouse on Adult Career and Vocational Education Columbus OH (footnotes omitted)

7. PROBLEM BASED LEARNING AND CLINICAL LEGAL EDUCATION

One vibrant and very successful methodology of professional education used extensively in medicine and now to some extent in law⁴⁷ and elsewhere is student-centred, problem-based learning (SPBL). In my view it meets the requirements for consideration as a clinical method. Following is a description of SPBL:⁴⁸

As Barrows and others suggest, SPBL is the learning that results from working toward understanding or resolving a problem. The problem is encountered first in the learning process - before any reading in the area - and, in the purer applications of the method, before, or often instead of, lectures or other formal course work. The only "preparation" students need is their prior knowledge and experience.

The primary objective of SPBL is to accumulate the basic concepts of a discipline in

⁴⁷ see Carrie Menkel-Meadow, Taking Law and _____ Really Seriously: Before, During and after "The Law" 60 *Vanderbilt Law Review* 555, (2007) section on CIDE and PBL pp. 591-595 where Menkel-Meadow discusses a Mexican revolution in the use of interdisciplinary PBL. This is for the most part an article about the merits of a truly interdisciplinary legal education in which traditional legal subjects keep company with sociology, anthropology, psychology, philosophy and so on.

⁴⁸ Suzanne Kurtz, Michael Wylie, Neil Gold, "Problem-Based Learning: An Alternative Approach to Legal Education" 13 *Dalhousie L.J.* 800 p. 800-801 (footnotes omitted). (1990)

Also see Jos C. Moust & Herman J. Nuy "Preparing Teachers For A Problem-Based, Student-Centered Law Course", 5 *J. Prof. Legal Educ.* 17, pp. 19-23" (1987) ...[S]tudents are given problems ... as the starting point for self-directed learning activities. The students' learning process is, as far as possible, initiated by these carefully described concrete practical or theoretical problems ... By learning this way students discover from the outset that working on problems requires an integration of different subject areas, and extensive co-operation with peers While discussing a problem, students become aware of uncertainties, questions, and activate ideas they have about mechanisms, processes or procedures which could be responsible for the solution or explanation of this problem. Students are asked to formulate their own learning goals, based on the questions unresolved during their discussion..."

the context of problems or issues encountered by practising professionals. Instead of learning self-contained and quickly forgotten bodies of knowledge, such as information covered in lectures, information is gradually assembled in a more "helter-skelter" way as students reflect on issues or gaps in knowledge which they identify as they work through problems. An assumption of SPBL is that the way information is acquired assists the student in remembering and applying that information in practice.

SPBL offers other important benefits as well. It develops self-directed, life-long learners, better able to cope with changes in the law. It encourages student independence and responsibility in the learning process. Students are more motivated, since the learning seems more relevant. Problem-solving skills can be better examined and developed. Misconceptions and ineffective reasoning can be identified and confronted. Communications skills can be taught using the method. Skills useful in group practice can be developed. Prior knowledge and experience is reactivated and built upon."

In an excellent discussion of PBL in the context of clinical legal education three authors raise the question:⁴⁹

There is clearly a debate that continues about the efficacy of using the PBL method exclusively to impart knowledge to students. The writers themselves have

⁴⁹ Cath Sylvester, Jonny Hall, Elaine Hall, "Problem based learning and clinical legal education: What can clinical educators learn from PBL?", 6 *Int'l J. Clinical Legal Educ.* 38, p. 44. (2004)

concerns about whether the use of a PBL approach can adequately provide the students with the fundamental doctrinal knowledge necessary for the foundation subjects of an English Law degree. We wonder whether it is time effective to always require students to begin with the problem and learn the detail of the discipline by forming their own learning objectives and then meeting to synthesise findings. We have concerns that there can be full coverage of the discipline within the time frame available using this method. On the other hand, if some traditional methods of teaching are inserted at the start of the course will that not defeat the object of the students defining their own learning objectives and taking responsibility for their own learning?

The authors' challenges to the efficacy of PBL have nothing to do with its appropriateness to learning "the fundamental doctrinal knowledge necessary for the foundation subjects of an English Law degree". And the authors refer to using it "exclusively" to acquire knowledge. While PBL is useful for learning legal knowledge it does that -- and much more. They go on to raise doubts about it as an efficient method for acquiring foundational knowledge and question whether it can or should be supported by traditional, information delivery methods. The PBL approach has worked well in medicine where the amount of knowledge required to be learned is very likely well in excess of what legal education requires of its learners.

Most importantly, they question whether timely and sufficient coverage can be accomplished. I believe that legal educators will need to invest the time into learning how to make the method efficient and effective. When that occurs the learning will expand. In addition, PBL teaches students to know their limits and fill the gaps as needed.

The bugaboo of coverage has been used to criticize many a reform with reflective, learning and teaching intensive, components. In my experience the plaint of “coverage” is a form of fear mongering that focuses not on the students’ learning needs but on the teacher’s reluctance to change and acquire the way to manage learning efficiently and effectively employing different models of instruction. Those who have complained that not all time spent is valuable may not appreciate the need for students to learn, through experience and supervised discussion, to become clearer about the “issues” to pursue and the means to inquire, investigate and research in order to begin to posit ways forward. The bugaboos of time, coverage and efficiency⁵⁰ are, I suspect, consequences of our failure to deploy resources adequately, innovatively and efficiently; I fear that the real barrier to the success of PBL and indeed of clinical legal education generally is not the failing of the methodology but the systemic discrimination by university legal education against putting students and their learning first.⁵¹ To repeat, as educators

⁵⁰ see Hall, J and Kerrigan, K in “Clinic and the wider law curriculum”, 16 *Int’l J. Clinical Legal Education* 25 (2011)

⁵¹ It is very difficult to make deep structural change to curriculum and its delivery. The delivery paradigm -- one course, one professor; all courses x hours per week, with no variation; sat written examinations etc. -- runs deep, with commensurate expectations of professional freedom to choose how time is spent.

become better at the deployment of a method they will become more efficient and effective.

The scope of this paper limits the extent to which this discussion ought to be pursued at present. I am convinced that trained preceptors (instructors) and experienced students can learn the method and make it more and more efficient and effective over time. This is part of the learning process and is one of its significant outcomes.

A further question arises on the issue of coverage. How much substantive and adjectival law must a student “know”? Each jurisdiction answers this question differently. In England and Wales some intending lawyers need only complete a one year Common Professional Examination.⁵² Casual conversations I have had with English lawyers, especially barristers, have often reflected their great pride in never having “read” law at university. In most parts of the common law world only some subjects are required, though three years of subjects, without a prescription beyond the initial set of courses, are normally required. There are many lawyers who practise law in fields unknown to their law schools and some practically unknown to their professional colleagues. In the 1960s in Canada labour law was a new subject. More recently, computer gaming law has found its way into the curriculum. We have somewhat lazily not tried very hard to clarify and specify the minimum body of knowledge to make a graduate a law graduate, except for

⁵² In order to qualify for the CPE course of study, an applicant must either have “a suitable academic or vocational qualification or be a mature student.” See: <http://www.lawsociety.org.uk/careers/becoming-a-solicitor/routes-to-qualifying/>

the various prescriptions of minimum specified subjects students must take around the globe which have not been developed from any systematic process I have ever heard of and while maintaining a nearly common first year core, thereafter differ from place to place. Good clinical teaching and learning not only provides clear markers for students on the limitations of their knowledge but it also engenders the ability to learn to learn, the most important macro skill any professional should acquire.

I will now focus on whether clinic, beyond PBL, could meet the learning outcomes specified in the UUDLEs and in both Carnegie and Stuckey.

8. THE DESIRABLE STRUCTURAL COMPLEXITY OF CLINIC

However, PBL is not nearly enough. It is a useful methodology for the introduction of the variety of aspects of substantive and procedural law that we are interested in assuring students know and can work with usefully. It is an active and sure surrogate for didactic and case method/Socratic approaches that are so notoriously limited.⁵³ However, even in the early days of a student's law study PBL should be joined with live-client

⁵³ I need not rehearse the classical challenge against C.C. Langdell's legacy: the heartless, dispassionate, objectifying, reifying lawyer. Were we to accept that the Langdellian library case titration model should be jettisoned in favour of active, experiential, clinical learning we would forever assure ourselves that students learn about clients' needs and wants, their struggles and mistakes, their pursuits of the unjustified and the merited, and their hopeless entanglement in the nasty realities of life and the wonders of hopefulness.

representation with “real consequences on the line.”⁵⁴ The benefits of live client representation are many and varied. First, truth is stranger than fiction and the real world is complex and unpredictable. It is unusual for clients to present problems that are resolved with reference to any single legal notion, field or representational approach. This context is rich and its stimuli are engaging and perplexing. It awakens an interest in managing the complex and tackling the ineffable. Second, student motivation to learn is enhanced through the desire to perform proficiently. Third, in poverty law clinics, a law reform office, *pro bono* projects and others where those without resources or resourcefulness are found, students are often motivated to do for clients what clients are unable to do for themselves.⁵⁵ Finally, the presence of peers and a supervisor provides a supportive environment in which to practise with a failsafe protective net -- most of the time. Besides students usually wish to provide the best possible service to their clients and welcome support in so doing.

First and foremost clinic, including PBL, is not a unitary method of learning and teaching. The central feature of clinic is that it demands that students undertake learning in the context of a lawyer’s (or other legal agent’s) role with oversight, supervision and feedback and that there is always a rich context of facts and factors to take into account in

⁵⁴ Stuckey, R. “Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses” 13 *Clinical Law Review* 807 (2006-2007) “Students need to observe and experience the demands, constraints, and methods of analyzing and dealing with unstructured situations in which the issues have not been identified in advance. Otherwise their problem-solving skills and judgment cannot mature.”

⁵⁵ Hall and Kerrigan *op. cit.* p.34

working through the problem towards its resolution. In the enriched and varied clinic model there will be a mixture of observation, PBL, simulation and live-client or equivalent models. In the “equivalent” models I am referring to legislative clinics, law reform, community development, community education and advocacy clinics. It has been feasible in some places to structure judicial internships. Though the student does not take on the role of judge, she does assume the role of judge’s clerk. Certain externships that are carefully supervised may also qualify if there is structured and reliable supervision and there are clear learning outcomes specified and achieved.⁵⁶

Problem development for PBL and simulation is itself a complex process and requires instructors’ skill in developing and sequencing problems in increasing complexity both legally and in terms of the contextual and professionalism factors that are in play. Fortunately there is significant experience with this in medical education and from some law schools, many international, that have learned how to structure, sequence, manage and support problems.

Live client problems of course defy being ordered neatly. That is life – it is rarely neat. Life is always complex and presents many conundrums, so the sooner and more often one can engage with it the better. Sequencing of learning according to a prescribed

⁵⁶ Blanco, Barbara A. and Buhai, Sande L. Externship Field Supervision: Effective Techniques For Training Supervisors and Students, *10 Clinical Law Review* 611. (2003-2004) See especially: B. Proposed Externship “Teaching Curriculum”: Developing the Skills of Communication, Reflection and Self Assessment, pp. 635 ff. The article features the models of Peter Hoffman, Liz Ryan Cole and Mary Jo Eyster. In this article Blanco and Buhai devise their own approach. See also footnote 31 above.

pattern may be marginally manageable with good intake management and case assignment techniques. That cases arrive randomly does not mean that the watchful instructor cannot manage them so as to maximize opportunities for learning.⁵⁷ Following is a suggestion of how that might be accomplished:

1. Provide statements of clear learning outcomes for the intended learning using the UUDLEs, Carnegie and Stuckey (or whatever schema is in place);
2. Create a matrix of the learning outcomes for each student (this might be done by the students);
3. Project from the case intake record the likely outcomes that will be achieved in the handling of the case at hand and note these outcomes in the student outcomes matrix for follow up;
4. Adjust the outcomes as the case progresses;
5. Recap the learning at a strategic point in the semester/term of study;
6. Look out for cases that will fill the gaps⁵⁸

⁵⁷ I recall a student who aimed to be a criminal defence lawyer. He came to clinic to learn how to handle such cases. He traded his civil cases with students who were less interested in criminal defence work. At that time I required students to have a mix of matter types including a variety of forms of representation and subject areas. My vigilance was no match for the student's resourcefulness and drive to take on criminal cases. However, I did insist and he succumbed. He is his city's preeminent criminal defence lawyer today.

⁵⁸ This may be somewhat challenging at first as one learns to identify and record outcomes. Students may be charged with responsibility to seek opportunities to meet the requirements of the course outcomes so as not to burden administration and more importantly to improve student focus on learning needs and requirements as well as their achievement. This will also enhance the student's personal catalogue of learnings and learning gaps.

There are many forms and formats that would support such student learning. Just as law firms or government departments or panels of judges/tribunal members might meet as a group to discuss cases in progress, so too may clinic students gather with their instructor(s), one-on-one or in small groups. These sessions may take many forms structured for example around formats for PBL learning. PBL may be supported by student requests for information or even brief discussions or lectures from experts arranged by the students where it is difficult to find the relevant material. The support to PBL may become less formal over time but at the same time more intensive in-group and with members. Or, there may be special skills development sessions focused on preparing for the upcoming activities (*e.g.*, a hearing, an interview, an advising session, a negotiation or mediation, *etc.*) in which the students take on the professional role. The session may take the form of “rounds” to provide the student in charge with insights from the class and instructors to aid in the management and progression of a specific case. There may be a group debriefing of a completed or partially completed case to track its progress and the work required to complete it successfully. Expert practitioners, judges, government lawyers and staff, in house counsel, social workers and other health care professionals, financial advisers, policy experts, professional regulators, applied ethicists and so on may join sessions at strategic moments or be trained to lead sessions. In my model I am assuming large numbers of clinical experiences in the context of live clients under supervision. I am also assuming a phased process leading to high

frequency live client work through other methods employed in medical education such as observation, simulation and PBL. In addition, I am also assuming that within live client work there will be seminars, workshops, case debriefs, rounds and one-on-one supervision or mentoring. The enriched clinical method will be supported by a range of learning and teaching interventions that are either whole group, subgroup or occasionally one-student focused. The interventions chosen will be a function of what outcomes they are capable of supporting. And each method is not itself monolithic nor will it be used completely or exclusively. In different hands with differing elements at different times in varying contexts it may be suited to accomplish different things. There are various models of supervision, of reflection and of debriefing. A lecture is not always purely a lecture and sometimes when a supervisor's comments on a student's performance go on for a few minutes she is really delivering a lecturette. PBL has a number of specified traditional or orthodox methods but no single instructor conducts it the same way as another, not only because of personal approach, personality or mode of reasoning *etc.*, style but because of choice related to context, situation or student needs, qualities, or characteristics.

Within PBL, simulation and live-client representation there will be myriad opportunities to focus on key elements of learning. The instructor may be called upon to search within her instructional repertoire to find the best opportunity and teaching tool to facilitate learning at that time. So for example, the clinic instructor may choose to generalize from

many similar student experiences to practice tendencies that are ineffective or inappropriate. To deal with this she may choose to debrief the cases and demonstrate the generalized case-handling problems. Perhaps the problem will be in students' weaknesses in their ability to carry out an effective interview and gather all the necessary facts. This might call for a simulation or demonstration, followed by either or both debrief and student practice. It may also call for a review of the pertinent interviewing literature. Perhaps the problems were procedural and related to poor question sequencing; perhaps students were unable to use skills well, through a failure of active listening. The teaching method selected to deal with the issues would be matched to the learning sought, all within the larger PBL or clinical method.

9. MATCHING TEACHING METHODS TO LEARNING OUTCOMES⁵⁹

So, within the broad frameworks of live-client under supervision clinics, PBL, and full-blown simulation⁶⁰ (neither role play nor vignette exercises) the clinical instructor has a full range of teaching strategies at her disposal. Selections can be made from among them

⁵⁹ See *e.g.*, Bok, Derek, C., *Our Underachieving Colleges: A Candid Look at How Much Students Learn and Why They Should Be Learning More: The Neglect of Pedagogy*. New Jersey: Princeton University Press p. 49. (2006)

⁶⁰ "A simulation is a form of experiential learning. Simulations are instructional scenarios where the learner is placed in a "world" defined by the teacher. They represent a reality within which students interact. The teacher controls the parameters of this "world" and uses it to achieve the desired instructional results. Simulations are in way, a lab experiment where the students themselves are the test subjects. They experience the reality of the scenario and gather meaning from it. It is a strategy that fits well with the principles of constructivism." <http://olc.spsd.sk.ca/de/pd/instr/strats/simul/index.html>

of the teaching tools most likely to help produce the learning sought or required.⁶¹ However, as broad frameworks for teaching and learning each of these methodologies, used alone or in combination, whether phased or contemporaneously, have dominant characteristics and ways of being deployed. All three share the following common characteristics:

1. Students must devise their own learning plan within the method.
2. Instructors can facilitate the learning of prescribed outcomes by focusing student performance on them and by directing feedback upon them.
3. They are high engagement activities.
4. They develop the analytical and critical faculties of students.
5. They promote the use of research methods, investigative and planning skills.
6. They build teamwork skills.
7. They raise professional issues in context and pose dilemmas requiring students to act in concert with their values, beliefs and professional requirements or expectations.
8. They illustrate the complexity of real life and virtual problems.
9. They require students to use their full range of resources.
10. They are constructivist in orientation.

⁶¹ Nilson, Linda B., *Teaching at its Best: A Research Based Resource for College Instructors*. 3rd edition. San Francisco: John Wiley & Sons. (2010) See in particular: "Matching Teaching Methods with Learning Outcomes" at p. 103.

Earlier I responded to a critique that neither clinic nor PBL nor the two combined, could deal with the acquisition of whole bodies of relevant, foundational knowledge. There I said I thought that PBL could be a successful way forward and that it had succeeded elsewhere in medicine, and in law, albeit to a limited context. Given constraints of space and scope I cannot progress this argument further here; however, I recognize it warrants further attention. This is a work in progress: a review of the medical and wider PBL research literature is indicated to provide better answers.

If there is a systematic body of knowledge we believe all students must acquire we must describe and specify it. Once it is known and mapped into learning outcomes we can then select the likeliest approach to successfully acquire the knowledge.⁶² The case/Socratic method that structures the learning of the body of knowledge around a series of reported cases, law review articles and other materials, and questions, is both limited and limiting educationally. However, if desirable because it promotes the achievement of specified outcomes, there might be Socratic moments or experiences within PBL or live client clinic to develop and test analytical skill development and the ability to synthesize knowledge for problem solving.

Within the broader framework of live-client under supervision clinics, PBL, and full-blown simulation a careful instructor proceeds more or less as follows. To begin with the instructor focuses on the achievement of clearly stated, pre-mapped learning outcomes

⁶² Biggs, J., "Aligning Teaching and Assessing to Course Objectives", Conference Paper, *Teaching and Learning in Higher Education: New Trends and Innovations*, University of Aveiro, 13-17 April, 2003

for the course. Next she identifies the learning components of each outcome to be learned as it may be a compound or complex learning outcome. Third, the instructor will reflect upon the learning preferences and learning styles of the learners.⁶³ Then she will select interventions, modes of supervision, individual and group activities including, methods, techniques, aids and devices suited to the achievement of the outcome(s). Fifth, the instructor will devise and carry out assessments of student performance for both formative (teaching and learning) and summative (certification; final examination) that are likely to promote the acquisition of the learning outcomes.

This approach will help instructors assure the achievement of the full range of law school learning outcomes through the development of teaching interventions either in advance of or as required in the context of live client, PBL and simulation clinics. Active learning with a focus on reality and live client experience in all phases will remain the watchword. However, to assure the learning of all requisite knowledge, skills and values some of the learning will need to be constructed through PBL, simulation or adjunct activities within live client clinics.

There are many reasons why we have developed a preference for active learning. To begin with, it tends to be engaging: the student is attentive and task focused (on task).

⁶³ Kolb, D. A., *Experiential Learning*, Englewood Cliffs, NJ: Prentice Hall (1984) Kolb's "cycle of learning" focuses attention on learner's preferences for different kinds of learning experiences. He suggests that no matter the beginning point of a learner the learning cycle inevitably goes through the four quadrants of the cycle: active experimentations (doing); concrete experience (feeling); reflective observation, (watching); abstract conceptualization, (thinking).

Second, it centres students on activities that will help them do something they want or will need to be able to do in their practice. Then, it permits them to test their knowledge, skills and abilities and obtain constructive feedback. All of these opportunities are offered in a safe environment in which students venture their approach. This active process tends to promote deep, long lasting and aligned learning.⁶⁴ It also offers observing instructors an opportunity to check the progress of learning to enable them to make any adjustments they consider useful.

So, finally can clinic achieve the UUDLEs as supplemented by Carnegie and Stuckey? My answer is yes, provided that there is a mix of clinical approaches including, among others, both PBL and live-client under supervision models. PBL can meet all of the requirements of the UUDLEs 1. to 4. inclusive. These are “knowledge” and “communication”; each would be addressed both directly and indirectly through PBL’s rich variety of activities, readings, research, exercises, discussions, presentations, constructive feedback sessions and supplementary activities either programmed for or requested by students. As for UUDLEs 5. and 6.⁶⁵, students should, as 5. requires, achieve “an understanding of the limits to their own knowledge and ability, and an appreciation of the uncertainty, ambiguity and limits to knowledge and how this might

⁶⁴ Biggs, J. "What do inventories of students' learning process really measure? A theoretical review and clarification" 83 *Brit. J. Ed. Psych.* pp 3-19 (1993) and Biggs J. and Tang C., *Teaching for Quality Learning at University* (3rd ed.) Buckingham: SRHE and Open University Press (2007)

⁶⁵ See footnote 8. above. Readers particularly interested in a careful reading of the UUDLEs or who are keen to have them at hand while reading this text will be able to extract them from their source at footnote 8.

influence analyses and interpretations” having been through many problems and attempts at their “resolution”. UUDLE 6. is less clear. It is very likely that the variety of activities once again will achieve: “a) qualities and transferable skills necessary for further study, employment, community involvement and other activities requiring:

1. the exercise of initiative, personal responsibility and accountability in both personal and group contexts;
2. working effectively with others;
3. decision-making in complex contexts.”

However, “b) the ability to manage their own learning in changing circumstances, both within and outside the discipline and to select an appropriate program of further study” will likely require live client under supervision experience. Finally, “c) behaviour consistent with academic integrity and social responsibility”⁶⁶ should proceed from PBL.

However higher-level professionalism is not fully achievable without live client work.

Higher education generally has been loath to enter into values education fearing that it would be tantamount to indoctrination.⁶⁷ Just as we do not tell people what to think we may shy away from telling them what to believe.⁶⁸ We have no difficulty in suggesting rational arguments for doing good deeds. Yet we still often take the view that another is

⁶⁶ *Ibid*

⁶⁷ See Petter *op. cit.*

⁶⁸ Carnegie *op. cit.* p. 132 ff. and see also Shepard, K. “Higher education for sustainability: seeking affective learning outcomes” 9 *International Journal of Sustainability in Higher Education* 87. (2008)

entitled to her own beliefs, values, attitudes and feelings.⁶⁹ We are willing to teach them how to think and maybe we can do the same for learning how to value, feel and believe. Similarly we are uneasy about trying to shape others' feelings. In many professions the concern for commitment to professional norms has resulted in attempts to "teach" in the affective domain. In many law schools we are told professional conduct is taught just like any other law subject that includes a body of rules and underlying principles and required behaviours. In the legal profession, but perhaps less so for law schools, there is little doubt that we require lawyers to abide by ethical prescriptions and rules of conduct.⁷⁰ However, do *we* want to inculcate the qualities of: caring for others; compassion, a commitment to justice, equity and fairness; civility and respectfulness of others and the justice system; honesty and integrity and so on?⁷¹ The answer in Carnegie and Stuckey is yes. Clearly experiential learning models including role-plays, simulation, PBL, and live client under supervision clinic are among the methods to succeed in order of increasing likelihood.⁷²

⁶⁹ See Krathwohl, *Learning Objectives in the Affective Domain op. cit.*; also includes motivation, willingness to participate, openness to new ideas.

⁷⁰ See: *e.g.*, The Law Society of England and Wales' Legal Education and Training Review <http://letr.org.uk/> and the work of the Chief Justice of Ontario's Advisory Committee on Professionalism <http://www.lsuc.on.ca/with.aspx?id=610>; Carnegie and Stuckey *op.cit.*

⁷¹ "The University of Sydney (2006), for example, suggests that: Graduates of the Faculty of Veterinary Science will hold personal values and beliefs consistent with their role as responsible members of local, national, international and professional communities. (E.g. protect the natural environment, maintain biodiversity and conserve endangered species)." *Shepard op. cit.* at p. 92

⁷² The field of legal ethics is developing quickly and has evolved as a highly intellectual and demanding discipline. We do need to be able to think systematically and deeply about such matters. In the end, if we do not internalize the beliefs we are unlikely to commit to the behaviours with enthusiasm.

As noted earlier, learning outcomes relating to:

1. lawyering skills education,
2. professionalism learning,
3. the ability to integrate the multiple spheres of learning, and
4. appreciation of the centrality of the influence and indeterminacy of context on the provision of legal services

will only progress completely through the live client under supervision model. However, these goals can to some significant extent be achieved through the enhanced PBL model, especially if it is supplemented by simulation. I do not propose this for reasons expressed earlier.⁷³ Rather the live client model coupled with PBL, both supplemented by strategically chosen and aligned learning and teaching methods, has the greatest chance to achieve these outcomes.

The greatest challenge for live-client learning is organizing student learning so that it is sufficiently comprehensive when the time for programme completion has arrived. In the absence of supplementation by PBL, live client is very unlikely ever to cover the basic subject matter grounding even a minimalist is likely to describe as basic to a legal education.

⁷³ see discussion *infra*

CONCLUSION

A modern legal education seeks to be a very sophisticated multi-dimensional, interdisciplinary venture that prepares graduates for a wide variety of career opportunities. Curiously, many examples of it do not prepare graduates to be lawyers, just to be learner-lawyers.⁷⁴

The ironies of the historical developments in clinical legal education ought not be allowed to slip by unmentioned.⁷⁵ The “clinical” method was of course the original method for legal education and training. Lawyers learned from seniors. In the United States apprenticeship was abandoned in favour of law school.⁷⁶ Apprenticeship of course had to go: it created barriers to equal access to the profession⁷⁷ and was vastly uneven in quality. It was also about to be supplanted by technology: the copyist work of articulated clerks would no longer be required.⁷⁸ Oddly, there was little effort to save apprenticeship by improving it.⁷⁹ Langdell had already kindled the academic revolution and the access

⁷⁴ see Hall and Kerrigan, *op cit.* at p. 28 quoting Aaronson, M. “Teaching Problem Solving Lawyering: An Exchange of Ideas”, 11 *Clinical Law Review* (2004-2005) at p. 485

⁷⁵ See Gold N., and Plowden P., “Clinical Scholarship and the Development of the Global Clinical Movement”, in Bloch, F. S., *The Global Clinical Movement*, New York: Oxford University Press. (2011)

⁷⁶ Stevens R., *Law School: Legal Education in American from the 1850s to the 1980s*, Chapel Hill: University of North Carolina Press. (1983)

⁷⁷ Delos Rogest Davis, only the second black lawyer in Ontario, was unable to enter the profession for want of being able to find a principal to supervise his articles of clerkship. It took two acts of the legislature of the Province of Ontario to permit his entry to the profession, first as a solicitor in 1884 and later as a barrister in 1886. He was later appointed the British Empire’s first black QC in 1910.

⁷⁸ Rowe W. V., “Legal Clinics and Better Trained Lawyers – a Necessity”, 11 *Ill. L. Rev.* 515 (1917)

⁷⁹ In the early 1980s I served as Director of British Columbia’s Bar Admission Program. One of its components was articling, or apprenticeship. I was able to persuade the members of the Legal Education Committee to require the structured and detailed supervision of four skills activities followed by feedback. There was to be a written record of the student-lawyer interactions. I was summoned to visit one of the

seekers in the US founded evening and open entry law schools at egalitarian sites such as YMCAs and private law offices.⁸⁰ Apprenticeship has survived in Canada, some of Australia, in the United Kingdom, and in many Commonwealth countries. For all the reasons articles were originally abandoned, they remain under fire in Australia and Ontario has approved a pilot scheme that introduces an alternative to articles: a professional preparation programme of 16 weeks accompanied by a placement of equal duration.⁸¹

The rise of the clinical movement in the late 1960s and 1970s owed its momentum to many things including the famous clarion call of legal realist Jerome Frank, “Why Not a Clinical Lawyer School?” and all of the arguments about the failings of university legal education in developing professional capability.⁸² More so, the movement owed its progress to the social movements in the United States as the struggles against racism and poverty took deep hold in the south and around the country in the form of the civil rights movement and President Johnson’s “War on Poverty”. Richard Nixon was indirectly to have his impact on the reform of legal education as the recognition that it was lawyers who facilitated the Watergate debacle sunk in. The Council on Legal Education for

city’s largest law firms. The training partner and three others met me. I was seated at the doorway to the office with the lawyers arrayed in a semi-circle beside and in front of me. I was told that the firm was considering abandoning its training role if the governing body were to insist on structured practice activities with feedback. No doubt this was a blustery bluff; after all the articling students were the major source of new lawyer recruitment. The point of their disinterest in working to help students achieve specified learning goals did not escape the governing body’s leadership or me.

⁸⁰ See Stevens, *op. cit.*

⁸¹ <http://www.lsuc.on.ca/Pathways/>, <http://www.ryerson.ca/lawcentre/lawpracticeprogram.html>

⁸² Frank J., “Why Not a Clinical Lawyer School?”, 81 *U. Pa. L. Rev.* 385 (1933)

Professional Responsibility (CLEPR) funded legal clinics with human rights, civil liberties, poverty law and professionalism agendas. Law schools became part of the social action of the day and clinics were the way to engage actively in them. Over the ensuing fifty years we have seen a shift to a wide variety of clinics, concerns for corporate as well as governmental and citizen social responsibility. It was important to show that this public-spirited and important community activism had educational merits; and it had plenty!

The legacy of CLEPR is rich and varied and, beyond clinical legal education, likely includes the vast work in professionalism, the legal profession and legal ethics.⁸³

Finally, somewhere along the way the work of clinics and clinicians became more theoretical and conceptual. Unsurprisingly clinicians were seeking a place of respect and importance within the academy and undertook to do important research in the wide range of realms that clinic touches. Legal practice became the subject of study and it too was academicized. Through this academicization scholars have emerged.⁸⁴ A part of that scholarship includes the educationists' contribution, with Carnegie and Stuckey serving as the primary synthesizers of clinical education.

That short tour complete, we can summarize as follows: legal education reform has begun to focus firmly on the centrality of lawyering education founded on both academic

⁸³ see *e.g.*, *Legal Ethics*, Hart Publishing, Oxford; *The Journal of the Legal Profession*, University of Alabama School of Law, Tuscaloosa; *International Journal of the Legal Profession*, Routledge, Taylor and Francis Online, England and many books and scores of articles.

⁸⁴ see Gold and Plowden *op. cit.*

and professional, practical bedrock. In part because we know more clearly what the desirable outcomes of a legal education are, clinic's formerly marginal role in legal education is moving ineluctably to the central and guiding role. We are seeing a joining of the clinicalization and academicization of legal education! Our current analyses of desired university and professional preparation outcomes, our greater clarity of purpose, is founded on a determined commitment to producing desirable professional results with the wherewithal of conceptual, theoretical, professional and methodological learning becoming much more firmly within our grasp.

The discussion in this paper provides some insights into frameworks for understanding law school learning outcomes and devising ways towards their achievement. The academy, especially in the United States, but also elsewhere, has not been idle; indeed, there are signs that it is restive.⁸⁵ The work of the Global Alliance for Justice Education,

⁸⁵ Following is a summary of recent developments in selected American JD programs. Interested readers are encouraged to get the full information at the URLs below:

Case Western Reserve University School of Law,

<http://law.case.edu/Academics/ExperientialLearning.aspx>

The CaseArc four-semester series of courses in Year 1 and 2 introduce students to lawyering skills – legal research and writing, client counseling, transactional drafting and negotiation, settlement negotiation, court presentations. In the 4th semester, simulated legal problem are used to approximate the lawyer's role and explore issues of professionalism and judgment. Clinics, externships and research labs (providing research for real clients) are also available but not required.

CUNY Law School, <http://www.law.cuny.edu/academics/curriculum.html>

The law school requires (each semester of Year 1 and in second semester of Year 2) experiential lawyering seminars, integrating areas of legal doctrine with lawyering skills through use of simulations, role-plays, mock jury trials, mediations, arbitrations, *etc.* Six competencies are assessed: professional responsibility, theoretic perspective, clinical judgment, communication (oral and written), legal reasoning, and management of effort. Year 3 includes a required one or two semester (12-16 credits) faculty supervised, live client lawyering course (at an in-house clinic or in a field placement).

the International Journal of Clinical Education, the Commonwealth Association for Legal Education, the European Network for Clinical Legal Education and many regional bodies⁸⁶ have spread the learning and influenced the movement. Recently there has been a flurry of curricular innovation that seeks to build on Carnegie and Stuckey. Innovations include phasing learning and practice opportunities into the law student learning experience and include the use of multiple experiential (and other) methods.⁸⁷

Higher education accountability and quality assurance (QA) schemes such as Ontario's UUDLEs, when mated with the results of studies such as Carnegie and Stuckey, among many other valuable sources, provide a series of learning targets that can be aimed at.

New York University Law School,

<http://www.law.nyu.edu/academics/lawyringprogram/curriculum/index.htm>

Year 1 includes a two-semester lawyering program that uses "a series of increasingly complex simulated exercises" aimed at developing lawyering skills and professionalism. Students are introduced to legal interpretation, written advocacy and analysis, fact development, client counseling, a transactional negotiation for a client, an oral argument of a motion before a "judge".

Northeastern University School of Law,

<http://www.northeastern.edu/law/academics/curriculum/lssc/index.html>

The Year 1 program, Legal Skills in Social Context,, introduces students to "legal research, objective and persuasive legal writing, client representation, crucial analysis and oral skills." Course is organized around small "law offices" in which students work through simulated problems to acquire skills. The "law office" also plans and executes a legal research project for a real "community-based or public service organization." The law school also has a co-op JD program.

Washington and Lee University School of Law, <http://law.wlu.edu/admissions/page.asp?pageid=311>

Year 3 is "entirely based on learning through engagement – combining practicum courses, practice simulations, client interactions, the formation of professional identity and the cultivation of practical skills." It is designed to transition students to the practice of law and integrates "legal theory, legal doctrine, and the development of professional judgment ethical sensibilities..." It is based on the Carnegie apprenticeships.

⁸⁶ The United States based Clinical Legal Education Association, the Association for Canadian Clinical Legal Education, and the Irish Clinical Legal Education Association are three examples.

⁸⁷ PBL, for example is cited by the Legal Education and Training Review (LETR) in England Wales as having a potentially large role to play. For the LETR more generally and the array of very informative papers see <http://letr.org.uk/>

Similarly, both Carnegie and Stuckey, and other contributors that I have mentioned along the way, suggest some ways of accomplishing the desired results. The strategic selection of clinic as the overarching method is the likeliest choice to assure that the various rings of the target that encompass competent and professional practice as well as sound and sophisticated learning are all hit.

Schedule 1: A concordance of the UUDLEs, Carnegie and Stuckey

UUDLES	Carnegie Apprenticeships/Tasks	Stuckey Principles
<p>1. Depth and Breadth of Knowledge</p>	<p>1. Cognitive Apprenticeship</p>	<p>Adequate core knowledge/ understanding of the law.</p>
<p>a) a developed knowledge and critical understanding of the key concepts, methodologies, current advances, theoretical approaches and assumptions in a discipline overall, as well as in a specialized area of a discipline</p> <p>b) a developed understanding of many of the major fields in a discipline, including, where appropriate, from an interdisciplinary perspective, and how the fields may intersect with fields in related disciplines</p> <p>c) a developed ability to: 1) gather, review, evaluate and interpret information; and 2) compare the merits of alternate hypotheses or creative options, relevant to one or more of the major fields in a discipline</p> <p>d) a developed, detailed knowledge of and experience in research in an area of the discipline</p> <p>e) developed critical thinking and analytical skills inside and outside the discipline</p> <p>f) the ability to apply learning from one or more areas outside the discipline</p>	<p>a) learn the academic knowledge base</p> <p>b) habits of mind that are considered most important to the profession</p> <p>c) mastery of legal rules taught in Year 1</p> <p>d) research</p> <p>e) how to gather knowledge and bolster comprehension – skills – reading case like lawyer would – meta-lesson – peculiar nature of legal language at once ambiguous and precise (p. 64)</p> <p>f) moving back and forth between detached analysis and empathetic engagement</p>	<p>a) Jurisdiction, authority, procedures that initiate, develop, interpret, and apply the law, constitutional law and judicial review;</p> <p>b) Regulatory and fiscal framework for business transactions and financial services:</p> <p>c) Contract, tort, obligations, rights, and remedies,</p> <p>d) Criminal law;</p> <p>e) Legal concept of property; the protection, disposal, transmission of proprietary interests,</p> <p>f) Equitable rights, titles and interests</p>

2. Knowledge of Methodologies	2. and 3. Cognitive/Practice Apprenticeships	The intellectual and analytical skills required to:
<p>an understanding of methods of enquiry or creative activity, or both, in their primary area of study that enable students to:</p> <p>a) Evaluate the appropriateness of different approaches to solving problems using well-established ideas and techniques;</p> <p>b) Devise and sustain arguments or solve problems using these methods; and</p> <p>c) Describe and comment upon particular aspects of current research or equivalent advanced scholarship.</p>	<p>a) Methodologies relate to the use of cognitive theory to develop theory of practice</p> <p>b) nature of expertise and how it is required</p> <p>c) able to articulate the conceptual models involved in important lawyering skills (interviewing, counseling, conducting research etc.) (p. 100/2, 116/18)</p>	<p>a) Apply methods and techniques to review, consolidate, extend and apply knowledge and understanding and to initiate and carry out projects; and</p> <p>b) Critically evaluate arguments, assumptions, abstract concepts and data to make judgments and to frame appropriate questions to achieve a solution or identify a range of solutions to a problem.</p>

3. Application of Knowledge	3. Practice Apprenticeship	Practical judgment and adequate professional skills
<p>a) the ability to review, present, and interpret quantitative and qualitative information to:</p> <ul style="list-style-type: none"> i. Develop lines of argument; ii. Make sound judgments in accordance with major theories, concepts and methods of the subject(s) of study; iii. Apply underlying concepts, principles, and techniques of analysis, both within and outside the discipline; iv. Where appropriate use this knowledge in the creative process; and <p>b) the ability to use a basic range of established techniques to:</p> <ul style="list-style-type: none"> i. Initiate and undertake critical evaluation of arguments, assumptions, abstract concepts and information; ii. Propose solutions; iii. Frame appropriate questions for the purpose of solving a problem; iv. Solve a problem or create a new work; <p>c) the ability to make critical use of scholarly reviews and primary sources</p>	<p>a) analyze cases in role by looking at cases from perspectives of their clients/lawyers (p.56/7)</p> <p>b) capacity to engage in complex practice.</p> <p>c) enabling students to learn to learn.</p> <p>d) learn from experience.</p> <p>e) integrate analytical knowledge within ongoing practical contexts which are organized by narrative modes of thinking and often convey meaning through exemplary acts and cases. (p. 96/7)</p> <p>f) iterative mode of improving skills can be applied to wide variety of capacities, blending intellectual and practical – making feature of expert performance explicit for learners ... (p. 99).</p>	<p>a) The ability to advocate a case on behalf of others, and to participate in trials to the extent allowed upon admission to practice,</p> <p>b) Effective use of current technologies and strategies to store, retrieve, and analyze information and to undertake factual and legal research,</p> <p>c) Effective skills for client relationship management and knowledge of how to act if a client is dissatisfied with the advice or service provided.</p>

4. Communication Skills	3. Practice Apprenticeship	Adequate professional skills
... the ability to communicate information, arguments, and analyses accurately and reliably, orally and in writing, to a range of audiences	<p>a) lawyering skills: legal research and writing, interviewing, counseling, and negotiation.</p> <p>b) expert performance</p>	<p>a) The application of techniques to communicate effectively with clients, colleagues, and members of other professions.</p> <p>b) The capacity to deal sensitively and effectively with clients, colleagues, and others from a range of social, economic, and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives.</p>
5. Awareness of Limits of Knowledge	3. Practice Apprenticeship	Self-efficacy and adequate professional skills
... an understanding of the limits to their own knowledge and ability and an appreciation of the uncertainty, ambiguity and limits to knowledge and how this might influence their analyses and interpretations.	<p>a) conceptual models involved in the important skills that define effective lawyering.</p>	<p>a) The ability to manage personal workload and to manage efficiently, effectively, and concurrently a number of client matters,</p> <p>b) The ability to work effectively as a member of a team.</p> <p>c) Capacity to recognize personal and professional strengths and weaknesses etc. (p. 77)</p>

6. Autonomy and Professional Capacity	3. Professional Identity/Purpose Apprenticeship and Ethical/social apprenticeship	Professionalism
<p>a) qualities and transferable skills necessary for further study, employment, community involvement and other activities requiring:</p> <p>i. The exercise of initiative, personal responsibility and accountability in both personal and group contexts;</p> <p>ii. Working effectively with others;</p> <p>iii. Decision-making in complex contexts;</p> <p>b) the ability to manage their own learning in changing circumstances, both within and outside the discipline and to select an appropriate program of further study; and</p> <p>c) behaviour consistent with academic integrity and social responsibility</p>	<p>a) purposes/attitudes guided by values for which the professional community is responsible</p> <p>b) public dimension professional life</p> <p>c) wide, ethically sensitive perspective on the technical knowledge and skill that law practice requires.</p> <p>d) skills, inclination, ethical standards, social roles, and responsibilities that mark the professional</p> <p>e) creating and participating in a responsible and effective professional community.</p> <p>f) able and willing to join an enterprise of public service.</p> <p>g) rules of conduct, “law of lawyering” and wider matters of morality and character</p> <p>h) individual and social justice</p> <p>i) integrity, consideration, civility and other aspects of professionalism.</p> <p>j)keep the analytical and the moral, the procedural and substantive in dialogue throughout learning process</p> <p>k) integrate not only knowledge and skill but the cognitive, practical and ethical-social facets of lawyering</p>	<p>Appropriate behaviors and integrity in a range of situations.</p> <p>a) The ability to recognize clients’ financial, professionals constraints and priorities</p> <p>b) An appreciations of the commercial environment of legal practice, including the market for legal service</p> <p>c) Employment of risk management skills</p> <p>The ability to work effectively as a member of a team.</p> <p>Graduates strive to seek justice.</p> <p>Graduates foster respect for the rule of law.</p> <p>Graduates embody honor, integrity, and fair play and are truthful and candid.</p> <p>Graduates deal sensitively and effectively with diverse clients and colleagues.</p> <p>Graduates nurture quality of life.</p> <p>Graduates demonstrate self-reflection and lifelong learning skills.</p> <p>Graduates demonstrate self-efficacy</p>

